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IN THE NAME OF ALLAH THE MOST BENEFICENT AND MERCIFUL

International Islamic University Sector H-10, Islamabad

COMPETITION POLICY AND LAW IN PAKISTAN
(Review, Analysis and Recommendations)

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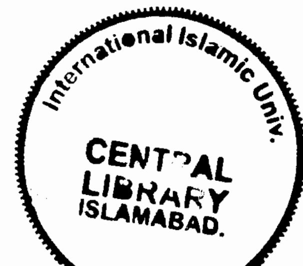

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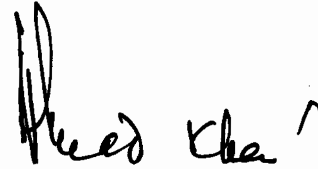
IN THE NAME OF ALLAH ALMIGHTY, THE MOST BENEFICENT, THE MOST COMPASSIONATE

FACULTY OF SHARIAH AND LAW IIUI
INTERNATIONAL ISLAMIC UNIVERSITY, ISLAMABAD

It is certified that we have read the thesis, submitted by **MR. SHABBIR HUSSAIN** (Registration No. 39-FSL/LL.M.(CL)/F-04, titled **"COMPETITION POLICY AND LAW IN PAKISTAN (Review, Analysis and Recommendations)"**, as a partial fulfillment for the award of degree of LL.M. Corporate Law. We have evaluated the thesis and found it up to the requirement in its scope and quality for the award of degree of LL.M. Corporate Law.



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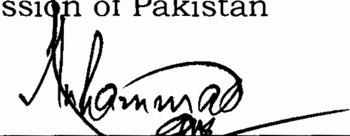

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DEDICATION

I dedicate this work to my father Mian Fazal Ahmad who wished for me to have highest qualification, my mother who prayed for my success and prosperity, brother and all friends among legal fraternity who appreciated my effort to continue this programme of higher study , whose endless love and prays are just a treasure for me.

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May Allah bless all these kind people for their generosity!!!

PREFACE

This thesis on the "COMPETITION POLICY AND LAW IN PAKISTAN (Review, Analysis and Recommendations)" is intended to serve as a useful reference guide to Competition Commission, of Pakistan, Ministry of Commerce and other financial institutions, law enforcing agencies and the general public to understand the meaning of competition policy and law, historical development of the Competition Law in ancient time, the origination of restraint of trade and creation of monopoly since 11 centuries. This study includes the brief description of case laws on monopoly and restraint of trade like Darcy Vs. Allin and standard Oil case.

In this study, an effort has been made to trace out the origin of the phenomena of competition law which existed during the Roman republic 50 BC, and aggressive measurement were taken in case of violation of tariff system. In England, legislation to control monopoly and restrictive practices were in force at the time of Norman Conquest Of England which began in 1066 with the invasion of the kingdom of england by the troops of william, duke of normandy. King Edward forbad the practice of buying of goods before they reach market and then inflating the price, in fact this is the tradition of the Holy Prophet:

Tradition No.1025

Narrated Ibn Abbas, Allah's Messenger said, "Do not go to meet the caravans on the way (for buying their goods without letting them know the market price), a town dweller should not sell the goods of desert dweller on behalf of the latter." Ibn 'Abbas was asked, "What does he mean by not selling the goods of a desert dweller by a town dweller?". He said, "He should not become his broker". (3-367-O.B). (Sahih Al-Bukhari, Arabic English translated by Dr. Muhammad Muhsin Khan, Dar-Us-Salam Publications, Riyadh, Saudi Arabia 1984).

In order to have know how of competition laws in the various jurisdiction of the world this study contains overviews of the competition laws of Saudi Arabia, Taiwan, India and Indonesia in the jurisdiction of Asia. The competition law firstly was enacted in Canada and hence deep study was made of the competition law in the jurisdiction in North America and overview of the

competition law of Canada, Mexico and Chile have been added in this research work. It was the devoted wish of Honourable Mr. Ahmad Khan Supervisor Ex-member of MCA to conduct study on the Law for the Defense of Free Competition of Chile, as latest development has been made in the competition law of Chile by the government. So valuable material has been added in this research work.

As the Competition Law is an international phenomenon, it was utmost necessary to discuss global and regional scenario of this law. The description of international bodies and forums like Competition Commission of India, Fair Trade Commission of Taiwan, Competition Council of Saudi Arabia, Business Competition Supervisory Commission of Indonesia, Competition Bureau of Canada Federal Competition Commission of Mexico and Free Competition Defense of Chile has not only been discussed but their constitutions, adjudications, investigations, scope of law and jurisdiction has been discussed in detail in this research work.

At the end, the economic scene at the time of promulgation of MRTPO 1970 has been mentioned, the detailed review and provisions of MRTPO 1970 has been discussed. The review of Competition Ordinance of 2007 has been enlisted in the Chapter 4 of the thesis. Finally keeping in view of Competition Law of various jurisdiction of the world valuable recommendation has been added in the Chapter 4 of the thesis.

ABBREVIATIONS

ADB	Asian Development Bank
ASEAN	Association of Southeast Asian Nations
BCSC	Business Competition Supervisory Economic
CA	Competent Authority
CBC	Competition Bureau of Canada
CC	Competition Council
CC	Commissioner Competition
CCA	Central Competition Authority
CCC	Commissioner Of Competition Commission
CCI	Competition Commission of India
CG	Central Government
CIP	Chilean Investigation Police
CLA	Corporation Law Authority
DG	Director General
EC	European Community
EU	European Union
FCC	Federal Competition Commission
FCDC	Free Competition Defense Court
FLEC	Federal Law of Economic Competition
FTC	Federal Trade Commission
FTC	Fair Trade Commission
FTL	Fair Trade Law
GATT	General Agreement on Trade and Tariff
IMF	International Monetary Fund
KSE	Karachi Stock Exchange
LDFC	Law for the Defense of Free Competition
LOI	Letter of Intent
MCA	Monopoly Control Authority
MFN	Most Favoured Nation
MRTPO	Monopolies and Restrictive Trade Practice (Control and Prevention) Ordinance

NATA	Northern American Trading Areas
NEP	National Economic Prosecutor
NEPRA	National Electric Power Regulatory Authority
OAGRA	Oil and Gas Regulatory Authority
OECD	Organization for Economic Co-operation and Development
PEMRA	Pakistan Electronic Media Regulatory Authority
PTA	Pakistan Telecommunication Authority
RFTA	Regional Free Trade Agreement
SAARC	South Asian Association of Regional Corporation
SAGB	Saudi Arabia Grievance Board
SBP	State Bank Of Pakistan
SEAP	Security and Exchange Authority of Pakistan
SECP	Security Exchange Commission Of Pakistan
SLIC	State Life Insurance Corporation
TFTC	Taiwan Fair Trade Commission
TRIMS	Trade Related Investment Measures
TRIPS	Trade-Related Aspects of Intellectual Property Rights
UNCTAD	United Nations Conferences on Trade and Development
WTO	World Trade Organization

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CHAPTER ONE

1 INTRODUCTION, LITERATURE REVIEW, POLICY CONCENTRATION

1.1 What is Competition

According to the dictionary meanings, Com·Pe·Ti·Tion (kŏm'pĭ-tĭsh'ən) is the act of competing as for profit or a prize, rivalry; rivalry between two or more businesses striving for the same customer or market.[1]

Thesaurus, as a noun, defines the word Competition as under[2]:-

1. A vying with others for victory or supremacy: battle, contest, co rivalry, race, rivalry, strife, striving, struggle, tug of war, war, warfare.
2. A trial of skill or ability: contest, meet.
3. One that competes: competitor, contender, contestant, corrival, opponent, rival.

1.2. Competition in Scientific Sense [3]

Competition is the act of striving against another force for the purpose of achieving dominance or attaining a reward or goal, or out of a biological imperative such as survival. Competition is a term widely used in several fields, including biochemistry, ecology, economics, business, politics, and sports. Competition may be between two or more forces, life forms, agents, systems, individuals, or groups, depending on the context in which the term is used.

1.3. Competition in Economics [4]

Competition is the rivalry in supply of acquiring an economic service or goods. Sellers compete with other sellers, and buyers with other buyers. In its perfect form, there is competition among many small buyers and sellers, none of whom is too late to affect the market as a whole. In practice, competition is often reduced by a great variety of limitations,

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[1] http://www.answers.com/competition&r=67 visited on 13-8-2009
[2] http://www.answers.com/competition visited on 13-8-2009
[3] http://www.science daily.com/articles/c/competition.htm visited on 14-5-2010

[4] http://www.infoplease.com/ce6/bus/a0813096/html visited on 13-8-2009

including copyrights, patents, and governmental regulation, such as fair-trade laws, minimum wage laws, and wage and price controls.

1.4. Competition among Merchants[5]

Competition has been a characteristic of mercantile and industrial expansion since middle ages. By the 19th century, classical economic theorists had come to regard competition, at least within the national state, as a natural outgrowth of the operation of supply and demand within a free market economy. The price of an item was seen as ultimately fixed by the confluence of these two forces.

A major theme in the history of competition has been the monopoly, which represents a business interest so large that it has the ability to control prices in a given industry. Some governments attempted to impose competition through legislation e.g. the United States did through Sherman Antitrust Act of 1890, which made many monopolistic practices illegal. Later legislation in the United States, such as the Clayton Act (1914), the Robinson-Patman Act (1936), and the Celler-Kefauver Act (1950), offered revisions and clarifications of the Sherman Act. The Federal Trade Commission, created in 1914, is a regulatory agency with the mission of encouraging competition and discouraging monopoly.

Until the mid-20th century, there was widespread government acceptance of the existence of industrial and commercial combinations, together with an effort to apply regulation administered either by the state or by the industries themselves. Governments had accepted the existence of what were considered "practical monopolies," particularly in the field of public utilities (see utility, public). This attitude changed somewhat after the 1970s; for example, the U.S. government forced the breakup (1984) of American Telephone & Telegraph and deregulated (1985) natural-gas prices. In the 1990s, state regulators began to allow competition among some utilities (especially natural-gas and electricity suppliers) in

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[5] http://www.answers.questia.com/library/encyclopedia visited on 13-8-2009

order to bring prices down. This was also a trend in some European countries; Germany, for example, deregulated its electric power industry in 1999.

To sum it up:

Broadly defined, competition in market-based economies refers to a situation in which firms or sellers independently strive for buyers' patronage to achieve particular objectives e.g. profit, sales or market share. Competition rivalry may take place in terms of price, quantity, service, or combination of these and other factors that customers may value. Competition would lead to greater economic efficiency (i.e. production, distribution, etc) and consumers' choice of products and services at competitive prices. In a competitive market:

1. Economy, price and profit signals tend to be free of distortions and create incentives for firms to redeploy resources from lower to higher – valued uses,
2. Decentralized decision making by firms promotes efficient allocation of scarce resources, increases consumers' welfare, and encourages innovation, technological change and progress in the economy as a whole.
3. Firms have incentives to have market power by limiting competition by erecting barriers to commerce, collusive arrangements to restrict prices and outputs, and engaging in other anti-competitive business practices.
4. Anti-competitive actions of firms lead to market failures; result in inefficient allocation of resources and adversely affect industry performance and economic welfare; and enable sellers to reduce outputs and extract higher prices at consumer's expense.

1.5 What is competition policy?

Competition Policy is a set of policies, measures and instruments used by Governments that determine the 'condition of competition' that reign on their markets. Its components include anti-trust/competition law, policies concerning privatization, deregulation, subsidies, product/producers' related discriminations. Competition policy target market activities by firms (i.e. market power and its abuse) that clash with the objectives of maximizing consumers' welfare and overall economic efficiency.

Competition policy, accordingly attempts to reduce barriers to market entry and exit, reform anti-competitive regulations, and provide for a comprehensive regulatory reform program.

1.6 What is Competition Law?

Competition Law is a set of rules and disciplines relating to controlling and preventing intra-firm agreements that restrict competition or abuse of dominant position: for efficient resource allocation and ensuring that competition process is not detrimental to social welfare.

1.7. Objectives of Competition Law

The primary purpose of competition law is to improve economic efficiency so that consumers enjoy lower prices, increased choice, and improved product quality. Sustained competition is the force that drives companies to be efficient and to pass benefits on the consumers. A more specific goal of competition law is to prevent economic agents from distorting the competitive process either through agreements with other firms or through unilateral actions designed to exclude actual or potential competitors.

It is expected of the competition law that it controls agreements among competing enterprises- horizontal agreements-on prices or other important aspects of their competitive interaction as well as agreements between firms at different levels of the manufacturing or distribution processes-vertical agreements. As it is possible for a firm to grow large enough to harm competition unilaterally, such dominant firms should be subject to carefully drafted provisions in the competition law.

It is imperative that while enterprises that win the competitive struggle lawfully, may be rewarded for their superior performance dominant firms should not be permitted to use their advantages to block challenges from existing or potential competitors. Also, the enterprises which might decide to merge in order to enhance efficiency will heighten competition and thus benefit consumers; some mergers may be anti-competitive, intended to eliminate competition and to artificially achieve a dominant position and based on superior economic performance. Alternatively, a merger might reduce the number of competitors sufficiently,

enabling the remaining firms to readily coordinate their activities. An effective competition law should, therefore, include a provision to prevent such mergers.

Where the competition law includes provisions related to consumer protection and unfair business practices, to reduce the potential for overlap with other statute, these provisions are expected to be as focused on preserving fair competition. They should also operate to protect the competitive process rather than the competitors.

Competition law being an essential part of the economic constitution of a free market country, it is expected to apply to all market transactions and to all entities engaged in commercial transactions irrespective of ownership or legal form.

1.8 Competition Regulator[6]

It is a government agency, typically a statutory authority, sometimes called an economic regulator, which regulates and enforces competition laws, and may sometimes also enforce consumer protection laws. Competition regulators may also regulate certain aspects of mergers and acquisitions and business alliances and regulate or prohibit cartels and monopolies.

In addition to such agencies there is often another body responsible for formulating competition policy. There is general agreement on acceptable standards of behavior. The degree to which countries enforce their competition policy does vary substantially, with the United States generally regarded as having the strictest enforcement.

1.9 History of Competition Law[7]

Competition law history refers to attempts by governments to regulate competitive markets for goods and services, leading up to the modern competition or antitrust laws around the world today. The earliest records traces back to the efforts of Roman legislators to control price fluctuations and unfair trade practices. The English common law doctrine of restraint of trade became the precursor to modern competition law. This grew out of the

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[6] Htt://encyclopedia.the free dictionary.com/competition + regulator, http://en.wikipedia.org/wiki/competition_regulator visited on 13.08.2009

[7] http://en.wikipedia.org/wiki/history of _competition law visited on 13.08.2009

codifications of United States antitrust statues, which in turn had considerable influence on the development of European Community competition laws after the Second World War. Increasingly the focus has moved to international competition enforcement in a globalize economy.

1.9.1. Early Competition Laws

The formal study of "Competition" began in earnest during the 18th century with such words as Adam Smith's The Wealth of Nations. Different terms were used to describe this area of the law, including "restrictive practices" "the law of monopolies". "Combination acts" and the "restraint of trade".

1.9.2 Roman Legislation[8]

During the Roman Republic, around 50 BC, to protect the corn trade, heavy fines were imposed on anyone directly, deliberately and insidiously stopping supply ships. Under Diocletian in 301 AD, an edict set a death penalty for anyone violating a tariff system, for example, by buying up, concealing up or contriving the scarcity of everyday goods. The most legislation came under the 483 AD Constitution of Zeno which can be traced into Florentine Municipal laws of 1322 and 1325. It provided for property confiscation and banishment for any trade combinations or joint action of monopolies private or granted by the Emperor. Zeno rescinded all previously granted exclusive rights. Justinian also introduced legislation not long after to pay officials to manage state monopolies. As Europe slipped into the dark ages, so did the records of law making until the Middle Ages brought greater expansion of trade in the time of lexmereatoria[9].

[8] http://en.wikipedia.org/wiki/History_of_competition_law visited on 13.08.09

[9]http://en.wikipedia.org/wiki/Lex_Mercatoria
Lex mercatoria is the Latin expression for a body of trading principles used by merchants throughout Europe in the medieval. Meaning literally "law merchant", it evolved as a system of custom and best practice, which was enforced through a system of merchant courts along the main trade routes. It functioned as the international law of commerce.[1] It emphasised contractual freedom, alienability of property, while shunning legal technicalities and deciding cases *ex aequo et bono*.

Legislation in England to control monopolies and restrictive practices which were in force well before the Norman Conquest[10]. The Doomsday Book[11] recorded that "fore steel" (i.e. forestalling, the practice of buying up goods before they reach market and then inflating the prices) was one of three forfeitures that King Edward the Confessor could carry out through England. But concern for fair prices also led to attempts to directly regulate the market. Under Henry III an act was passed in 1266 to fix bread and ale prices in correspondence with corn prices laid down by the assizes. Penalties for breach included immurements, pillory and tumbrel. A fourteenth century statute labeled forestallers[12] as "oppressors of the poor and the community at large and enemies of the whole country." Under King Edward III the Statute of Labourers of 1349 fixed wages of artificers and workmen and decreed that foodstuff should be sold at reasonable prices. On top of existing penalties, the statute stated that overcharging merchants must pay the injured party double the sum he received, an idea that has been replicated in punitive treble damages under US antitrust law. Also under Edward III, the following statutory provision in the poetic language of the time outlawed trade combinations:-

> *"We have ordained and established, that no merchant or other shall make Confederacy, Conspiracy, Coin, Imagination, or Murmur, or Evil Device in any point that may turn to the impeachment, Disturbance, Defeating or Decay of the said Staples, or of anything that to them pertained, or may pertain".*[13]

Examples of legislation in mainland Europe include the constitutions juries metallici by Wenceslas II of Bohemia between 1283 and 1305, condemning combinations of ore traders increasing prices[14]; the Municipal Statutes of Florence in 1322 and 1325 followed Zeno's

[10] http://en.wikipedia.org/wiki/Norman_Conquest The **Norman conquest of England** or **'The Conquest'** began in 1066 with the invasion of the Kingdom of England by the troops of William, Duke of Normandy ('William the Conqueror or William the Bastard'), and his victory at the Battle of Hastings.

[11] http://en.wikipedia.org/wiki/Domesday_Book The ***Domesday Book*** is the record of the great survey of England completed in 1086, executed for William I of England, or William the Conqueror. While spending Christmas of 1085 in Gloucester, William "had deep speech with his counsellors and sent men all over England to each shire to find out what or how much each landholder had in land and livestock, and what it was worth"

[12] http://en.wikipedia.org/wiki/Competition_law#cite_note-9

[13] http://en.wikipedia.org/wiki/Competition_law#cite_note-11

[14] http://en.wikipedia.org/wiki/Wenceslaus_II

legislation against state monopolies; and under Emperor Charles V in the Holy Roman Empire a law was passed "to prevent losses resulting from monopolies and improper contracts which many merchants and artisans made in the Netherlands." In 1553 King Henry VIII reintroduced tariffs for foodstuffs, designed to stabilize prices, in the face of fluctuations in supply from overseas. So the legislation read here that whereas:-

> *"It is very hard and difficult to put certain prices to any such things.... (it is necessary because) prices of such victuals be many times enhanced and raised by the Greedy Covetousness and Appetites of the Owners of such Victuals, by occasion of engrossing and regarding the same, more than upon any reasonable or just ground or cause, to the great damage and impoverishing of the King's subjects.[15]"*

Around this time organizations representing various tradesmen and handicrafts people, known as guilds had been developing, and enjoyed many concessions and exemptions from the laws against monopolies. The privileges conferred were not abolished until the Municipal Corporation Act 1835.

1.9.3. Renaissance Developments

Elizabeth I assured monopolies would not be abused in the early era of globalization. Europe around the 15th century was changing fast. The new world had just been opened up, overseas trade and plunder was pouring wealth through the international economy and attitudes among businessmen were shifting. In 1561 a system of Industrial Monopoly Licenses, similar to modern patents had been introduced into England[16]. But by the reign of Queen Elizabeth I, the system was reputedly much abused and used merely to preserve privileges, encouraging nothing new in the way of innovation or manufacture. When a protest was made in the House of Commons and a Bill was introduced, the Queen convinced the protesters to challenge the case in the courts. This was the catalyst for the case of

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[15] http://en.wikipedia.org/wiki/Competition_law#cite_note-12

[16] http://en.wikipedia.org/wiki/Competition_law#cite_note-13

Monopolies or Darcy V. Allen[17]. The plaintiff, an officer of the Queen's household, had been granted the sole right of making playing cards and claimed damages for the defendant's infringement of this right. The court found the grant void and that three characteristics of monopoly were: price increases, quality decrease and the tendency to reduce artificers to idleness and beggary. This put a temporary end to complaints about monopoly, until King James I began to grant them again. In 1623 Parliament passed the

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- [17] http://en.wikipedia.org/wiki/Case_of_Monopolies ***Darcy v. Allin***, 77 Eng. Rep. 1260 (Queen's Bench, 1602) (often mis-spelled as ***Darcy v. Allain*** or ***Darcy v. Allen***, but most widely known as ***The Case of Monopolies***), was an early landmark case in English law, establishing that *the grant* of exclusive rights to produce any article was improper (monopoly). The reasoning behind the outcome of the case - which was decided at a time before courts regularly issued written opinions - was reported by Sir Edward Coke.

Facts

The plaintiff, Edward Darcy, was a member of Queen Elizabeth's court who received from the queen a licence to import and sell all playing cards to be marketed in England. This arrangement was apparently secured in part by the Queen's concern that card-playing was becoming a problem among her subjects, and that having one person control the trade would regulate the activity. When the defendant, T. Allin, sought to make and sell his own playing cards, Darcy sued to prevent this competition.

Ruling

The court determined that the Queen's grant of a monopoly was invalid, for several reasons:

1. Such a monopoly prevents persons who may be skilled in a trade from practising their trade, and therefore promotes idleness.
2. Grant of a monopoly damages not only tradesman in that field, but everyone who wants to use the product, because the monopolist will raise the price, but will have no incentive to maintain the quality of the goods sold.
3. The Queen intended to permit this monopoly for the public good, but she must have been deceived because such a monopoly can only be used for the private gain of the monopolist.
4. It would set a dangerous precedent to allow a trade to be monopolized - particularly because the person being granted the monopoly in this case knew nothing about making cards himself, and where there was no law that permitted the creation of such a monopoly.

Significance

Darcy v. Allin was the first definitive statement by a court that monopolies are inherently harmful, and therefore contrary to law. The case has since come to be known as *The Case of Monopolies*, and the arguments set forth therein have served as the basis for modern antitrust and competition law. It drew considerably on historical evidence of rulers antipathy to monopolies, as follows.

For we read in Justinian that monopolies are not to be meddled with, because they do not conduce to the benefit of the common weal but to its ruin and damage. The civil Laws forbid monopolies: in the chapter of monopolies, one and the same Law. The Emperor Zeno ordained that those practicing monopolies should be deprived of all their goods. Zeno added that even imperial Prescripts were not to be accepted if they granted monopolies to anyone.

Statute of Monopolies, which for the most part excluded patent rights from its prohibitions, as well as guilds. From King Charles I, through the civil war and to King Charles II, monopolies continued, especially useful for raising revenue. Then in 1684, in East India Company V. Sandy's[18] it was decided that exclusive rights to trade only outside the realm were legitimate, on the grounds that only large and powerful concerns could trade in the conditions prevailing overseas. In 1710 to deal with high coal prices caused by a Newcastle Coal Monopoly the New Law was passed. Its provisions stated that *"all and every contract or contracts, Covenants and Agreements, whether the same be in writing or not in writing...... are hereby declared to be illegal."*[19] When Adam Smith wrote the Wealth of Nations in 1776 he was somewhat cynical of the possibility for change.

> *"To expect indeed that freedom of trade should ever be entirely restored in Great Britain is as absurd as to expect that Oceana[20] or Utopia should ever be established in it. Not only is the prejudices of the public, but what more unconquerable, the private interests of many individuals irresistibly oppose it. The Member of Parliament who supports any proposal for strengthening this Monopoly is seen to acquire not only the reputation for understanding trade, but great popularity and influence with an order of men whose members and wealth render them of great importance."*

1.9.4 Restraint of Trade

Judge Coke in the 17th century thought that general restraints on trade were unreasonable[21]. The English law of restraint of trade is the direct predecessor to modern competition law. Its current use is small, given modern and economically oriented statutes in most common law countries. Its approach was based on the two concepts of prohibiting agreements that ran counter to public policy, unless the reasonableness of an agreement could be shown. A

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[18] http://en.wikipedia.org/wiki/Competition_law#cite_note-16

[19] http://en.wikipedia.org/wiki/History_of_competition_law#cite_note-16

[20] http://en.wikipedia.org/wiki/The_Commonwealth_of_Oceana ***The Commonwealth of Oceana***, published 1656, is a composition of political philosophy written by the English politician and essayist,

[21] http://en.wikipedia.org/wiki/Edward_Coke Sir Edward Coke (pronounced "Cook") (1 February 1552 - 3 September 1634), was a seventeenth-century English jurist and Member of Parliament whose writings on the common law were the definitive legal texts for nearly 150 years

restraint of trade is simply some kind of agreed provision that is designed to restrain another's trade. For example, in Nordenfelt V. Maxim[22], Nordenfelt Gun Co. a Swedish arm inventor promised on sale of his business to an American gun maker that he would not make guns or ammunition anywhere in the world, and would not compete with Maxim in any way."

To be considered whether or not there is a restraint of trade in first place, both parties must have provided valuable consideration for their agreement. In Dyer's case[23] a dyer had given a bond not to exercise his trade in the same town as the plaintiff for six months but the plaintiff had promised nothing in return. On hearing the plaintiff's attempt to enforce this restraint, Hull J exclaimed,

> *"Per Dieu, if the plaintiff were here, he should go to prison until he had paid a fine to the King[24]."*

The common law has evolved to reflect changing business conditions. So in the 1613 case of Rogers V. Parry[25] a court held that a joiner who promised not to trade from his house for 21 years could have this bond enforced against him since the time and place was certain. It was also held that a man can not bind himself to not use his trade generally by Chief Justice Coke. This was followed in Broad V. Jolyffe[26] and Mitchell V. Reynolds[27] where Lord Macclesfield[28] asked, "what does it signify to a tradesman in London what another does in

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[22] http://en.wikipedia.org/wiki/History_of_competition_law#cite_note-18

[23] http://en.wikipedia.org/wiki/Dyer%27s_case ***Dyer's case*** (1414) 2 Hen. V, fol. 5, pl. 26 is an old English contract law case concerning restraint of trade and the doctrine of consideration

[24] http://en.wikipedia.org/wiki/Rogers_v._Parry

[25] http://en.wikipedia.org/wiki/Rogers_v._Parry

[26]) http://en.wikipedia.org/wiki/Broad_v._Jolyffe

[27] http://en.wikipedia.org/wiki/Mitchell_v._Reynolds

[28] http://en.wikipedia.org/wiki/Thomas_Parker,_1st_Earl_of_Macclesfield **Thomas Parker, 1st Earl of Macclesfield** PC FRS (1666–1732) was an English Whig politician. He was born in Staffordshire, the son of Thomas Parker, an attorney at Leek. He was educated at Adams' Grammar School and Trinity College, Cambridge

Newcatle?'. In times of such slow communications, commerce around the country it seemed axiomatic that a general restraint served no legitimate purpose for one's business and ought to be void. But already in 1880 in Roussillon V. Roussillon[29] Lord Justice Fry[30] stated that a restraint unlimited in space need not be void, since the real question was whether it went further than necessary for the promisee's protection. So in the Nordenfelt case Lord MC Naughton rule that while one could validly promise to "not make guns or ammunition anywhere in the world" it was an unreasonable restraint to "not compete with Maxim in any way." This approach in England was confirmed by the House of Lords in Mason V. The Provident Supply and Clothing Co[31].

1.9.5 Modern Competition Law

Modern competition law begins with the United States legislation of the Sherman Act of 1890 and the Clayton Act of 1914. While other, particularly European, countries also had some form of regulation on monopolies and cartels, the US codification of the common law position on restraint of trade had a widespread effect on subsequent competition law

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[29] http://en.wikipedia.org/wiki/Roussillon_v._Roussillon

[30] Sir **Edward Fry** GCB, GCMG, FRS (1827-1918), was a judge in the British Court of Appeal (1883-1892) and also an arbitrator on the International Permanent Court of Arbitration..

[31] http://en.wikipedia.org/wiki/Mason_v._The_Provident_Supply_and_Clothing_Co.

- http://en.wikipedia.org/w/index.php?title=Special%3ASearch&redirs=0&search=Mason+v.+The+Provident+Supply+and+Clothing+Co.&fulltext=Search&ns0=1 This approach in England was confirmed by the House of Lords in Mason v. The Provident Supply and Clothing Co. Restraining workers ...

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- This approach in England was confirmed by the House of Lords in Mason v. The Provident Supply and Clothing Co. Restraining workers ...

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  Mason v's Provident Clothing Company Ltd
  Mason was a salesman for a clothing company which had branches all over England. He agreed not to assist in a similar company for 3 years within a 25 mile radius from London. It was decided the area was to much. The court noted Mason had only a minor role in a small part of Loandon and he had been working with a two week notice period. This was void.

development. Both after World War II and after the fall of the Berlin wall competition law has gone through phases of renewed attention and legislative updates around the world.

1.9.5.1. United States Antitrust Laws

Standard Oil was one of the greatest companies to be broken up under United States antitrust laws. The American term anti-trust arose not because the US statutes had anything to do with ordinary trust law, but because the large American corporation used trusts to conceal the nature of their business arrangements. Big trusts became synonymous with big monopolies, the perceived threat to democracy and the free market these trusts represented to the Sherman and Clayton Acts. These laws, in part, codified past American and English common law of restraints of trade. Senator Hoar, an author of the Sherman Act[32] said in a debate, "We have affirmed the old doctrine of the common law in regard to all inter-state and international commercial transactions and have clothed the United States courts with authority to enforce that doctrine by injunction." Evidence of the common law basis of the Sherman Clayton Acts is found in the Standard Oil case[33], where Chief Justice White

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[32] http://en.wikipedia.org/wiki/Sherman_Act The **Sherman Antitrust Act** (**Sherman Act**,[1] July 2, 1890, ch. 647, 26 Stat. 209, 15 U.S.C. § 1–7) requires the United States Federal government to investigate and pursue trusts, companies and organizations suspected of violating the Act. It was the first Federal statute to limit cartels and monopolies, and today still forms the basis for most antitrust litigation by the United States federal government. "The purpose of the [Sherman] Act is not to protect businesses from the working of the market; it is to protect the public from the failure of the market. The law directs itself not against conduct which is competitive, even severely so, but against conduct which unfairly tends to destroy competition itself."

[33] http://en.wikipedia.org/wiki/Standard_Oil

Standard Oil was a predominant American integrated oil producing, transporting, refining, and marketing company. Established in 1870 as an Ohio corporation, it was the largest oil refiner in the world[3] and operated as a major company trust and was one of the world's first and largest multinational corporations until it was broken up by the United States Supreme Court in 1911. John D. Rockefeller was a founder, chairman and major shareholder, and the company made him a billionaire and eventually the richest man in history. In 1885, Standard Oil of Ohio moved its headquarters from Cleveland to its permanent headquarters at 26 Broadway in New York City. Concurrently, the trustees of Standard Oil of Ohio chartered the Standard Oil Company of New Jersey (SOCNJ) to take advantages of New Jersey's more lenient corporate stock ownership laws. SOCNJ eventually became one of many important companies that dominated key markets, such as steel and the railroads.[citation needed]

Also in 1890, Congress passed the Sherman Antitrust Act — the source of all American anti-monopoly laws. The law forbade every contract, scheme, deal, or conspiracy to restrain trade, though the phrase "restraint of trade" remained subjective. The Standard Oil group quickly attracted attention from antitrust authorities leading to a lawsuit filed by then Ohio Attorney General David K. Watson.

The U.S. Supreme Court ruled in 1911 that antitrust law required Standard Oil to be broken into smaller, independent companies. Among the "baby Standards" that still exist are rExxonMobil and Chevron. If not for that court ruling,

explicitly linked the Sherman Act with the common law and sixteenth century English statutes on engrossing. The Act's wording also reflects the spirit of common law. The first two sections read as follows:-

"Section-1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine....

Section-2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine......."

The Sherman Act did not have the immediate effects its authors intended, though Republican President Theodore Roosevelt's federal government sued 45 companies, and William Taft used it against 75. The Clayton Act of 1914 was passed to supplement the Sherman Act. Specific categories of abusive conduct were listed, including price discrimination, exclusive dealings and mergers which substantially lessen competition. Section-6 exempted trade unions from the law's operation. Both the Sherman and Clayton Acts are now codified under Title 15 of the United States Code.

1.9.5.2. Post War Consensus

It was after the First World War that countries began to follow the United State's lead in competition policy. In 1923 Canada introduced the Combines Investigation Act and in 1926

Standard Oil would be worth more than $1 trillion today.[27] Whether the breakup of Standard Oil was beneficial is a matter of some controversy.[28] Many economists agree that Standard Oil was not a monopoly, citing its much reduced market presence by the time of the antitrust trial. They also argue that the intense free market competition resulted in cheaper oil prices and more diverse petroleum products for consumers. In 1890, Rep. William Mason, arguing in favor of the Sherman Antitrust Act, said: "trusts have made products cheaper, have reduced prices; but if the price of oil, for instance, were reduced to one cent a barrel, it would not right the wrong done to people of this country by the *trusts* which have destroyed legitimate competition and driven honest men from legitimate business enterprise".[29]

The Sherman Act prohibits the restraint of trade. Defenders of Standard Oil insist that the company did not restrain trade; they were simply superior competitors. The federal courts ruled otherwise.

France reinforced its basic competition provisions from the 1810 Code Napoleon. After World War II, the Allies, led by the United States, introduced tight regulation of cartels and monopolies in occupied Germany and Japan. In Germany, despite the existence of laws against unfair competition passed in 1909 (Goetz gagmen den unlauteren Wettbewerb or UWB) it was widely believed that the predominance of large cartels of German Industry had made it easier for the Nazis to assume total economic control, simply by bribing or blackmailing the heads of a small number of industrial magnates. Similarly in Japan, where business was organized along family and nepotistic ties, the zaibatsu[34] were easy for the despotic government to manipulate into the war effort. Following, unconditional surrender tighter controls, replicating American policy were introduced.

Further developments, however, were considerably overshadowed by the move towards nationalization and industry wide planning in many countries. Making the economy and industry democratically accountable through direct government action because a priority. Coal industry, railroads, steel, electricity, water, health care and many other sectors were targeted for their special qualities of being natural monopolies. Commonwealth countries were slow in enacting statutory competition law provisions. The United Kingdom introduced the (considerably less stringent) Restrictive Practices Act in 1956. Australia introduced its current Trade Practices Act in 1974. Recently, however, there has been a wave of updates, especially in Europe to harmonies legislation with contemporary competition law thinking.

1.9.5.3. European Union Law

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[34] http://en.wikipedia.org/wiki/Zaibatsu **Zaibatsu** (財閥?, literally *plutocrats* or *financial clique*) is a Japanese term referring to industrial and financial business conglomerates in the Empire of Japan, whose influence and size allowed for control over significant parts of the Japanese economy from the Meiji period until the end of the Pacific War . Although *zaibatsu* existed from the 19th century, the term was not in common use until after World War I. By definition, the "zaibatsu" were large family-controlled vertical monopolies consisting of a holding company on top, with a wholly-owned banking subsidiary providing finance, and several industrial subsidiaries dominating specific sectors of a market, either solely, or through a number of sub-subsidiary companies.

Under the American occupation after the surrender of Japan, a partially successful attempt was made to dissolve the *zaibatsu*. Many of the economic advisors accompanying the SCAP administration had experience with the New Deal program under American President Roosevelt, and were highly suspicious of monopolies and restrictive business practices, which they felt to be both inefficient, and to be a form of corporativism (and thus inherently anti-democratic).

In 1957 six Western European counties signed the Treaty of the European Community (EC Treaty or Treaty of Rome), which over the last fifty years has grown into a European Union of nearly half a billion citizens. The European Community is the name for the economic and social pillar of EU law, under which competition law falls. Healthy competition is seen as an essential element in the creation of a common market free from restraints on trade. The first provision is Article-81 EC[35], which deals with cartels and restrictive vertical agreements. Prohibited are……………

> *"(1).. all agreement between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market….."*

Article-81(1) EC then gives examples of "hard core" restrictive practices such as price fixing or market sharing and 81(2) EC confirms that any agreements are automatically void. However, just like the Statute of Monopolies 1623, Article 81(3) EC creates exemptions, if the collusion is for distributional or technological innovation, gives consumers a "fair share"

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35 http://en.wikipedia.org/wiki/Treaty_of_the_European_Community
http://en.wikipedia.org/wiki/Article_81

Article 81 of the Treaty establishing the European Community prohibits cartels and other agreements which could disrupt free competition in the European Economic Area's common market. Article 81 reads,

1. The following shall be prohibited as incompatible with the common market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market, and in particular those which:

   (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
   (b) limit or control production, markets, technical development, or investment;
   (c) share markets or sources of supply;
   (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
   (e) 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.

2. Any agreements or decisions prohibited pursuant to this article shall be automatically void.
3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:
   any agreement or category of agreements between undertakings,
   any decision or category of decisions by associations of undertakings,
   any concerted practice or category of concerted practices,

which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

   (a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;

of the benefit and does not include unreasonable restraints or disproportionate, in ECJ terminology that risk eliminating competition anywhere. Article-82 EC deals with monopolies, or more precisely firms who have a dominant market share and abuse that position, unlike U.S. Antitrust, EC law has never been used to punish the existence of dominant firms, but merely imposes a special responsibility to conduct oneself appropriately. Specific categories of abuse listed in Article-82 EC include price discrimination and exclusive dealing, much the same as section-2 and 3 of the U.S. Clayton Act. Also under Article-82 EC, the European Council was empowered to enact a regulation to control mergers between firms, currently the latest known by the abbreviation of ECMR "Reg. 139/2004." The general test is whether a concentration (i.e. merger or acquisition) with a community dimension (i.e. affects a number of EU member states) might significantly impede effective competition. Again, the similarity to the Clayton Act's substantial lessening of competition. Finally, Articles-86 and 87 EC regulate the state's role in the market. Article 86(2) EC states clearly that nothing in the rules can be used to obstruct a member state's right to deliver public services, but that otherwise public enterprises must play by the same rules as on collusion and abuse of dominance as everyone else. Article-87 EC, similar to Article-81 EC, lays down a general rule that the state may not aid or subsidize private parties in distortion of free competition, but then grants exceptions for things like charities, natural disasters or regional development.

1.9.5.4. International Enforcement

Competition law has been substantially internationalized along the lines of the US model by nation states themselves; however, the involvement of international organization has been growing. Increasingly active at all international conferences are the United Nations Conferences on Trade and Development (UNCTAD), Organization for Economic Co-operation and Development (OECD) and World Trade Organization (WTO) members have been recently discussing how future global competition law could look.

1.10 Historical Background of Competition Law in Pakistan

Pakistan introduced the anti-monopoly law in early 70s in the background of socio-economic developments of late 60s. Pakistan, at that time, was pursuing the policy of

encouraging private sector. The Government, however, felt that unregulated private enterprises may lead to concentration of wealth and creation of monopolies and restrictive trade practices which were seen as detrimental to public interest. Accordingly, Monopolies and Restrictive Trade Practices (Control and Prevention) Ordinance (MRTPO) was promulgated in February 1970.Monopoly Control Authority was created as a quasi-judicial organization to administer this law. The Authority was assigned the functions of assisting the Government in formulation of competition policy and control undue concentration of economic power, growth of unreasonable power and unreasonable restrictive trade practices. By the time Monopoly Control Authority became functional in 1972, Government initiated widespread nationalization of private sector. These policy developments considerably reduced the scope for the private sector and as a result for the Authority also. The Authority consequently lost its steam during very early days of its creation. In early 80s the Authority was merged with the Security and Exchange Authority of Pakistan. The anti-monopoly function was vested in a wing of the newly created Corporate Law Authority. This created a conflict of interest with in the same institution that was to safeguard the interests of enterprises and the consumers under the same roof. Because of the Governmental priorities at that time, the anti-monopoly function was put at the back burner.

During early years of 90s, the Government once again initiated a major reversal of its economic policies of 70s and started privatization of nationalized industries. Government also started a program of introducing liberal investment policies geared towards attracting foreign direct investment and encouraging domestic enterprises to participate in the revival of economy. In the meantime, Pakistan also became a signatory to WTO Agreements and moved towards reducing/eliminating most tariff and non-tariff barriers. Consequently, it was necessary for the Government to have a fresh look on the competition law as well as the institutional framework for its implementation so as to improve enterprise level efficiency and ensure that the domestic enterprises are competitive and consumer's interest is protected. The Monopoly Control Authority was, accordingly, once again made as an independent institution in 1995 with the responsibility to administer the MRTPO, 1970.

As a first step, the Authority introduced a comprehensive set of rules for collecting necessary information from individual enterprises about their assets ownership and market behavior. Government also set up a commission to review the competition law and

recommend for the required changes in MRTPO, 1970 to cater for the changed realities. Commission's recommendations were put up to the Government in the form of proposed amendments in the law. These were approved by the Cabinet in May 1998 and were forwarded to the Ministry of Law and justice. As a consequence to the discussions with the Ministry, it was decided to have a fresh look at the proposed recommendations. Finally, a formal presentation was made to the Finance Minister in August 2002. This meeting decided that a new law should not be introduced. Instead, the Authority should only propose necessary changes with in the scope of existing law. Further, the Authority was asked to make a proposal on its capacity building. It was understood that the Authority has completed its work and its proposal is under consideration of Ministry of Finance for quite some time.
In the mean time, in September 2002, Government amended MRTPO, 1970 to exclude the privatized public sector enterprises falling within the jurisdiction of any of the regulatory bodies from the purview of the Monopoly law. This step, although taken in good faith to accelerate the privatization process, has further narrowed the applicability of anti-monopoly law- a step back ward in the implementation process.

Looking at the history of implementation of MRTPO, 1970, MCA has mostly been handicapped by legal capacity and socio-economic-political constraints. MRTPO, 1970 was made applicable to private sector only. Public sector enterprises as well as several services including communication, construction, real estate, money changing, storage, processing, indenting, medical, legal education, accounting, etc were excluded from the scope of monopoly law. Restrictive and unfair trade practices in a single firm monopoly situation also fell out of the scope of competition law. Similarly, situations such as refusal to deal, vertical restraints and tying of supplies and services with purchase agreements were not covered under MRTPO, 1970.A very weak implementation mechanism was provided. Penalties for non-compliance of Authority's orders were extremely low.
Notwithstanding these weaknesses, the law contained provisions giving very broad powers to the Authority to treat asset-based, transaction-based monopolies and restrictive trade practices as cognizable offences. However, the very low penalties for non-compliance of Authority's orders and the general approach by the courts in deciding appeals against these orders has not helped in the competition law finding roots in Pakistan. The Government has

all along not been very sure that active enforcement of anti-monopoly law will not discourage new investments and retard growth of businesses. Government has, accordingly, not been very enthusiastic in promoting competition policy and law from the very beginning. The Governmental attitude in cement cartel case is a classical example of this state of mind.

Government's personnel selection policy is yet another reflection of the Authority not being on its priority agenda. As the Authority has not delivered much to the general public by way of correcting the market behavior of business enterprises, it has not won the public support either. The over all Government attitude has also depleted the Authority of the requisite technical and investigative skills, if it had any. In short, MCA's story is a typical case of Government exuberance in enacting a law, creating an institutional framework for its implementation, and then to forget it.

1.11 Exception to the application of competition law often creates market distortions.

Following the policy of economic development through the private enterprise system, Pakistan introduced the competition law in 1970 to maintain a balance between the policy objectives of rapid capital formation and economic development on the one hand and social justice and consumer protection of the other. This was considered imperative in view of the conflict between these two aims as evident from history of the industrialized developed countries that rely heavily on the private enterprise system.

While introducing the competition law, Pakistan firmly believed that an absolutely unregulated private enterprise system tends to result in concentration of wealth and creation of monopolies and restrictive trade practices, which in so far as detrimental to consumers interest, generates in due course general social unrest.

It was also Government's belief that in developing economies like Pakistan monopolies emerge as a result of transplantation of modern technology and large- scale production technique to the limited domestic markets characterized by inadequate purchasing power.

It was felt that public sector policies of restricted licensing for industries also contributed to creation of monopoly like situations.

Even in industries otherwise characterized by competition, collusive arrangements could result in curtailing output, high prices and sharing agreements.

In such circumstances, Government was of the view that public sector interference and regulation became necessary to correct the situation.

The broad objective of the MRTPO, 1970 as embodied in the preamble to the Ordinance was to provide for measures against

- Undue concentration of economic power,
- Monopoly power and
- Restrictive trade practices.

The law spelt out the situations that shall be deemed to constitute undue concentration of economic power, unreasonable monopoly power and unreasonably restrictive practices. The scheme of the law was to prohibit these clearly defined situations and to collect information through the process of registration about these and other circumstances that are likely to lead to such situations.

CHAPTER 2

OVERVIEW OF COMPETION LAW IN ASIA

2.1 Saudi Arabia's Competition Law

2.1.1 The Competition Law and Nomenclature

At the commencements of new millennium Saudi Arabia vide Royal Decree No.M125 has enacted competition law on 4-5-1425 H, 22 June, 2004. It was published on 21-5-1425 H, 9th July, 2004 and came into force on 19-11-1425 H, 31 December, 2004. It was further declared vide the said Royal Decree No.M/25 that the business practices of all the Establishments/Undertakings must be in accordance with the terms and contents of the Competition Law.[36]

2.1.2 Scope of the Law, Jurisdiction and Extent

The competition law has a broad scope and applies to all plants, establishments, companies, associations carrying out commercial, agricultural, industrial, service work; buying and selling of goods and services in the Saudi markets.

2.1.3. Provisions Defining The Prohibited Actions

Article 4 of the Competition Law prescribes that all practices which are prohibited, agreements, contracts, whether written, verbal, express or implied, between the undertakings; and also such intentions or the result of such practices, agreements or contracts is to restrict commerce or limit competition between undertakings/establishment are prohibited. Article-4 of the competition law also puts prohibition upon influential undertakings that particularly act in:-

a. Controlling the prices of goods or services by increasing, decreasing, or fixing prices or by other means harmful to competition;
b. Limiting the free flow of goods or services to the market or removing goods or services from the market by concealing, hoarding, or refraining to deal in such goods or services;
c. Creating a sudden abun
d. dance of goods or services in the market resulting in unrealistically low prices that affect other Establishments in the market;

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[36] http://www.legal500.com/devs/saadi/cc/succ_006.htm visited on 22.02.2007. The Saudi Arabian Competition Law was down loaded and its review has been written by me.

e. Prohibiting or impeding any establishment from using or right to enter or exit the market;
f. Concealing from other Establishments goods or services in the market;
g. Dividing or allotting the market for goods or services on the basis of geography, types of clients, seasons and periods of time, or distribution centers;
h. Influencing the normal price of offers to buy, sell, or supply goods or services in public or private bids and tenders; and
i. Stopping or restricting the manufacturing, development, distribution, or marketing processes.

2.1.4. Mergers, Acquisitions, Consolidations and its procedure:

Article 6 of the Competition Law provides that where competing undertakings/establishments wish to combine their management while remaining as separate legal entities and under such unification of management would create dominant establishment/undertaking, then the establishment/undertaking so involved must notify to the Competition Council at least 60 days prior to the competition of the merger or acquisition. Any establishment/undertaking which gives the notice as required under article 6 of the competition law and the notice period is elapsed and the Competition Council has not notified to the establishment as under:-

i. Object to the proposal set-forth the notice under Article-6.
ii. Is studying the proposal set-forth in the notice under Article-6.
iii. 90 days has passed since the date of the giving of notice under Article-6 and the Competition Council:

a. Is still studying the proposal set-forth in the notice under article-6
b. Has not notified to the establishment for approval or rejection of the proposal set-forth in Article-6 then the establishment/undertaking may processed further in matter.

2.1.5. Exemption or Exclusion from Prohibited Action

Article 3 provides and delimits the extent of the applicability of Competition Law. It provides that Competition Law will not be applicable to Public Corporation, which are wholly owned by the kingdom of Saudi Arabia. Article 4 of the Competition Law further

provides exemption to certain practices of under takings and exemption for all matters which are otherwise prohibited. Contracts and agreements made with the intention that these leads to improvement in the performance of the Establishments and benefit consumers to an extent greater than the effects of the prohibited contract upon free competition. In furtherance to that the Competition Council established under Section-23.5 may act in public interest not to investigate or prosecute the parties to the prohibited contract, as if such prohibited contract may lead to an improvement in the performance of the Establishment/undertaking and consequently it may provide benefit to the consumers to an extent greater than the effects of the prohibited contracts upon free competition.

2.1.6. Establishment of Competition Council.

Article 8 of the competition law establishes an independent Competition Council chaired by the Minister of Commerce and Industry. The Competition Council of the Saudi Arabia administers the Competition Law and implements its various provisions through the Competition Council.

2.1.7. Functions and Power of the Competition Council

a. Approve or reject application for the acquisition, merger, or consolidation of the management of the undertaking, pursuant to Article-6 of the Competition Law.

b. Order the investigation and prosecution of complaints regarding Competition Law. Approve the criminal prosecution against the accused party for violation of the Competition Law

2.1.8 Inquiries, hearing, and decision of the Competition Council/Penalty Committee

Article-15 of the Competition Law provides that the competition council is authorized to constitute a committee to determine the financial penalty to be imposed upon any party, who has violated the provisions of the competition law keeping in view the gravity of offence committed. The Committee is called the Penalty Committee; its decision is appealable before the Saudi Arabian Grievances Board

Article-12 deals with limitation and extent of fine. The Competition Law limits the scope of the financial penalties that may be imposed by the Penalties Committee to no more than Saudi riyals five million (SR 5,000,000), although the fine may be extended to no more Saudi Riyals ten million (Sr 10,000,000) if the violator has previously been convicted under

the Competition Law. The financial penalties that may be imposed under the Competition Law are imposed without prejudice to any other penalties that may be applicable under any other laws.

In addition to the financial penalties that may be imposed by the Penalties Committee on any party that has violated the Competition Law, the Competition Council may order any party that has violated the Competition Law.

(a) To remedy the violation of the Competition Law within a set period of time; and/or

(b) To dispose of some of its assets, shares, or property rights; and/or

(c) To pay a daily fine of not less than Saudi Riyals one thousand (SR 1,000) and not more than Saudi Riyals ten thousand (SR.10, 000) until the violation is remedied.

2.1.9 Saudi Arabian Grievances Board and Appeal

The decision of the Penalties Committee and competition council is applicable regarding the imposition of penalties and remedial measures. If a party or undertaking feels aggrieved by such decision, it may prefer the appeal to Saudi Arabian Grievances Board under Article 19 of the law all establishment/undertaking have one year grace period to make the activities, transaction in accordance with competition law till 21-5-1426 H, 28-6-2005.

2.2 Fair Trade Law 2000 of Taiwan [37]

2.2.1 The Competition Law and Nomenclature

The official name of Competition Law of Taiwan is "Fair Trade Law of 2000" which was firstly promulgated on 4th February, 1991 and became effective on 4th February, 1992. Amendment was made on February 3, 1999 which became effective on February 5, 1999. Last amendment was made on April 26, 2000.

2.2.2. Scope of the Law, Jurisdiction and Extent.

The scope and purpose of the law is to maintain trading order, protecting consumer's interest, ensuring fair competition, promoting economic stability and prosperity. The law is applicable to companies, sole proprietorships or partnerships, trading associations and upon

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37 Http://sistersources.worldbank.org/INCOMPLEGALDB/EastAsianandPacific/20985837/Taiwanfair Trade law 2000.pdf

any other such person or organization engaging in transactions and through provision of goods or services.

2.2.3. Provisions Defining the Prohibited Actions.

(i). Monopolies, Mergers, Unfair Competition[38]

Chapter II to III comprising Article 10 to 24 deals with all prohibited acts which have been declared, unlawful under the Fair Trade Law of 2000 such as monopolistic practices, merger, concerted action and unfair competition. All the enterprises have been forbidden to prevent the fair competition, improperly set, maintain or change the price for goods and remuneration services. The merger that creates 1/3 market share, or an enterprise has market share to the amount of ¼ market share and the sales which exceeds from the amount publically announced. The merger is admissible only when it is approved by the Central Competent Authority who will decide the case within the period of two months. The Central Competent Authority may approve the application of merger if the overall economic benefit of the merger outweighs the disadvantages resulted from competition restraint. In case any enterprise proceed with merger without approval of the Central Competent Authority may pass stricture as well as adverse order with the direction to split, dispose of the share, remove the merger affects.

(ii) Concerted Actions

Under the law restricted Trade Practices has been prohibited. Fair Trade Law of 2000 of Taiwan has named such practices as concerted actions which include following:

"The conduct of any Enterprise by means of contract, agreement or any other form of mutually understanding with any other competing enterprise to jointly determine the price of goods or services, or to limit the terms of the quantity, technology, products, facilities, trading counter parts, or trading territory with respect to such goods and services and thereby to restrict each other's business activities.

38 Section-10 to 24 of the Fair Trade Law 2000 of Taiwan

2.2.4. Unfair Competition

Chapter No.3 and Article-18 to 24 deals with unfair competition. Under the law, following are the circumstances which cause unfair competition or impede fair competition:-

1. Causing another enterprise to discontinue supply, purchase or other business transactions with a particular enterprise for the purpose of injuring such particular enterprise.
2. Treating another enterprise discriminatively without justification.
3. Causing the trading counterpart(s) of its competitors to do business with itself by coercion, inducement with interest, or other improper means.
4. Causing another enterprise to refrain from competing in price, or to take part in a merger or a concerted action by coercion, inducement with interest, or other improper means.
5. Acquiring the secret of production and sales, information concerning trading counterparts or other technology related secret of any other enterprise by coercion, inducement with interest, or other improper means.
6. Limiting its trading counterpart's business activity improperly by means of the requirements of business of engagement.
7. Using in the same or similar manner, the personal name, business or corporate name, or trademark of another, or container, packaging, or appearance of another's goods, or any other symbol that represents such person's goods, commonly known to relevant enterprise or consumers, so as to cause confusion with such person's goods; or selling, transporting, exporting, or importing goods bearing such representation;
8. Using in the same or similar manner, the personal name, business or corporate name, or service mark of another, or any other symbol that represents such person's business or service, commonly known to relevant enterprise or consumers so as to cause confusion with the facilities or activities of the business or service of such person; or
9. Using on the same or similar goods the mark that is identical or similar to a well known foreign trademark that has not been registered in this country; or selling, transporting, exporting, or importing goods bearing such trademark.

2.2.5. Exemption or Exclusion from Prohibited Actions

There is exemption from Article-10 to 17 such as from concerted action provided they are beneficial to the economy as a whole and in the public interest. The circumstances which constitute and cover the factum of public interest include, improvement of quality, increasing efficiency. Similarly the project of joint research and development (R&D) on goods for the purpose of upgrading the technology. Such agreement which promote competition in foreign market and import are also correct. The Central Competent Authority may impose restriction and, put time limit. The aggrieved undertaking may file written application for extension within three month prior to the expiration of such period. The Central Competent Authority may revoke the approval, after the contents of approval or take necessary corrective action if the economic conditions changes. The record of such procedure should be maintained. The following matters are also exempted from the provision of Article-18 and 19:-

1. Using in an ordinary manner the generic name customarily with the goods or the representation customarily used in the trade of the same category of goods; or selling, transporting, exporting or importing goods bearing such name or representation;
2. Using in an ordinary manner the same or representation that is customarily used in the trade of the same type of business or service;
3. Using in good faith one's own name, or selling, transporting, exporting or importing goods bearing such name; or
4. Using, with good faith, in the same or similar manner the representation referred to in the first or second subparagraph of the preceding paragraph before such representation having become commonly known to the relevant enterprises or consumers, or using such representation by any successor that acquires such representation together with the business from a bona fide user; or selling, transporting, exporting or importing goods bearing such representation.

In order to limit the harmful effect of competition the enterprises are prohibited to use false, misleading representation or symbol as to price, quality, content, production process, production date, valid period, method of use, purpose of use, place of origin, manufacturer, place of manufacturing, processor or place of processing on goods or advertising or in

advertisements, or in any other way making known to the public. In case of wrong advertising is designed or made then the principle and advertiser will be liable for damages. Under Article-23-1 any participant in multi-level sale may rescind the participation agreement by giving written notice to such multi-level enterprises within fourteen days after entering into such agreement. On the ground perhaps such sale or levels of such sale of good is made fictions to enhance the price. In this way the goods may remain in the ware house and by way of multi level sales the artificial price may be created and fixed by way of such sale. After the given notice period that is 15 days after the agreement and after the laps of 30 days may terminate the agreement when the participant exercise the right of rescind or terminate the agreement, the multi-level sales enterprise may not claim damages or levy penalties against the participant for such rescission or termination of contract. Article 23-4 further says that in addition to the provision of this law, regulations concerning any multi-level sales enterprise filing of record, inspection of activities, notice to participation and the contents of participation agreements as well as the protection of participants interests are to be promulgated by the Central Competent Authority. Article 24 provides further protection in respect of trade offence on the line that no enterprise shall otherwise have any deceptive or obviously unfair conduct that is able to affect trading order.

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2.2.6. Fair Trade Commission of Taiwan [39]

Article 25 give power to Executive Yuan to establish Fair Trade Commission (FTC) in order to regulate the economical, trade related activities within Taiwan. Originally Taiwan Fair Trade Commission (TFTC) was established on January and is under the jurisdiction of Executive Yuan (Cabinet). Fair Trade Commission is the central authority in the charge of competition policy and Fair Trade Law in Taiwan. It is in the charged with Fair Trade Policy, Law, Regulation, Investigation various activates impeding competition. Fair Trade Commission is the machinery which administers the prescribed procedure to provide under the Fair Trade Law of 2000.[40]

[39] See Section-25 of "Fair Trade Law of 2000"

[40] http://www.Chinapost.com.tw/supplement/2007/10/10/126115/Taiwan-fair.htm Visited on 05.08.2008, the information has be placed on web site of the Taiwan visited on Wed Oct 10, 2007

2.2.7 Powers and duties of the Fair Trade Commission [41]

In order to manage the affairs of the enterprises in order to keep the fair competition as set forth in this Fair Trade Law the commission shall have the following duties and powers:-

1) The commission shall be competent to formulate and frame policy, laws and regulation in respect of Fair Trade.
2) Hence a review of any Fair Trade matters related to this law.
3) Can conduct investigation of activities of enterprises and economic condition.
4) Investigation and disposition of any case violating the Fair Trade Law.
5) Take up enquiry and procedural steps regarding matters related to Fair Trade.

2.2.8. Enquiries, Hearing and Decision by FTC [42]

i. Investigation and Inquiry Procedure

Under article 26 of Fair Trade Commission may investigate and handle upon the complaints or ex-officio, any violation of the provision by its own motion of this law that harm the public interest. In order to initiate any inquiry or investigation under the law Fair Trade Commission have powers which are to be exercised in accordance with the with the following procedure:-

1) Notify the parties and any related third party to appear before the Commission and to record the statements.
2) Summon to the parties, issue notice to the relevant agencies, organizations and enterprises or individuals to submit books, records, documents, and any other necessary materials and exhibit the same upon the file.
3) Dispatch personnel for any necessary on-site inspection of the office, place of business, or other locations of the relevant organization or enterprise. The proceedings carried out by the Commission are deemed and treated in the name of Commission.

[41] See also Article 25 to 29 of Fair Trade Law of 2000 (Taiwan)
[42] See Article 26 to 29

2.2.9. Compensation for damages[43]

Articles-30 to 34 provides the remedy of compensation and damages to the aggrieved enterprise or person. In case any enterprise violates the provision of Fair Trade Law Zone and infringes upon the right and interest of another person enterprise, the aggrieved person or enterprise may demand the remedial measures in respect of such infringement and in case there is likelihood of further infringement then as a preventive measurement may seek remedy of injunction. Injured person may also seek for damages; the court may take into consideration nature of the infringement and award damages even more than the actual damages. In case of intentional infringement, the damages may be awarded three times of actual loss.

2.2.10. Limitation

The limitation for damages is 2 years. The right should be exercised within this time. The judgment passed in suit of damages may be published in the newspaper at the expense of infringing party.

2.2.11 Punishment and penalties[44]

Articles-35 to 44 deals with the imposition of punishment and penalties. Followings are the categories of punishment which may be imposed in violation of law:-

i. In case of violation of article 10 to 14 and 20(1) Competent Authority may in pursuant to Article 41 take necessary corrective action within prescribed time. In case of lapse of such period, there is punishment for three years and fine of not more than one hundred million New Taiwan Dollars or both. The same is for violation of Article 23.

ii. In violation of Article 19, the Central Competent Authority pursuant to Article 41 order to rectify its conduct, take necessary corrective action. After the lapse of prescribed time it may impose punishment upon the actor for two year detention and fine up to 50 Million New Taiwan Dollars or both. In case of violation of action could be taken only upon complaint.

[43] See Article 30 to 34

[44] See Section-35 to 44.

iii. If any juristic person is committed of any violation refer to in any of the three articles i.e. 35 to 37, such juristic person is also liable to be fined as prescribed in each of the respective article. Where other law provides more severe punishment than the prescribed in the preceding articles, the provision of such other laws having severe punishment is applicable.

iv. In case of merger without law and its continuation of violation under article 13 penalties will be imposed of one hundred thousand and not more than 50 Million New Taiwan Dollars.

v. If the violation under article 23 is of serious nature then, in addition to being subject to disposition pursuant to the provision of Article 41, further order may be passed for dissolution, suspension or termination of business operation, if the violation is serious[45]

vi. Disobedience to participation in investigation process conducted by Fair Trade Commission under article 27 in case of refusal to appear, to respond, submit relevant record, document etc. an administrative penalty of not less than 20,000/- but not more than 250,000 New Taiwanese Dollar may be imposed. In case of further violation, the penalty may be 50,000/- but not more than 500,000/- New Taiwan Dollars[46].

vii. In case of non compliance of any penalty order, the matter shall be referred to the court for compulsory execution.

2.2.12. Supplementary Provision and Exemption to Intellectual Property Laws[47]

Article-45 gives exemption to the work which falls in the nature of Intellectual Property Law such as Copy Right Law, Trademark Law and Patent Law. Under Article-46, where any other law governs the conduct of an enterprise in respect of competition, such other law shall be applicable provided that it does not contradicts with the legislative purpose of this law.

[45] See Section-42 of which prescribe the violation of the provision of article-23
[46] See article-43.
[47] See article-45 to 49.

2.2.13. Immunity to Foreign Organizations

Any foreign organization or enterprise has legal right to file a complaint for public prosecution, private prosecution or civil action subject to any law, regulation, custom, treaty or agreement provided in this respect[48].

2.3 Competition Act of 2002 of India[49].

2.3.1. Competition Law and Nomenclature

Govt. of India constituted a committee in 1999 to examine Monopoly Restricted Trade Practices Act, 1969 for shifting the focus of the law from curbing monopolies to promote competition and to suggest a modern competition law in line with international developments which suits India's conditions. As a sequel to the Report of the committee, the parliament gave its assent on 13th Jan, 2003. The official name of Competition Law of India is "Competition Act, 2002" (The Competition Act, 2002 No.12 of 2003). The Act received the assent of the President on 13th January, 2003.

2.3.2. Scope of the Law, Jurisdiction and Extent.

As per the economic department of the country the law provides for the establishment of a Commission to prevent practices having adverse effects to ensure freedom of trade, carried on by other participants in markets, in India and other matters incidental thereto. One of the salient features of this Ordinance is that law and its provisions came into being on different dates. The Act extends to the whole of the India except the State of Jammu and Kashmir.

2.3.3. Purpose of the Law

The purpose of the law is to develop the economic of the country. In order to prevent unlawful practices and adverse effects upon freedom of trades and administration of

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[48] See Article 47.

[49] http://www.Competition-Commission-india.nic.in/Act/Competition-act2002
The overview of this Act has been written after downloading the original text of Competition Act, 2002 of India as published in the official gazette of the country.

Competition Act, 2000 a Commission has been established, which aims at to prevent the practices having adverse effects on the Competition, it emphasis to promote and sustain competition in the market, to protect the interest of the consumer and to ensure freedom of trade carried on by other participant in the market of India.

2.3.4. Provision defining the Prohibited Actions[50]

i. Anticompetitive Agreement

Chapter II Articles-3 to 6 deals with the offences like prohibitation and unlawful trade practices. Under the law, any agreement in any shape entered into between enterprises or associations of enterprises, person or persons is prohibited if executed or arrange on followings lines, term and condition:-

a. It causes or is likely cause an appreciable adverse effect on competition in India

b. Directly or indirectly determines purchase or sale prices

c. It limits, controls production, supply, markets, technical development, investment or provision of service.

d. Shares the market or source of production or provision of service by way of allocation of geographical area of market, types of goods or services, or number of customers in the market or any other similar way.

e. It results in bid-signing or collusive bidding which may have adverse effect on competition.

f. It is in respect of production, supply, distribution, storage, sale or price of, trade in goods or provision of service which include:-

i) Tie-in agreement,

ii) Exclusive supply agreement,

iii) Exclusive distribution agreement,

iv.) Refusal to deal, v) resale price maintenance,

[50] Section-3 to 6

ii. Abuse of Dominant Position

a) The Existence of abuse of dominant position is said to be found when following circumstances are existed: The use of directly/indirectly imposition of unfair or discriminatory condition in purchase of, sale of goods as well as services. Similarly imposition of unfair/discriminatory price in purchase of, sale of goods or services. It also includes predatory price.

b) Abuse of dominant position also includes putting limitation/restriction on production of goods, provision of services or upon market. Similarly

c) Same Act upon technical, scientific development relating to goods or services which is prejudice to consumer.

d) The indulgence of enterprise in practices which result in denial of market access.

iii. Combination

The acquisition, merger, amalgamation of one or more enterprises by one or more person is called combination. The combination of the enterprises may exist in following circumstances:-

a. When the joint shares, voting rights of assets of both the enterprises becomes equal to more than Rs. one thousand crores or turn over more than Rs. three thousand crores. Or the aggregate value of the asset is more than five hundred millions US $ or turn over more than fifteen hundred millions US $. In case of merger and amalgamation when the enterprise remaining after merger or the enterprise created as a result of amalgamation the value of the asset becomes more than Rs. One thousand crores or turn over more than Rs. three thousand crore. The combination will also be considered when in aggregate the assets of the value are more than five hundred million US $ or turn over more than fifteen hundred million US $. For the purpose of acquisition, merger and amalgamation control includes controlling the affairs or management by one or more enterprises, either jointly or singly, over another enterprise or group; one or more groups, either jointly or singly, over

another group or enterprise; groups means two or more enterprises which, directly or indirectly, are in a position to---exercise twenty-six per cent, or more of the voting rights in the other enterprise; or appoint more than fifty percent, of the members of the board of directors in the other enterprise; or Control the management or affairs of the other enterprise.

iv. Procedure for Combination

The combination in anything is prohibited under the Competition Act, 2002 of India, which causes appreciable adverse effect on competition within the relevant market in India and such combination is void under the law. Any enterprise or person which proposes into a combination may at his or its own option give notice to the commission in the form as is specified. The Commission shall after receipt of notice, deals in accordance with provision contained in the Section-29, 30 and 31 of the Act, which relates to the procedure for investigation of combination and inquiry into disclosure of the merger acquisition etc.

2.3.5. Exemption from Anticompetitive Agreements

i. The agreement which increase efficiency in production, supply, distribution, storage, acquisition or control of goods and provision of services.

ii. Any condition put by way of agreement or restraining others under copyright Act, 1957, Patent Act 1970, Trade and Merchandise, Marks Act 1958, Trade Marks Act 1999, Geographical Indication of Goods(Registration and Protection) Act, 1999, The designs Act 2000 and Semi-conductor Integrated Circuits layout-Design Act 2000.

iii. The agreement related to export of goods from India which is exclusively pertaining to production, supply, and distribution, control of goods or provision of services.

2.3.6. Exemption from the procedure for combination

The provision in respect of Regulation of combination is not applicable to share subscription, financing facility and any acquisition by a public financial institution, foreign

institutional investor, bank or venture capital fund pursuant to any convenient loan agreement or investment agreement

2.3.7. Establishment and composition of Competition Commission of India.

Competition Act 2002 provides for the establishment of a Commission to prevent practices having a diverse effect on competition.[51] The Commission is a body corporate and has its perpetual succession with rights and viabilities to hold, acquire and dispose of the moveable and immoveable property. It can sue and be sued. It consists upon Chairperson and number of members upto ten. The Chairman and members shall possesses the ability, integrity, standing, special knowledge in International Trade, Economic, business, commerce, law, finance, accountancy, management, industry, public affairs, administration or who qualify to be Judge of High Court.

2.3.8. Terms and Condition of Service of the Members

The Chairperson and members shall be selected for a term of five years and chair person may hold its office till the age of 62 years and Member may hold its office till the age of 60 years. Chairperson or any Member may resign from his office by a notice in writing addressed to Central Government. Chairperson or Member can be removed from their office, in case adjudged to be an insolvent; has engaged in any paid employment, has been committed an offence, or is involved in Moral Turpitude, acquire such financial interest prejudice to his function, abuse his position.

2.3.9. Duties/functions of the Commission [52]

Article 18 to 21 deals with duties, functions, inquiry and reference made to the Commission. The Competition Commission has following duties and function:-

1. Eliminate practices having adverse effect on competition.
2. Promote and sustain competition.

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[51] Chapter No.III to Chapter No.IV Section-7 to 40 prescribe the functions, duties and procedure of investigation which is placed at http://www.competition-commission-india.nic.un/Act/Competition-Act 2002

[52] See Section-18 to 21.

1. Promote the interest of consumer and ensure freedom of trade carried on by other participants.
2. The commission may enter into any memorandum or arrangement with the approval of Government with any foreign country.
3. The Commission may inquire into any alleged contravention of the provision of Section-3 & 4 on its own motion.
4. The Commission may also initiate an inquiry in respect of complaint submitted by any person, consumer, and association. The inquiry may also be conducted in respect of prohibited agreements and unreasonable monopoly of an enterprise upon the reference submitted by the Central Government or a statutory authority[53].

2.3.10. Jurisdiction of the Commission

The jurisdiction, powers and authority of the Commission is exercised by the Benches. A bench shall be constituted of not less than two members, consisting upon at least one judicial member who is or qualify to be Judge of High Court. The Bench which will be presided over by the Chair person shall be called principal Bench. Other Benches shall be called additional Benches. One or more Bench may be constituted as Merger Benches.

2.3.11. Inquiry Procedure, Hearing and Decisions.

The competition commission initiates inquiry within its local limits when the respondent actually or voluntarily reside within the local limits of that bench or carries business or personally work for gain or the cause of action wholly or partly arise with its local limits. On receipt of complaint, reference from an authority, on its own knowledge, information the Commission is of the opinion that prima facia case exists, and then the commission shall direct the Director General to cause an investigation into the matter. And the Director General on receipt of direction investigates and submits its finding within the period specified by the Commission. Either in case of dismissal of complaint or formulation of finding conveys its order to the parties, Central Government or to the statutory authority as the case may be. In case report of the DG is recommended on the line that no contravention is made out then the commission provides opportunity to the complainant to rebut the finding of DG. After hearing the complainant the Commission is of the opinion

[53] See Section-18 to 19.

that the recommendation of DG does not suffer from any infirmity, being so the commission shall dismiss the complaint otherwise shall proceed with the complaint. Similarly if DG put formal recommendation upon reference made by the government authority and recommend that no violations are committed, then the Commission shall invite the comments of Central Government or the concerned authority. On receipt of comments the Commission shall return the reference, if no prima facia case exists or proceed with the matter as a complaint if there is a prima facia case[54]. The report of the Director General is of advisory nature; in case the commission is of the view that further inquiry is required it can inquire into such contravention. The commission is competent to hold inquiry under Section-20, 27 into merger, amalgamation, agreement, abuse of dominant position in the like manner and after holding inquiry can pass orders accordingly.

2.3.12. Power to grant interim Relief

In case of compelling circumstances and fear of continuation of harmful competition when there is violation of Section-3, 4 and 6 the Commission may grant interim injunction restraining other party from carrying out such act till the conclusion of inquiry or further order without giving notice. The interim relief will be applicable to import of goods which contravene the provision of Section-3, 4, 6[55].

2.3.13 Award of Compensation[56]

If due to any contravention of this act someone suffers from loss, damage, the applicant may recover damages by way of filing application to the Commission. The Commission shall hold inquiry into allegations, and pass an order against the enterprise to make the payment to the applicant. If there are more persons who suffer from loss, then a representative may file application with the permission for the benefit of others.

2.3.14 Power of Commission to regulate its own Procedure.

The Section 35 to 36 deals with the appearance and trial procedure regulated by the Commission. A complainant, defendant or Director General, as the case may be, may appear

[54] See Section-26.
[55] See Section-33.
[56] See Section-34.

in person or through authorized person. The Commission while conducting the trial of any matter filed before it may adopt its own procedure. It means that like a special Tribunal, it is master of its own procedure. The Commission is not bound to follow the procedure of civil Procedure Code, the Commission can regulate its own procedure; but shall be guided by the principles of Natural Justice and any rule made by the Central Government. The Commission has same power as vested with civil court in following matters:

i. Summoning and enforcing the attendance of any person and examining him on oath.

ii. Requiring the discovery and production of documents.

iii. Receiving evidence on affidavits.

iv. Issuing commissions for the examination of witnesses or documents.

v. In term of Section-123, 124 Indian Evidence Act, 1872 commission may requisition any public record or document or copy of such record from any office.

vi. Dismissing an application in default or deciding it ex-parte.

vii. Any other matter which may be prescribed which may be prescribed by the rule. The proceedings of the commission are judicial proceeding and the commission is deemed to be civil court u/s 195 Chapter XXVI Code of Criminal Procedure. The commission may call upon an expert in the field of Economic, Commerce, Accountancy, International Trade etc.

2.3.15. Review, Ratification, Execution and Appeal against Order.

Any aggrieved person by an order passed by the Commission prefers appeals which lie to the Supreme Court of India. The limitation of review petition is 30 days. The review proceedings are only competent when the other party has been given notice of being heard during the hearing upon review petition.

In case any mistake has been found in the order passed by the commission may amend its order on its own motion or upon the application of any party; the commission shall amend that substantive part of its order.

Every order passed by the commission is executable as decree is executed by the civil court or order made by High Court. The commission is also competent to send its order as precept to the High Court or principal civil court within its local limit.

The appeal can be preferred against the decision of commission within 60 days from the date of the decision or order of the commission from the date of communication. The grounds for the appeals are same as specified in Section 100 CPC 1908. The appeal lies before Supreme Court. In case appellant is prevented by sufficient cause from filing the appeal further sixty days limitation period is available to the appellant. If the order has been passed with the consent of the parties then no appeal lie against such decision.

2.3.16. Penalties

If any person contravenes, any condition, restriction, sanction, direction, exemption or penalty imposed under this Act; the offender is liable to be detained in civil prison for term which extends to one year and penalty up to 10 lakhs. If any person fails to comply with the direction issued by the Commission and Director General the penalty is rupees one lakhs only for each day. In case of submission of false statement the penalty is rupees fifty lakhs which may extend upto one crore. In case any person willfully submit a false documents or willfully alter the documents or destroy the documents the penalty is 10 lakhs rupees.

2.3.17. Miscellaneous Provisions regarding Powers of Central Government

Section-54 to 66 deals with the power of central government. The central government has power to exempt application of the Act or any provision for the special period. The central government may by notification exempt any dues of enterprise in the interest of security of the State or Public interest. Wherein any agreement or practice stands exempted in order to discharge International obligation assumed through treaty or conclusion. The exemption is only for an enterprise whose activities are related to sovereign function of the government and the activities relatable thereto. The central government is competent to issue directions on policy matters relating to technical and administrative matters. The commission may be given opportunity to express its views before any direction is given. In all circumstances the central government has no finality. There are no supreme powers of central government. The central government is the controlling authority of the competition commission of India. Being so the central government may issue the directions of following nature:-

On account of the circumstances beyond the control of the commission when it is unable to discharge the functions or perform the duties imposed on it.

a. The commission persistently made default in complying with any direction given by the central government under the Act. As a result of such default the financial position of the commission or the administration of the commission has suffered.

b. The circumstances exist which render it necessary in the public interest so to do. The central government may by giving reason, supersede the commission for the such period, but no exceeding for six month. Before issuing notification central government shall give a reasonable opportunity to the commission by the mentioning therein reason to specify. Upon the publication of notification the chairman and other members shall vacate their offices. Till the reconstitution of power all the function, powers and duties of the commission shall be discharged or exercised by the central government. Any information regarding an enterprise be treated as confidential which has been obtained by or on behalf of the commission. The same may be disclosed with the permission of that enterprise.

2.3.18. General Provision

1. All members, DG, Additional, Joint Deputy or Assistant Director General and Registrar other officer are public servant.
2. No suit prosecution and legal proceeding shall be against central government, commission and officer of the commission.
3. The Act has effect not withstanding any thing inconsistent therewith contained in any other law for time being in force.
4. The jurisdiction of civil court excluded and no court can grant injunction in respect of action under this Act.

2.4 COMPETITION LAW OF INDONESIA

2.4.1. Competition Law and Nomenclature

The principal competition statute in Indonesia is Law No.5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition (Competition Law)[57], which was enacted March 5, 1999 and effective w.e.f. March 5, 2000.

2.4.2. Scope, Jurisdiction, Purposes and Principles

The Competition Law states that its principles and purposes shall be to:-

i. Safeguard the public interest and to increase the national economic efficiency as one of the efforts to increase the people's welfare;

ii. Establish a conducive business climate through the arrangement of fair business competition thus guaranteeing the certainty of equal business opportunities for large, middle and small business actors in Indonesia;

iii. Prevent monopolistic practices and/or unfair business competition caused by business actors; and

iv. The creation of effectiveness and efficiency in business activities.

v. The Competition Law is thus not concerned solely with the efficient allocation of resources, but is also "infused with principles of equality of opportunity, fairness, equal treatment and a leveling of advantage." Article 2 of the Competition Law provides that business actors in Indonesia are doing their business, shall be based on economic democracy, with due attention to the equilibrium between the business actors' interests and the public interest". For purposes of the Indonesia statute, the term "business actor" is defined as under: "any individual or business entity, either incorporated or not incorporated as (a) legal entity, established and domiciled in or conducting a activities in the jurisdiction of the Republic of Indonesia, either individually or jointly based on agreement, conducting various business activities in the economic sector".

2.4.3. Provision Defining the Prohibited Acts

Chapter III of the competition law (articles 4 to 16) It prohibits certain agreements. Article 4(1) prohibits agreements between two or more business actors to "jointly take

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[57] The competition Law of Indonesia of 1999 concerted from *Book competition Laws outside the United States Volume I by H.Stephen Harris, Jr.*

control of the production and/or marketing of goods and/or services that could result in the occurrence of monopolistic practices and/or unfair business competition." Under the Competition Law, the term "monopolistic practices" is defined as "the concentration of economic power by one or more business actors, resulting in the control of the production and/or marketing of certain goods and/or services resulting in unhealthy business competition and could be harmful to the public interests." Similarly, "unfair business competition" is defined as "competition between business actors in undertaking production activities and/or marketing of goods and/or services in dishonest or illegal fashion or restricting business competition".

Price-fixing agreements and price discrimination are also prohibited by the Competition Act. Price discrimination is defined by Article 6 as an agreement that results in which a buyer having to pay different prices from a price paid by other buyers for the same goods and/or services. Article 7 prohibits agreements competitors to fix prices below market prices. Article 8 prohibits business actors from imposing a minimum resale price.

Under article 5(2) Article 9 of the Competition Law prohibits agreements competitors to divide marketing territories or allocate the markets for goods and/or services, which could result in the occurrence of monopolistic practices and/or unfair business competition. Article 10(1) prohibits agreements between competitors that could restrain other business actors from conducting the same business either in domestic or overseas markets. Article 10(2) makes illegal agreements between competitors to refuse to sell goods and/or services from other business actors, where the agreement causes or can be presumed to cause a loss to another business actor, or where the agreement restrict other business actors in selling or buying goods and/or services in the relevant market.

Article 11 deals with cartels:- Specifically, the provision prohibits "agreement (by business actors) with their business competitors, with the intention of influencing prices by arranging production and/or marketing of a good and/or service, which would result in the occurrence of monopolistic practices and/or unfair business competition." The prohibitions regarding trusts are set out in Article 12. In particular, this provision prohibits a business actor from making "agreements with other business actors to co-operate by establishing a joint company or a larger company, by still maintaining and preserving the continued existence of each company or its member, with the purpose of controlling production and/or

marketing of goods and/or services, (and) thus could result in the occurrence of monopolistic practices and/or unfair business competition."

Article 13 prohibits oligopoly, defined as "agreements with other business actors with the purpose of jointly controlling the purchase or receipt of supplies in order to be able to control the prices of goods and/or services in the relevant market, which could result in the occurrence of monopolistic practices and/or unfair business competition ....". The Competition Law restricts vertical integration, specifically prohibiting "agreements with other business actors with the purpose (of controlling) the production of a number of products which are included in a chain of production of certain goods and/or services where each chain of production is the result of the manufacturing or the continuation of process, either in one direct or indirect series, which could result in the occurrence of ....unfair business competition and/or harm to the society.

Article 15 makes illegal three types of closed agreements:

(1) "agreements with (an) other business actor containing provisions that the party receiving certain goods and/or services shall only supply or not re-supply (resell) the aforementioned goods and/or services to certain parties and/or in certain places";

(2) "agreements with other parties containing provisions that the party receiving certain goods and/or services must be prepared to buy other goods and/or services of the supplying business actor"; and

(3) "agreements concerning prices or certain price discounts for goods and/or services, containing provisions that the business actor receiving goods and/or services from the supplying business actor:

   (a) Must agree to buy other goods and/or services from the supplying business actor (,) or

   (b) Shall not buy (the) same or similar goods and/or services from other business actors, who are competitors of the supplying business actor."

Article-16 specifically applies to agreements "with foreign parties" and prohibits "agreements by a business actor with another party abroad that contain provisions which could result in the occurrence of monopolistic practices and/or unfair business competition.

Restriction on monopolization is set out in Article-17(1). The provision specifically prohibits a business actor from "controlling the production and/or marketing of goods and/or

services that may result in the occurrence of monopolistic practices and/or unfair business competition. Article-17(2) provides that a business actor will be deemed to "control the production and/or marketing of goods and/or services" under Article-17(1) if:

There is no substitute yet for the goods and/or services or (the agreement results in) other business actors(being) unable to enter into business competition for the same goods and/or services, or

One business actor or a group of business actors control more than 50% (fifty percent) of the market share of a certain type of goods or services.

Article 18(1) prohibits monopoly; specifically, the provision makes it illegal for a business actor "to control the receipt of supplies or to become (the) sole buyer of goods and/or services in the relevant market that could result in the occurrence of monopolistic practices and/or unfair business competition." Under Article 18(2), a business actor ' shall reasonably be presumed or deemed to control the receipt of supplies or (to be a) sole buyer as referred to in(Article 18(1) if a business actor or a group of business actors control more than 50% (fifty percent) of the market share of (a) certain type of goods or services."

Article 19 restricts a company's ability to obtain market control. In particular, this provision precludes a business actor "either individually or jointly with another business actor," from conducting any of the following activities which could result in the occurrence of monopolistic practices and/or unfair business competition:-

Refusing and/or preventing certain other business actors from conducting the same business activities in the relevant market; or

Preventing consumers or customers of their business competitors from conducting business relationships with their business competitors; or

Restricting the circulation and/or sales of goods and/or services in the relevant market; or

Conducting discriminating practices towards certain business actors.

Article-20 prohibits sales at a loss or at very low prices with the intention of eliminating or destroying the business of their competitors, which could result in the occurrence of monopolistic practices and/or unfair business competition. Article 21 makes it illegal for a business actor "to commit fraud in fixing (the) production cost and other costs

that are part of the price component of goods and/or services that could result in unfair business competition."

Article-22, 23, and 24 prohibit certain conspiracies, including, respectively:
(1) bid rigging conspiracies, (2) conspiracies to obtain information regarding the business activities of competitors that :is classified as company secret thus could result in the occurrence of unfair business competition." and (3) conspiracies by a business actor "to obstruct the production and/or marketing of goods and/or services of their business competitors with the intention that the goods and/or services offered or supplied in the relevant market become less, either in quantity, quality or in timeliness required."

Under Article-25, a business actor may not use a dominant position, either directly or indirectly, in following manners:-
Determine the trade conditions with the purpose to prevent and/or restrain consumer(s) from obtaining competitive goods and/or services, either from the point of view of price and quality, or
Limit markets and technology development, or
Obstruct other business actors who have the potential to become competitors from entering the relevant market.

Article-25(2) of the Competition Law provides that a business actor shall be deemed to hold a dominant position for purposes of Article-25(1) if :
One business actor or a group of business actors control 50% (fifty percent) or more of the market share of a certain type of goods or services, or
Two or three business actors or group of business actors control 75% (seventy-five percent) or more of the market share of a certain type of goods or services.

Article-26 prescribes interlocking directorates. Specifically, Article-26 prohibits a director or commissioner of a company from also holding, at the same time, the office of director or commissioner in other companies, if those other companies:-

1 are in the same relevant market,
2 have close links in the same field and or in the same type of business, or
3 can jointly control the market share of certain goods and/or services, and that Interlocking directorate "could result in the occurrence of monopolistic practices and/or unfair business competition."

Article-27 prohibits business actors from owning majority shares in competing businesses, or establishing several companies that operative in the same industry in the same market, if such ownership result in:

One business actor or a group of business actors controlling more than 50% (fifty percent) of the market share of a certain type of goods or services; (or)

Two or three business actors or group of business actors control (ling) more than 75% (seventy five percent) of the market share of a certain type of goods or services.

2.4.4 Prohibited Concentration

Concentrations are regulated under Article-28 and 29 of the Competition Act. Article-28(1) prohibits "mergers or consolidations of business entities that could result in the occurrence of monopolistic practices and/or unfair business competition." Article-28(2) prohibits acquisitions of shares by one business actor in other companies if such acquisition "may result in the occurrence of monopolistic practices and/or unfair business competition." Article-28(3) provides that government regulation may provide further provision regarding the prohibitions of mergers, consolidations and acquisitions.

2.4.5 Merger Notification

Article-29(1) provides for a mandatory pre-merger notification regime, under which if provides that mergers of consolidating of the business entities or acquisition of shares as referred to in Article 28 which result in asset value and/or sales value exceeding a certain amount, must be notified to the (BCSC) at the latest within a time period of 30(thirty) days from the date of the merger, consolidating or acquisition has taken place." Article-29(2) states that provisions regarding the determination of asset value or sales value as well as the procedure of notification as referred to in (Article-29(1) shall be stipulated in the government regulation." As of this writing, these thresholds for notification have not been established.

2.4.6 Exemption from Competition Law

Article-50 exempts the following types of actions and agreements from the provisions of the Competition Law:

i. Actions and/or agreements with the purpose to implement the prevailing law; or

ii. Agreements connected with intellectual property rights such as license, patent, trademark, copyright, industrial product design, integrated electronic circuit(s), and trade secrets, as well as agreements related to franchising; or

iii. Agreements on technical standardization of products of goods and/or services which do not restrict and/or restrain competition; or

iv. Agreements for agency purpose which do not contain provisions to re- supply (resell) goods and/or services with lower prices than the price agreed in the agreement; or

v. Agreements of research cooperation to increase or improve the living standards of the society at large; or

vi. International agreements which have been ratified by the government of the Republic of Indonesia; or

vii. Export-oriented agreements and/or actions which do not disturb demand and/or supply of a domestic market; or

viii. Business actors categorized as a small scale business; or cooperative business activities with the specific purpose of serving its members.

Article-51 provides that monopoly and/or centralization of activities connected with the production and/or marketing of goods and/or services which control the lives of most people in general and production branches important to the state shall be regulated by the Competition Law and shall be conducted by State Owned Companies and/or entities or institution formed or appointed by the government.' The effect of this somewhat vague provision will not be known until special regulatory statues are passed which may or may not require that the Competition Law be applied to the activities describe in Article-51.

Asking for information from government agencies in connection with investigations and/or examinations of business actors who are violating the provisions of (the Competition Law);

Obtaining, researching and/or evaluating letters, documents or other evidence for the purpose of investigation and/or examination;

Deciding and determining whether or not there has been any loss suffered by other business actors or public;

2.4.7. Establishment of Business Competition Supervisory Commission.

The BCSC is established by Article-30 of the Competition Law, as "an independent institution, free from the influence and control of the government and other parties." Article 1, paragraph 18, provides that the BCSC "shall be the commission formed to supervise business actors in conducting their business activities so that they do not conduct monopolistic practices and/or unhealthy business competition." The BCSC consists of a chairman, a vice-chairman, and seven members. Article-13 provides that the BCSC shall be an independent institution from influence and control of the Government and other parties. The Business Competition and Supervisory Commission shall be reasonable to the President of Indonesia.

2.4.8 Duties of Business Competition Supervisory Commission.

b. Conducting evaluations of agreements that could result in the occurrence of monopolistic practices and/or unfair business competition as referred to in Article(s) 4 to 16.

c. Conducting evaluations of business activities and/or actions of business actors that could result in the occurrence of monopolistic practices and/or unfair business competition as referred to in Article(s) 17 to 24;

d. Conducting evaluations of whether there is or not any abuse of dominant position that could result in the occurrence of monopolistic practices and/or unfair business competition as referred to in Article(s) 25 to 28;

e. Taking actions in accordance with the authority of the (BCSC) as referred to in Article-36;

f. Providing suggestions and consideration on government policies regarding monopolistic practices and/or unfair business competition;

g. Compiling guides and/or publications regarding the law; (and)

h. Providing periodical reports on the activity results of the (BCSC) to the President and the House of Representatives.

2.4.9. Powers and Authorities of Business Competition Supervisory Commission

Article 36 of the competition Law sets forth the authorities of the BCSC, which are as follows:-

i. Receiving reports from the public and/or business actors concerning presumption of the occurrence of monopolistic practices and/or unfair business of competition;
ii. Conducting research on presumption of any business activities and/or actions of business actors that could cause monopolistic practices and/or unfair business competition;
iii. Conducting investigations and/or examinations on presumed cases of monopolistic practices and/or unfair business competition reported by the public or by business actors or discovered by the Commission as (a) result of its investigation;
iv. Concluding the results of investigation and /or examination whether there are or are not any monopolistic practices and/or unfair business competition;
v. Summoning business actors who are presumed to have violated the provisions in the Competition Law;
vi. Summoning and calling to attend witnesses, expert witnesses and any person who is considered knowing of any violation (of) the provisions in the Competition Law;
vii. Order for assistance from investigation to summon business actors, witnesses, expert witnesses or anybody as referred to in point (v) and (vi) who are unwilling to fulfill the summons by the commission to appear,
viii Asking for information from government agencies in connection with investigations and/or examinations of business actors who are violating the provisions of the Competition Law;
ix. Obtaining, researching and/or evaluating letters, documents or other evidence for the purpose of investigation and/or examination;
x. Deciding and determining whether or not there has been any loss suffered by other business actors or public;
xi. Notifying the BCSC's decision to the business actor presumed of conducting monopolistic practices and/or unfair business competition; and
xii. Imposing sanction in the form of administrative sanctions to the business actor who is violating provisions of the Competition Law.

2.4.10. Investigation and Inquiry Procedure

Article-38 through 46 set out the case handling procedure of the BCSC. Article-38 provides for confidential reporting of suspected violations to the BCSC. Based on such report, the BCSC is required to conduct a preliminary examination and, not more than thirty days after receiving the report determine whether further examination is required. In a further examination the BCSC is required to make an examination of the suspected violators including as necessary hearing witnesses and obtaining information from the suspected violators, which information will be maintained as confidential to the extent it is classified as a company secret. The BCSC has the authority to compel witnesses to testify and documents to be submitted. The BCSC is also empowered to initiate investigations on its own, without receiving a report of a suspected violation.

A further examination when determined necessary must be completed by the BCSC within sixty days of the imitation of investigation process though the period can be extended by at most an additional thirty days. Within thirty days of the completion of a further examination the BCSC must decide whether a violation has occurred, which decision is released publicly and notified immediately to the business actor. Within thirty days after the business actor receives notification of the BCSC's decision, the business actor must begin to implement the obligation imposed by the decision, and must provide a report on its implementation to the BCSC. The business actor may submit an objection to the decision to the district court not later than fourteen days after receipt of the BCSC's decision. If the business actor fails to submit such an objection within the stipulated limitation, it will be deemed to have accepted the BCSC's decision. If a business actor fails to either report to the BCSC or files an objection, as described earlier, the BCSC is required to submit the decision to the investigation for conducting an investigation in accordance with the prevailing law.

If the business actor files an objection with the district court, the court is required the objection within fourteen days after the initiation of the examination of the objection. The district court is required to render a decision on the objection within thirty days after its commencement of examination of the objection. The district court's decision may be appealed by the objecting party direct to the Supreme Court of the Republic of Indonesia within fourteen days. The Supreme Court must decide the appeal within thirty days after receipt of the appeal. If the business actor does not file an objection, the BCSC's decision

becomes final and binding, and the BCSC may request an executory decree from the district court.

2.4.11. Power to Impose Stricture of Civil Nature

i. Decree cancelling agreements as referred in Article-4 to 13, Article-15, and Article-16;

ii. Order to the business actor to cease vertical integration as referred to in Article-14;

iii. Order to the business actor to cease the activity that has been proven to cause monopolistic practices and/or result in unfair business competition and/or losses to the public;

iv. Order to the business actor to cease the abuse of dominant position;

v. Decree canceling the merger or consolidation of business entities and acquisition of shares as referred to in Article 28

vi. Decree for payment of compensation;

Levying a fine at the lowest in the amount of Rs.1,000,000,000.00(one billion rupiah).

2.4.12. Criminal Penalties

Article-48(1) of the Competition Law provides for criminal penalties for violations of Article 4, Articles-9 to 14, Articles 16 to 19, Article-25 and Articles-27 and 28. Fines for criminal violations, range from twenty-five billion rupiah to one hundred billion rupiah, or imprisonment as a substitute for the fine, of at most six months. Under Article 48(2), violation of Article-5 to 8, Article-15, Articles-20 to 24, and Article-26 are subject to criminal punishment by a fine of between five billion rupiah and twenty-five billion rupiah, or imprisonment as a substitute for the fine, of at most five months. Article-48(3) provides that violations of Article-41 are subject to a criminal fine of between one billion rupiah and five billion rupiah, or imprisonment as a substitute for the fine, of at most three months. Article-49 provides for penalties for violation of the Compensation Law, in addition to those prescribed by Article-48, including revocation of business license, prohibition for the business actor to hold a position as a director or commission for a period of at least two years and at most five years, or cessation of certain activities or actions that cause losses to another party.

CHAPTER 3

OVERVIEWS OF COMPETITION LAWS IN NORTH AMERICA

3.1 COMPETITION LAW OF CANADA

3.1.1. Competition Law and Nomenclature

The short title of the act is Competition Act (R.S., 1985, c. C-34), the Act provides for the general regulations of trade and commerce in respect of conspiracy, trade practices and mergers affecting the competition in Canada[58]

3.1.2 Purpose of the Act

The purpose of the Act is to maintain and encourage competition in Canada in order to promote the efficiency and adaptability of the Canadian economy, expand opportunities for Canadian participation in world markets while at the same time recognizing the role of foreign competition in Canada, to ensure that small and medium-sized enterprises have an equitable opportunity to participate in the Canadian economy and in order to provide consumers with competitive prices and product choices.

3.1.3 Provisions Defining Prohibited Actions

By the perusal of Competition Act (R.S., 1985 c.C-34) as amended up to 19th March-2007 the following offences have been mentioned as prohibited actions:

3.1.3.1 Conspiracy[59]

Conspiracy is indictable offence, the element of conspiracy are that any person who conspires combines, agrees or arrange with other person to limit unduly the facilities for transporting, producing, manufacturing supplying, storing or dealing in any product or entrance unreasonably the price thereof. Likewise to prevent or lesson, competition in the production, manufacture, purchase, barter, sale, storage, rental, transportation or supply of product, or in the price of insurance on persons or property. Also otherwise restrain or injure competition unduly. The punishment for

[58] http://laws.justice.gc.ca.en/showdoc/cs/c-34/bo-gas_1//en#anchorbo-ga:s-1 visited on 06.05.2008

[59] See Section-45 of the Act

conspiracy is 5 years or fine not exceeding ten million dollars. The evidence and proof of the conspiracy is difficult in ordinary course of investigation where direct evidence is not available circumstantial evidence is acceptable in case of commission of offence·

3.1.3.2. Foreign Directives

Foreign directives mean that when any corporation wherever it has been incorporated and it carries business in Canada and that implements or directives, instructions, intimation of policy or other communication to the corporation or partially or totally in Canada . And such directives are instructions as mentioned above is from a person in a country who is residing outside Canada, he is also in a position to influence the policies of the corporation in Canada. And it would be deemed such person or a corporation who issued the communication is hit by Section-45 i.e. conspiracy under Competition Act of Canada. Upon the conviction the officer or any director of the accused corporation is liable to pay fine as determined by the court according to its discretionary power[60].

3.1.3.3. Bid-Rigging

Bid-Rigging is an agreement or arrangement among one or more persons who agree or undertake not to submit bid in a tender. Being an offence the offender is liable on conviction to the fine to the amount as per discretion of the court or imprisonment not exceeding five year or both[61].

3.1.3.4. Conspiracy relating to professional sport [62]

It is defined as any Act which relates to conspiracy, combination, agreement, arrangements with another person by which it limit unreasonably the opportunity for another persons to participate as a player or limit unreasonably the opportunity for any other person to negotiate to play for the team or club of his choice in a professional league. The offender is liable to a fine in the discretion of court or to imprisonment for a turn not exceeding 05 years or to both

3.1.3.5. Prohibited Arrangement and Agreement of Bank[63]

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60 See Section-46.
61 See Section-47.
62 See Section-48.
63 See Section-49.

The arrangements and agreement made by a bank or financial institutions with each other and such arrangement and agreement lessen the competition among the financial institution legally prohibited. Every Federal Financial Institution that makes, execute agreement or arrangement with other Federal Institution in respect of following ,amounts to offence :-

i) The rate of interest on the deposit.

ii) The rate of interest or the charges on a loan.

iii) The amount or kind of any charge for a service provided to a customer.

iv) The amount or kind of loan to a customer.

v) The kind of service to be provided to a customer.

vi) The person or classes of persons to whom a loan or other service will be made or provided or from whom a loan or other service will be withheld.

The financial Institution who commits above mentioned acts and proceeding, the director, officer or employee of such Institution is liable to fine not exceeding ten million dollars or imprisonment for period of five years or both.

3.1.3.6. Deceptive telemarketing [64]

It means the practice of using interactive telephone communications for the purpose of promoting directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest.

If a person engaged in telemarketing and observes the followings precautions then he is exempted from the offence unless

(a) disclosure is made, in a fair and reasonable manner at the beginning of each telephone communication, of the identity of the person on behalf of whom the communication is made, the nature of the product or business interest being promoted and the purposes of the communication;

(b) disclosure is made, in a fair, reasonable and timely manner, of the price of any product whose supply or use is being promoted and any material restriction, terms or conditions applicable to its delivery; and

[64] See Section-52.1.

(c) Disclosure is made, in a fair, reasonable and timely manner, of such other information in relation to the products may be prescribed by the regulations of using interactive telephone communications for the purpose of promotion directly or indirectly the supply or use of product or for the purpose of promoting business interest. In order to avoid from the offence it is necessary to disclose the identity and nature of product, business interest being promoted in a fair and reasonable manner during telephone communication to the customer

3.1.3.7. Merger

When all or part of one business is acquired by another undertaking, it is deemed that merger has taken place. The Competition Bureau has the authority to review any merger, regardless of its size. However, the bureau must be notified in advance of proposed transactions when the value of the assets or the target firm exceeds $ 50 Million or the value of the amalgamated company exceeds $ 70 Million and when the combined dollar value of the parties and their respective affiliates exceeds $ 400 Million[65].

3.1.3.8. Deceptive Notice of winning prize [66]

When any person for the purpose of promoting, directly or indirectly any business interest, supply of product, or use of product send or cause to be sent by electronic or regular mail or by means of other document and gives general impression that the recipient has won, will win, a prize or other benefit, and the receipent is asked or given option to pay money or to do any thing that will incur a cost, such person commits the crime of Deceptive Tele Marketing. The punishment for the offence of telemarketing is fine to the discretion of the court or to the imprisonment for a term not exceeding 05 years or both.

3.1.3.9. Multi level Marketing Plan[67]

Multi level market plan means a plan for the supply of a product whereby a participant in the plan receives compensation for the supply of the product to another

[65] //H:\Competition%20Breau%20-%20About%20the%20Breau.htm visited on 29-5-2008
[66] See Section -53.
[67] See Section -55.

participant in the plan, who in turn receives compensation for the supply of the same or another product to other participant in the plan. Multi level marketing when it is operated within the limit set by the Competition Act; it is legal business activity, while a scheme of pyramid selling is illegal as defined by the law.

3.1.3.10. Price maintenance[68]

The price maintenance is prohibited act and any person who is engaged in a business of producing, supply product, provide credit card or have exclusive right conferred by Intellectual property laws and can not by agreement, threat, promise or in any like manner attempt to influence upward or discourage the reduction of price at which any other person engaged in business in Canada supply goods or offer to supply product.

3.1.3.11. Refusal to Deal[69]

Refusal to deal is defined as when someone is substantially affected in his or her business, or is unable to carry on business because of inability to obtain adequate supplies of a product on usual trade terms.

3.1.3.12. Exclusive Dealing, Tied selling and Market Restriction

It means that when a supplier require or induces a customer to deal only or mostly in certain products; requires or induces a customer to buy a second product as condition of supplying a particular product; require a customer to sell specified products in defined market.

3.1.3.13 Deceptive Marketing Practices [70]

When a product is advertised at a bargain price and is not supplied in reasonable quantities or when a product is supplied at a price above the advertised price; when retailer make "Regular Price" claims without selling a substantial volume of product,

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[68] See Section-61 also available at web site: //H:\Competition%20Breau%20-%20About%20the%20Breau.htm visited on 29-5-2008

[69] available at web site: //H:\Competition%20Breau%20-%20About%20the%20Breau.htm visited on 29-5-2008

[70] available at web site: //H:\Competition%20Breau%20-%20About%20the%20Breau.htm visited on 29-5-2008

or offering the product at that price or a higher price in good faith for a substantial period of time; or when a contest , lottery, or game of chance or skill is conducted without making adequate and fair disclosure of facts that affect the chance of winning.

3.1.4. Exemption from the Provision of Act[71]

The Act is binding on and applies to an agent of her Majesty in right of Canada or a province that is Corporation in respect of commercial activities engaged in by the Corporation in competition whether actual or potential. The Act is not applicable upon following and their activities are also exempted from the Act:-

i. Combination/merger or activities of workmen or employees for their own reasonable protection of rights.
ii. The contracts, agreements and arrangements among the fishermen and their association relating to processing of Fish according to quality.
iii. Contracts, agreement and arrangements between employers engaged in Trade, Industry and Profession pertaining to collective bargaining with their employees in respect of salary, wages and term and condition of service.
iv. The Travel Agent and their activities in respect of negotiation of commission on ticket sales for domestic flights are exempted from the provision of Section-45 to 61 of the Act.
v. The agreement and arrangement between teams clubs and leagues pertaining to participants in amateur sport.
vi. The Section-45 to 61 does not apply in respect of agreement or arrangement between or among persons who ordinarily engaged in the business of dealing security.
vii. The Act does not apply in respect of agreement, arrangements between the teams, clubs, for participation in amateur sport.

3.1.5. Competition Tribunal [72]

[71] See Section-4 to 6 of the Competition Act (R.S., 1985 c.C-34)
[72] http://www.ct-tc.gc.ca/english/View.asp?x=213 visited on 28-7-2008

The Competition Tribunal was created in 1986 when Parliament enacted major reforms of Canada's competition law and replaced the Combines Investigation Act with the Competition Act. The Competition Tribunal is a strictly adjudicative body with no function other than that associated with the hearing of application made to it pursuant to the Act and the issuance of orders.

The Tribunal is a specialized tribunal that combines expertise in economics and business with expertise in law. It hears and decides all applications made under Parts VII.1 and VIII of the Competition Act as informally and quickly as the circumstances and consideration of fairness allow. The Tribunal is a strictly adjudicative body that operates independently of any government department. It does not have investigative powers nor does it provide advice to government. It has no function other than that associated with the hearing of applications and issuance of orders.

The Tribunal is composed of not more than six judicial members and not more than eight lay members, which are appointed by the Governor in Council.

3.1.6. Competition Bureau of Canada (CBC)[73]

The Competition Bureau, headed by the Commissioner of Competition, is responsible for the administration and enforcement of the Competition Act, R.S.C. 1985, c. C-34 (the "Act"), and other acts. The Bureau investigates complaints and decides whether to proceed with the filing of an application under the Act to the Tribunal. Part II of the Act comprising upon Section-7 to 29 deals with the enforcement and administrative set up of Competition Act of Canada. The Competition Bureau is an independent agency that contributes to the prosperity of Canadians by protecting and promoting competitive markets and enabling informed consumer choice. The basic operative assumption of the Competition Bureau is that competition is good for both business and consumers[74]. Following are the administrative set up to administer the provision of Act:-

i. Commissioner of Competition

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[73] Please See Section-7 to 29 of the Act and web site http://www.ct-tc.gc.ca/english/View.asp?x=270

[74] //H:\Competition%20Bureau%20-%20About%20the%20Bureau.htm

The Governor in Council is authorize to appoint Commissioner of Competition who is responsible for administration and enforcement of Act, administration of consumer packaging, Labeling Act, Precious Metal Marking Act and Textile Labeling Act. The commissioner is obligated to take and subscribe on oath or solemn affirmation before the clerk of Privy Council on the line that I will faithfully, truly, impartially to the best of my judgment, skill and ability execute the powers and trusts reposed in me as a Commissioner of Competition.

In general, the Commissioner initiates an inquiry in any case where he has reason to believe that an officer has been committed, or someone is engaged in unfair business practices. In conducting inquiries under the Act, the Commissioner has broad powers, including the ability to obtain and execute a search warrant, compel the production of documents and other information and obtain sworn testimony from persons who may have information relevant to his inquiry, the Commissioner is of the opinion that an offence has been committed, he may refer the matter to the Department of Justice with a recommendation for prosecution. The Commissioner can not initiate prosecutions on his own although, as a practical matter, the Competition Bureau works closely with the Department of Justice in conducting prosecutions under the Act. Criminal prosecutions are conducted in both the federal and provincial courts employing the rules of criminal law and procedure that apply to all criminal cases.

ii) **Competition Tribunal**

In civil matters, the Commissioner can bring an application before the Competition Tribunal, a quasi-judicial tribunal consisting of judges of the Federal Court of Canada and lay persons drawn from various disciplines. The Competition Tribunal deals with all civil matters, including reviewable business practices and mergers, where it finds that these activities may lessen or prevent competition substantially. Proceedings before the Competition Tribunal are adversarial, with the civil burden of proof. The Tribunal has the discretion to issue final or interim orders restraining the alleged improper behaviour. In addition, in some circumstances, the Tribunal can impose administrative monetary penalties, or, on the consent of the parties, behavioral remedies. As of June 2002, the Act allows the Commissioner and

responding parties to arrive at a final resolution to the Commissioner's objections, and simply register that agreement, with only limited oversight by the Tribunal in circumstances where affected third parties challenge the settlement.

iii Deputy Commissioner of Competition

The Governor in council may authorize the deputy commissioner to exercise the powers and perform the duties of the Commissioner. Furthermore the Governor in Council may authorize any person to exercise and perform the duties of Commissioner whenever, the Commissioner and deputy commissioner are absent. The Commissioner may authorize a deputy commissioner to make inquiry regarding any matter into which Commissioner has power to inquire into the powers of Commissioner are not effected, does not in any way limit, restrict or duties of the Commissioner either generally or with respect to any particular matter.

3.1.7 Inquiry and Procedure

Any six persons who are resident in Canada and found that following features exist and may apply to commissioner for inquiry:-

i. A person has contravened an order made pursuant to Section-32, 33, or 34 or Part-VII or VIII.

ii. Grounds exist for making of an order under Part-VII and VIII.

iii. An offence under Part-VI or VII has been or about to be committed.

The application should be accompanied by a statement in solemn declaration by showing the name and address of applicants and one of them nominated or authorization of attorney or a council for the purpose of receiving communication etc. The application must have good reason and alleged contravention offence and grounds. The Commissioner can cause inquiry into the matter when directed by the Minister. The Commissioner, as an ex-parte proceeding i.e. by its own motion through his authorized agent can refer the matter for inquiry to Judge of superior or country court. The Judge can order as under:-

i. Cause attendance of person, examine on oath or solemn affirmation by the Commissioner or authorized representative.

ii. May order to a person to produce to the Commission or to the authorized Representative of the Commissioner at given time and place a copy of record, affidavit.

iii. Deliver to the Commissioner or authorized Representative of the Commissioner a written return under oath or solemn affirmation, showing in detail.

iv. Where the person is corporation and the Judge is satisfied by information on oath that the corporation has relevant record that relevant to inquiry may summon it.

v. The order has effect anywhere in Canada. Any person may be compelled to give evidence. The person so summoned is entitled for fees and allowances.

3.1.8. Warrant for Entry into Premises

Proceeding upon the application filed by the Commissioner on his own mention to the Judge of the Superior Court or country court, and after the examination of same and being satisfied:

If that the person has contravened the order made under Section-32, 33, 34 or part VIII(1) and VIII, the ground exist for the making of an order under Part VII or VIII, which are offence under Part-VI or VII has been or is about to be committed. The Judge may issue a warrant authorizing Commissioner or any other person to enter into the premises, reach the premises for any such record and the copy of same. The warrant may be executed anywhere in Canada. In case of exigent circumstances it would not be practical to obtain warrant Commissioner may proceed further in order to search and enter the premises.

3.1.9 Judgement and Decision

In the most of instances the pleadings in shape of complaint or application to the tribunal is filed by the Commissioner of Competition Commission. Only in certain circumstances any individual may also file an application for leave to make an application pursuant to provision of Act. The process for filing of an application by the Commissioner of Competition is set out in Rule-31 of the Competition Tribunal Rule. The most of the hearing are held in Ottawa, Ontario but the hearing may be held else where in Canada if necessary all the hearing open to public whoever, on occasion due to sensitive or confidential nature of the testimony the hearing may go in Camera. Most of the cases are heard by a panel of three members, this panel must include one judicial member. The rest of the panel is usually

constituted of two lay members. As far as the cases relating to deceptive marketing practices are concerned they are heard by a judicial member, we can say it single bench. The decisions of cases are rendered on case to case basis, depending upon the complexity of the case and the material presented during the case. The Tribunal strives its best to issue its decision timely and in right manner. An aggrieved party may prefer an appeal to Federal Court of Canada[75].

3.2 FEDERAL LAW OF ECONOMIC COMPETITION OF MEXICO [76]

3.2.1. Competition Law and Nomenclature

The official name of Competition Law is Federal Law of Economic Competition of Mexico. In compliance to the Article 29 of the Constitution of Mexico relating to Economic Competition, monopolies and free market access. These constitutional provisions are binding on all sectors of the economic activities in Mexico Republic. Hence in order to fulfill the constitutional requirement and keep on prevailing the fair competition practices, to protect competition process fairly, free market access, preventing monopoly & monopolistic practices and other restrictions that deter the efficient operation of the goods and services in market of republic of Mexico, The Federal Law of Economic Competition has been enacted

3.2.2. Scope of the Law and Jurisdiction

Under Article-3 of the law provides that all the undertakings, firms and economic agent are subject to the provision of law; such as individuals, corporation, and agencies entities of Federal Government, local administration, associations, professional groups' trusts and any other form of entity engaged in economic activities.

3.2.3 Provisions Defining Prohibited Actions:

3.2.3.1 Monopolistic Practices.

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[75] http://www.ct-tc.gc.ca/english/View.asp?x=270

[76] i. http://www.apeccp.org.tw/doc/mexico/competition/mxcom/html
ii. http://www.unctad.org/section/ditc_ccpb1docs1ditc._ccpb_ncl.mexico-en.pdf

Articles 8 to 15 of Chapter-II deals with the monopolies and monopolistic practices. This chapter specifically mentions and prescribes the absolute monopolistic practices and the set of conditions which amounts to an offence and violation under the law. Furthermore it prescribes the criteria for the determination of relevant market. The absolute monopolistic practices may be such contracts, agreements, or combinations among competitive economic agents whose aim or effect may fall within the ambit of following:-

a. To fix, raise, to agree upon, or manipulate the purchase of or sale price of goods or services supported or demanded in the market, or to exchange information with the same aim or effect.

b. To establish the obligation to produce, to process, distribute or market only a restricted or limited amount of goods, or to render a specific volume, number or frequency of restricted or limited services.

c. To divide, distribute, assign or impose portions or segments of the current or potential market of goods and services by means of determinable groups of customers, supplier, time or spaces.

d. To establish, agree upon or co-ordinate bids or to abstain from bids, tenders public auction or bidding. There are two conditions that should be fulfilled for constituting monopolistic practice:-

I The party assumed to be responsible has substantial power in the relevant market.

II That they are carrying out business regarding goods and services corresponding to that relevant market. The commission may evaluate market share of the undertaking which restrict market share of the undertaking which restrict the supply or set the price. And have entry barrier, may after those barrier, competitors existence, have access to the inputs. The commission may investigate at the request of a party and publish the declaration. A party being aggrieved may challenge the findings of the investigation before Supreme Court of justice.

3.2.3.2 . Concentrations

Chapter III Article 16 to 24 deals with undue concentrations, which is understood to be merger, acquiring the control or any other action through which corporations, associations, stock, equity interests, trusts and assets in general are carried out amongst competitors, suppliers, customers or any other economic agents, such concentration are also violative to the law whose objective or effect is to diminish, damage or deter the competition, free access to equal, similar or substantially related goods and services following may be un-due concentration under the law:-

a) Merger or acquisition that make powerful to the undertaking to set the price and restrict the supply.

b) May intend to unduly displace the other economic agent or hinder their access to the relevant market.

c) Intend or pretend to allow behaviour of monopolistic practices. The Mexico law of competition has declared following concentration as unlawful:-

i. The value of a transaction or series of transaction is higher than 12 million times the general minimum wage in effect in the Federal Districts.

ii. If two or more assets or share of an economic agent which are more than 12 million times than the wages in effect in Federal District.

iii. If two or more economic agents participate in transaction and their annual volume of same jointly or separately is up to 48 million times to the wages in Federal District.

Before taking any action Notice with nature of legal action in the name of undertaking with the default of its market share, and data will be served and commission may obtain further data and interested parties may also submit the required information. The order/resolution of the commission must be funded and motivated one.

3.2.4. Exemption from the Prohibited Actions

Under Article 4 to 7 following entities have been exempted from the provision of Federal Law of Economic Competition:-

a. The matters and activities of strategic sector which has been declared that it does not constitute monopoly.
b. All other agencies and entities whose activities fall within the ambit of strategic sector.
c. Worker associations that has been created under the legislation to protect their interest.
d. Temporary privileges granted to authors and artists, inventors and individuals perfecting improvements for the exclusive use of their inventions.
e. Associations or co-operatives that directly sell their products abroad, provided that the product are not in dire need of Mexico, nor sold in Mexico,

Under Article 7 of the law Federal Executive is responsible for determining the maximum price of goods and services. Federal Consumer Protection Agency is responsible for the inspection, surveillance and penalization of maximum prices.

3.2.5. Federal Competition Commission.

Articles 23 to 29 deals with the constitution of Federal Competition Commission. Legal status of the Commission is that it is autonomous body; it is responsible for preventing monopoly, concentration and unlawful act under the competition law. It can investigate and

combat with the monopolistic practices. The commission shall have the following powers to deal with the unlawful practices and functions under the law.

j. Investigate the existence of monopolies, tax corners, practices or concentrations prohibited by this law, to which end it may require from individuals and other economic agents the relevant information or documents.

ii. Establishment mechanisms of coordination to contest and prevent monopolies, tax corners, concentrations and illicit practices.

iii. Solve cases of competition practice and impose administrative penalties for the infringement of this law, and to report to the Public Prosecutor criminal practices regarding competition and free market participation.

iv. Issue opinions concerning adjustments in programs and policies of the Federal Public Administration, whose effects may damage competition and free market participation.

v. Issue opinions, when requested by the Federal Executive, about modification of law and regulation policy regarding competition and free market participation.

vi. Issue opinions, when considered pertinent, about competition and free market participation, regarding laws, regulations, agreements, orders and administrative acts, without such opinions having any legal effect, and without the Commission being compelled to issue an opinion.

vii. Prepare and enforce internally, the organization of manuals and rules of procedure.

viii. Participate with the appropriate entities the celebration of international treaties, agreements or pacts, in connection with regulations or policies involving competition and free market participation, in which Mexico is or intends to be party and

ix. All others vested in it by this and other laws and regulations.

The commission shall be headed by the President and five Commissioners. The President Commissioner will be appointed by Federal Executive and the commissioner must be citizen of Mexico professionally qualified in public, academic matters and law. He must abstain from performing other jobs, public or private activities. The Commissioner will be appointed for the period of ten years.

3.2.6 Inquiries, Decision and Procedure for complaint

Article 30 to 34 dealing with procedure and investigation process. All persons or the party affected due to unlawful practices under article 8 to 21 may file written complaint before the Commission. The documents and information submitted before the Commission are strictly confidential except when discussed by the Competent Authority. The following is procedure for adjudication of complaint.

i. Any person, affected parties in case of violation of law, may file a written complaint before the commission against the alleged responsible, describing the nature of such practice or concentration.
ii. The complainant must include the elements that constitute such practices or concentrations and, as the case may be, the circumstances that prove that the complainant has sustained or may sustain substantial damage or loss.
iii. The alleged responsible shall be summoned.
iv. And shall have thirty calendar days to submit an affidavit of defense, to adjoin documentary evidence of its possession, and to submit any other kind of evidence that merit review.
v. The Commission shall set a time limit not exceeding thirty calendar days for the submission of the pleas, whether verbal or written.
vi. Upon completion of the file, the Commission must issue a decision in the following 60 calendar days

3.2.7. Appeal and Review

An appeal for a reversal may be filed before the Commission within 15 working days following the notification of impugned decision. The appellate authority may revoke, amend or sustain the decision appealed and the ruling issued shall contain the assessment of the contested act legal principles on which it rest and the points of the decision. The appeal is competent for adjudication before the Chairman of the Commission. The appeal shall be decided within the period of 60 days from the date of filing.

3.3 COMPETITION LAW OF REPUBLIC OF CHILE

3.3.1. The Competition Law, Nomenclature

Chile's current Competition Law is called "Law for the Defense of Free Competition" which is the official name of Competition Law of the Chile. It was adopted in December, 1973 as a part of the Military Government's programme. The new law was and is substantively similar to its predecessor; but it created new Institutional Frame Work that remains in place today[77].

3.3.2 Scope of the Law Jurisdiction

Vide decree of law No.19806 dated 31-5-2002 and 19911 article 2, it has been mentioned that in order to facilitate the cognizance and application of the new law in matter of such great importance, it becomes convenient to consolidate the said legal provisions into one single text. The law intends to promote and defend free market competition in the republic of Chile. The free Competition Defense Court and the National Economic Prosecutor in the scope of their respective authorities are authorized to apply this law for the safeguard of free competition in the market.

3.3.3. The Goals of Chile's Competition Law[78]

Chile's government regards the principal goals of the competition law as being to promote economic efficiency with the expectation that in the long run this maximizes consumer welfare. The law does not express this (or any other) goal, though, and it contains one provision that implies a non-efficiency goal. For at least the first fifteen years, Chile's enforcement institutions gave decisive weight to a variety of values other than efficiency and consumer welfare. The absence of specific goals in the law, combined with a shift toward emphasis on efficiency in practice, is a pattern found in many OECD countries. One of the proposed amendments would add a statement of purpose to the law, that its objective is the "protection of competition". Stating that goal explicitly would tend to make it more difficult for parties to invoke goals that are unrelated to competition or efficiency.

Both the shift in emphasis and the continuing relevance of non-efficiency goals are important. Three key issues are mentioned in this respect.

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[77] The original text of Chile's current Competition Law "Law for the Defense of free Competition has been down loaded from the web site wherein after and the overview of the law has been written by me, http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTLAWJUSTICE/EXTICO MAPLEGALD B/O contestMDK: 21081161- Page PK:2137398 - PIPK: 64581526 - the Site PK: 2137348100.html. Visited on 15-5-2008.

[78] Report on Competition Law and Policy in Chile prepared by Terry Winslow consultant to OECD 2004.

.Whether the standards for assessing allegedly unlawful conduct have shifted to reflect the new efficiency orientation;

.Whether and when non-efficiency goals change the normal analysis; and

.Whether the business and the public are fully aware of the current interpretation of the law's goals and the legal standards applicable in different kinds of cases.

3.3.4. Provisions Defining Prohibited Actions

Law No.19,911 article 2 and 3 emphasize that he who enter into or executes contract that prevents, restricts or hinder free competition or tends to produce affects against free competition are regarded against the law. Following deeds, acts and contracts are regarded as preventive, restrictive and hindering free competition:-

i. Expressed or implied agreement between business agents or concerted practices between them having the intent of fixing sale or purchase prices, limiting promotion or assigning themselves market zone or quotas, abusing the power conferred upon them by such agreement or practices.

ii. The abusive exploitation by a corporation or corporation having a common holding company, of a dominant position in the market, fixing sale or purchase prices, imposing on a sale that of another product, allocation of market zones, quota and imposition of abusive practices.

iii. Predatory or unfair competition practices conducted in order to attain, keep or increase a dominant position.

3.3.5. Exemption

Chile's competition law provides no concession, authorization even to trust for the conduction of business activities unless otherwise provided by the law.

3.3.6. Establishment of Free Competition Defense Court (FCDC)

i) ORGANIZATION AND OPERATION.

The free Competition Defense Court is a special and independent jurisdictional body subject to the managerial, correctional and economic supervision of the Supreme Court. The

free Competition Defense Court acts and function to present correct and punish to the elements and attempts made against free competition.

ii) COMPOSITION OF FREE COMPETITION DEFENSE COURT

Composition of Free Competition Defense Court is composed and consists of following office Bearer:-

i. Presiding Officer is appointed by the President of the Republic among the candidates who have ten years practical experience of professional practice. They have an out-standing professional or academic background of activities in free competition matters or in commercial and economic law. In respect of such five candidates the list is prepared by the Supreme Court of Chile. Four members are selected from college-graduate professionals who have experience of free competition matters. Two of whom are lawyers and two of them may be bachelors or post graduate in economic science. The appointment of two such members is made by the Central Bank Council; subject to prior public contest of qualification. The other two members, each one of different professional area are appointed by the President of Republic. Collateral to that they have also two alternate members. The appointment of the members of FCDC is made by the President of Republic of Chile through Supreme Decree of the Ministry of Economic, Development and Reconstruction. It is required to be signed by the Minister of Finance.

iii) OATH, TERMINATION OF THE SERVICE OF THE MEMBER

Before taking the duties of free competition defense court all the members swear and promise to abide by the constitution and law of the republic of Chile before the Chairman of the court. The Chairman takes his oath before the most Senior Justice of the court. The duration of the member is 6 years and is entitled to be re-elected for new successive period, the member of FCDC vacate their office due to the occurrence of following events:-

i. Expiration of the legal term of their appointment.
ii. Voluntarily resignation.
iii. Removal due to gross breach of duties.
iv. Supervening inability which means that any act which prevents the member from holding its office for a period of 3 consecutive month or six months during one year.

iv) POWER OF THE FREE COMPETITION DEFENSE COURT

1. To hear, at the request of an interested party or at the motion of the National Economic Prosecutor, the situations that might constitute violations of this law.
2. To hear, at the request of a party having lawful interest or at the motion of the National Economic Prosecutor, non contentious matters that may infringe the provision of this law, whether on existing facts, acts or contracts or regarding matters referred to it by those proposing to enter into or execute them. For that purpose, in both cases, it may set the conditions to be met in such facts, acts or contracts.
3. To give general instructions according to the law, which are to be considered by private individuals upon the acts or contracts to be entered into or executed in connection with free competition or which might attempt against it.
4. To propose to the President of the Republic, through the relevant State Minister, the amendment or abrogation of the legal and regulatory provisions which in its opinion are contrary to free competition, as well as the enactment of legal or regulatory provisions, wherever necessary to encourage competition or regulate the exercise of certain activities which take place under non-competitive conditions
5. Such other powers and duties as prescribed by law. The hearing and award of cases as referred to under Article-19 (1) of the foregoing article shall be subject to the procedure regulated under the following articles.

3.3.7 Trial and Adjudication

The law requires that final judgement should be well grounded and it is required to state the findings of facts as well as legal and economic consideration under which the judgement is passed. In the final judgement the court is obligated to adopt the following steps:-

a. To amend or terminate the acts, contracts, agreements, systems or arrangements which are contrary to the provisions of this law,

b. To order the amendment or dissolution of the partnerships, corporation of other private-law entities involved in the acts, contracts, agreements, systems or arrangements referred to in the foregoing paragraph;

c. To apply fines for fiscal benefit for up to an amount equivalent to twenty thousand annual tax units. The fines may be imposed on the corresponding legal entity, on its directors, managers and on any person having been involved in the conduction of the relevant act. In the case of fines applied to legal entities, their directors, managers and those persons having benefited from the respective act shall be jointly liable to the payment thereof, provided they took part in its conduction. For determining the fines, there shall be considered, among other, the following circumstances: the economic benefit derived from the infringement, the seriousness of the conduct and the recidivist attitude of the violator.

The judgments rendered by the free Competition Defense Court, except for the final judgement, shall be liable to the motion to set aside, which may be given incidental processing or be settled at once.

3.3.8 National Economic Prosecutor and Inquiry/Investigation.

The office of National Economic Prosecutor is decentralized public service with its legal status and own assets independent from any other agency or service. It is under the control and supervision of President of the Republic. National Economic Prosecutor's office located at Santiags. It is in the charge of officer named at National Economic Prosecutor who has the absolute trust of President of the republic. The qualification of the National Economic Prosecutor is that he should have degree of law and must have professional practice experience for ten years. In order to meet prosecution duty he is authorized to appoint alternate prosecutors to perform the function of Competition Law when an urgency of an investigation is required. Alternate Prosecutor functions as per the delegation of powers so delegated upon him.

3.3.9 Power and Duties – To conduct Inquiry and Investigation.

i. In order to prove the violation of law National Economic Prosecutor can direct Investigation by giving Notice to the affected Party, with the cognizance of

Chairman, Free Competition Defense Court. In order to facilitate the process of investigation the Directorate General of Chilean Investigation Police shall put at the disposal of National Economic Prosecutor such number of personnels as it may require for the attainment of the duties, assignments and investigation indicated in the letter.

ii. The National Economic Prosecutor with the cognizance of the Chairman of the Free Competition Defense Court may pass decree that the investigation instructed at its own motion or by virtue of the reports may be kept reserved.

iii. The National Economic Prosecutor may also ask decree that there is no need to give the notice in respect of commencement of investigation against the effected party. But this act of National Economic Prosecutor is subject to the authorization of Free Competition Defense Court.

iv. The National Economic Prosecutor may act as a party when the question of public importance is involved in respect of any economic matter which falls within the jurisdiction of Free Competition Defense Court and the Chilean courts of justice. The National Economic Prosecutor is authorized to exercise all powers and duties of which it is entitled.

v. The National Economic Prosecutor may on its own account or through a delegate may defend or challenge the judgement of Free Competition Defense Court before the Supreme Court.

vi. National Economic Prosecutor may endorse the charges brought on record by an alternate prosecutor as a record of investigation. And for trial before Free Competition Defense Court.

vii. To ensure the enforcement of the judgement ruling, decrees and direction issued by Free Competition Defense Court or other courts of justice.

viii. To issue report in the matters in which National Economic Prosecutor is not party to proceeding upon the request of Free Competition Defense Court.

ix. National Economic Prosecutor can have collaboration of any officer of Public Service among municipalities Corporations etc.

x. National Economic Prosecutor may have such information and document which are necessary for investigation.

xi. To enter into moveable and immoveable property and execute all kinds of acts and contracts over moveable or immoveable property and over corporal or incorporeal property comprising the assets of service, including those assets which make it possible to dispose of and transfer the ownership and settle the rights, actions, annual obligation, whether contractual or extra-contractual.

xii. Summon the representative, manager, advisor and dependent of the entities, and other person who have the knowledge of facts, acts, and agreement which is the subject of investigation.

xiii. To request for the help of technical organization of State and have a report and retain the services of expert or technicians.

xiv. May execute any agreement or memorandum of understanding with agencies or other foreign to bodies intending to promote or defend Free Competition in economic activities.

The prosecutor's office as and when receives the complaint, investigate it appropriately. Likewise may investigate upon the report filed by private parties in respect of violation of rule or law. Any person whoever hinders the process of investigation conducted by National Economic Prosecutor is liable to be arrested for 15 days. In order to effectuate the arrest, the court having jurisdiction over criminal matter is empowered to issue warrant. In order to have the warrant prior authorization is required. The staff working for the implementation of law is bound to keep the secrecy of information, facts, data that came to their knowledge during the course of their duties.

3.3.10 Judgement and Penalties and Fines.

The proceedings before the court are initiated upon requisition of the National Economic Prosecutor or upon the claim of any private party. The requisitions, claims, pleadings are fixed for preliminary arguments, after it once it is admitted for trial, the affected party is served with copy for submission of its pleading in shape of written-statement and written reply within the deadline of 15 days or such longer period as may be permitted and determined by the court which not exceed 30 days. The means and modes of taking evidence are as indicated in article 341 of the Chilean Code of Civil Procedure which prescribes admissibility and standard of proof. The Free Competition Defense Court may decree at any

stage of the case on the basis of established relevant facts. On the commencement of trial the parties wishing to surrender testimonial evidence is required to submit the list. The list of witness within five days from the date of admission. (Here the procedure is similar to Pakistan Civil Procedure Code when the issues are framed the list of witness is required to be submitted within the period of seven days). The FCDC is competent to conduct a personal search for answer to investigation or seeking of evidence. This process is to be conducted by the number, appointed by the court in each case. The proof-taking action or evidence collection process out-side the territory of Metropolitan Region of Santiago may be conducted through appropriate civil court. Such civil court will complete the process accurately and expeditiously. After the completion of evidence collection the FCDC fix date of argument and hears all allegations and points for determination from the lawyers on both side. The court is authorized to pass any interim order and on its accord or the final judgement is required under the law to be well-grounded. It being required so to state the finding of fact as well as legal and economic consideration. The FCDC is bound to issue to deliver the judgement within the period of forty-five days from the time in the final judgement FCDC may adopt following steps:-

i.) It may amend or terminate acts, contracts, agreements, system or arrangements which are contrary to the provision of the law.

ii) The court can pass order to amend or dissolute a partnership from Corporation of other private law entities involved in the acts, contracts, agreements system or arrangements.

iii) To apply fines for fiscal benefit up to an amount equivalent to twenty thousand annual tax units. The fines may be imposed on the corresponding legal entity, on its directors, managers and on any person having been involved in the conduction of the relevant act. In the case of fines applied to legal entities, their directors, managers and those persons having benefited from the respective act shall be jointly liable to the payment thereof, provided they took part in its conduction.

iv) For determining the fines, there shall be considered, among other, the following circumstances: the economic benefit derived from the infringement, the seriousness of the conduct and the recidivist attitude of the violator.

3.3.11 Appeal:

The order rendered by the Free Competition Defense Court and other judgments except the final judgement are liable to be motioned for setting aside before the Free Competition Defense Court as far as the final judgement is concerned it is directly challengeable to Supreme Court of Chile

CHAPTER NO.4

OVERVIEW OF THE COMPETITION LAWS IN PAKISTAN

4.1 Government's Economic Agenda before the Promulgation of competition Ordinance, 2007.

Government's economic agenda focuses on liberalization, de-regularization and privatization. Trade policies are geared towards opening of Pakistani import/export regime, reduction in tariffs, encouraging investment in a competitive environment with no constraints and barriers. The policy agenda favors reforms in competition policy and law. The decision-makers in all relevant ministries and departments, particularly the Finance Minister, desired that MCA should convert itself into an effective institution, but in no way interrupting the process of economic growth, foreign investment or in any way discouraging the local enterprises. Level playing field, without any discrimination, is provided for all undertakings. Market forces should determine the trade and industrial operations, of course with clear cut rules of the game. Public interest must be, however, protected and the consumers must have the benefit of choice and low prices.

4.2 Economic Scene in 1969 – 1970 (At the time of introduction of competition law)

- Control and regulatory economy prevailed in which industrial activity was strictly regulated principally through a licensing regime. This is reflected in the very title of the Ordinance which includes the words "Control and Prevention". The preamble to the Ordinance speaks of certain practices as "injurious to the economic well-being, growth and development of Pakistan". It is, therefore, obvious that the then prevailing economic situation brought about Government intervention to provide for measures against concentration of economic power and restrictive trade practices.

- The world economy at that time was also regulation-minded and in the post World War-II scenario nations were concerned to protect their shattered economies and induce internal economic growth. There was also a socialistic central command approach to economic planning, especially in Europe and particularly in our neighboring country India.

- There was considerable public disquiet leading to the slogan about 22 families controlling the economy of Pakistan. There was need to protect and advance the economic development of erstwhile East Pakistan which, as compared to West Pakistan, was highly undeveloped. The Foreign Exchange regime was strictly controlled. There was strict import control and a high level of customs duties.

- In early 1970s, there was nationalization of major economic activity e.g. banks, life insurance, oil refineries, oil distributing companies, gas companies, shipping etc., and major industries under the Economic Reforms Order 1972, which were brought into the public sector. However, state monopolies which existed or resulted from the above including Energy, PTCL, Railways, PIA etc., were excluded from the purview of the Ordinance, which concentrated on the private sector.

4.3 Economic Realities in 2004 – 2005

- Most of the above cited points are no longer relevant. There has been a deliberate reversal with emphasis on the growth of the private sector with corresponding diminution in the role of the public sector.
- There has been total globalization of the world economy with rapid movement of goods and services internationally. Pakistan has acceded to the World Trade Organization and accepted its privileges and corresponding obligations. Consequently, liberalization has become mandatory and free trade among nations is the order of the day and national economic growth is measured in terms of international trade statistics. Customs duties are specifically being reduced and will shortly be eliminated on most of items to encourage free flow of international trade.

- There is a world trend towards consolidation and increase in economic size, both for survival and enhanced competition. One consequence is that million-dollar companies have now become billion-dollar companies. Major consolidation in trading areas has occurred e.g. the European Union, North American Trading Areas, ASEAN and Regional Free Trade Agreements and consequential preferential trade. Liberalization of inter-border trade within the SAARC region has been committed by Governments and is about to take place.
- There is a liberal foreign exchange regime in Pakistan with generally free movement of capital in current account, and some in capital account. Foreign investment is actively encouraged and has led to substantial foreign investments with free opportunity to remit out capital and dividends. Investments in large scale industrial activity and specifically foreign investments are statutorily protected from nationalization or expropriation. The services sector has been opened up to foreign investment and considerably liberalized, including franchise, royalty payment and remittances.
- There is a general realization that growth in economic size is essential both for survival and competition in a global context, with free import of goods. One instance is in the banking sector where banks are encouraged and obliged to increase capital, to amalgamate, and to meet minimum capital requirements. The life insurance sector has been opened to private and foreign investment to provide competition mainly to SLIC the state monopoly.
- Privatization is a major declared objective of Government policy. Information Technology has revolutionized the manner in which business and industry is conducted and the consequences are still in process of being understood.

4.4. Current Economic Policy of Government and Reform in Corporate Environment

- To meet worldwide competition in a rapidly globalizing economy and to fulfill Pakistan's obligations under the WTO regime, it is the stated policy of the Government to encourage economic growth and provide employment opportunities for the rapidly increasing employable and unemployed population of Pakistan.

- This is particularly important to avoid social unrest and misdirected fundamentalism, especially as migration for employment to the Middle East and Gulf areas which was a safety valve in 1970 and 1980 has now closed. In fact, there is a considerable number of returning Pakistanis which adds to the unemployment problems in Pakistan.
- It is the stated policy of Government to move towards poverty alleviation. Indeed, this is a Government commitment to the world community, to the IMF and the ADB for which considerable sums have been made available to the Government.
- As part of its job creation and poverty alleviation program, small and medium enterprises are being encouraged and micro-finance for small entrepreneurs is encouraged e.g. through the *Khushhali Bank*.
- There has been a significant re-examination and re-enactment of relevant legislation and new legislation: The Companies Ordinance 1984 repealed the Companies Act, 1913 and has introduced a modern company law regime. Recent amendments in 2002 were made to stimulate economic growth through company formation including single member companies.
- The Securities and Exchange Commission of Pakistan replaced the former Securities and Exchange Authority. It has been organized on modern lines and has adopted a very proactive role in supervising economic activity through encouraging companies' formation and vigilance on companies operations etc. The SECP has actively encouraged the stock exchanges in Pakistan to play a very substantial market role with the result that the Karachi Stock Exchange was one of the best performing stock exchanges in the world in 2003 and continues to perform as well as before.
- The strength of the Stock Exchange is reflective of economic growth, well-being and potential in Pakistan and internationally acknowledged as such. The SECP is encouraging demutualization of the stock exchanges as a further means of liberalization and economic growth consistent with international demutualization practices in stock exchanges.
- The Listed Companies (Substantial Acquisition of Voting Shares and Takeover) Ordinance 2003 has set out clearly the parameters to be observed for substantial

acquisition of shares and takeovers of companies, and provides a complete code for the regulation of mergers and acquisitions.

- The updated Companies Ordinance particularly Section 208 has clearly delineated the extent and manner in which investments in "associated companies" may be made, and has strictly regulated the same. "Related party transactions", essentially with associated companies, are required to be specifically approved by Directors, examined by statutory auditors, and disclosed in the Companies' report.
- A mandatory Code of Corporate Governance applicable initially to public listed companies and eventually to other companies has been instituted.
- The State Bank of Pakistan has totally re-organized its regulatory role in respect of banking companies and the Non Banking Finance Institutions particularly through the Banking Policy Department. The SBP has enforced revised Prudential Regulations which not only govern the activities of banks but significantly cover the activities vis-à-vis lending etc., in the economic sector.

4.5 Detailed Review of the Monopoly and Restricted Trade Practices (Control and Prevention) Ordinance, 1970 (V of 1970)

- The competition law was promulgated as an Ordinance in 1970. It covered only private sector enterprises. Public sector enterprises were excluded. More recently, even public sector enterprises being privatized had been excluded from the purview of the competition law in respect of their functions and activities regulated by NEPRA, OGRA, PTA and PEMRA. Single firm monopolies were also not covered under the law.

- The law covered situations of asset-based monopolies (provision not operational under administrative instructions of the Government), intra-group dealings amongst associated firms acquisitions and mergers. Inter-firm agreements (cartels and restrictive trade practices).

- The law also empowered the MCA to declare situations, other than specifically stipulated, as 'monopolies' – for this purpose the Authority must pre-publish the proposed amendment in law and seek public comments prior to declaring such change as final.
- The Authority had divergent views on whether it was only the existence of market dominance that automatically creates the monopoly in a legal sense, or it is condition precedent to establish that there has been or there is likely to be the abuse of market power (i.e. it is contrary to public interest) which was cognizable and warrants issuance of a show cause notice. This issue must be resolved to avoid unnecessary credibility gap with businesses and, sometimes, with economic managers in Government.

- The law contained provisions for advance rulings on questions of law and practice.

- Firms with aggregate assets exceeding Rs.50 millions, market share exceeding 1/3rd market share, restrictive agreements, banks and insurance companies, persons holding more than 50% of shares in public companies, technology transfer agreements, etc. were required to register with the Authority – the purpose being to enforce the law on these firms on the basis of their trading results/ownerships/restrictive agreements by the Authority. Since 1970, a total of 607 undertakings, 149 individuals and 573 agreements have been registered with the Authority.

- The law provided for enquiries and investigation in cases of suspected contravention, acquisitions and mergers. If the Authority is satisfied that an offence within the meanings of the law had been committed, it issued a show cause notice and initiated hearings as a quasi-judicial body. While hearing the cases, the Authority acts as civil court. Appeal against Authority's decisions lies before the superior courts.

- Penalties for non-compliance of Authority's orders. These were very low as compared with the financial gains from offences committed. Therefore, they did serve as adequate deterrent.

- Rules provided for supply information by firms in prescribed form. The Authority could also seek specific information concerning matters of Authority's interest – whether for sector analyses or as required in connection with any enquiry.

4.6 MRTPO 1970 AT Glance

SECTION 1: defines the scope of MRTPO 1970.

SECTION 2: defines various terms used in MRTPO 1970.

SECTION 3: describes undue concentration of economic power, unreasonable monopoly power and unreasonably restrictive trade practices as circumstances constituting monopolies and cognizable under MRTPO 1970.

SECTION 4: deals with undue concentration of economic power i.e. asset based monopoly.

SECTION 5: deals with unreasonable monopoly power i.e. dominant position.

SECTION 6: deals withn reasonable restrictive trade practices.

SECTION 7: empowers MCA to declare circumstances other than those covered under Sec. 4, 5 and 6 as constituting 'monopoly'.

SECTION 8: deals with matters concerning constitution of MCA.

SECTION 9: deals with the appointment of Officers/Staff of the MCA.

SECTION 10: describes the functions and powers of the MCA.

SECTION 11: describes the manner in which MCA initiates its proceedings in cases of contravention of MRTPO provisions.

SECTION 12: describes the type of orders the Authority can make under various contraventions.

SECTION 13: describes MCA powers to issue interim orders.

SECTION 14: describes the circumstances and manner in which the Authority can hold special enquiries.

- SECTION 15: describes Authority's powers in relation to its proceedings and enquiries.
- SECTIONS 16, 17 and 18: deal with matters concerning registration of undertakings, individuals and agreements by the Authority.
- SECTION 19: prescribes penalties for non-compliance of Authority's orders.
- SECTION 20: provides appeal mechanism against Authority's orders.
- SECTION 21: describes Authority's power to call information relating to undertakings.
- SECTION 22: deals with matter concerning payment of compensation in pursuance of Authority's orders.
- SECTION 23: indemnifies Authority for actions taken under the MRTPO 1970
- SECTION 24: empowers the authority to make rules regarding carrying out purposes of MRTPO 1970.
- SECTION 25: describes the 'exclusions' from application of MRTPO.

4.7 Section wise analysis of MRTPO

- Section 2 - Definitions:

  - *Definition of 'associated undertaking'*: Conflict in the definition of 'associated undertaking' as appearing in MRTPO1970 and Companies Ordinance, 1984, has invariably been a source of dispute. Hence, the need for reconciliation of the two definitions - perhaps substituting the present definition by the one appearing in the company law. No adverse consequence is expected on the competition law.

  - *Definition of 'services'*: The present definition of 'services' has limited scope and applicability. Given the fact that there is no restriction in law imposed on types of 'businesses' to be covered under the competition law, there is no merit in providing a restrictive definition of 'services' to be covered. All services, therefore, be considered for falling under the competition law.

- *Definition of 'undertaking'*: Present definition only refers to 'concerns' that denotes only 'juridical persons'. Consider substituting the expression 'concerns' by 'persons'. This will cover both 'natural and juridical persons'.

- Section 4

This provision deals with asset-based monopolies and inter-corporate financing. Both need to be dealt separately.

The law provides that 'private companies' with value of aggregate assets (at cost price) exceeding the prescribed threshold must convert to 'public companies'. The fundamental question is in what way the proposed conversion promotes 'competition' and/or 'public interest'? It is understandable that public companies have higher 'reporting requirements as compared with the private companies that are mostly 'family businesses'. Consequently, there is a higher level of transparency in the affairs of these businesses if they convert to public companies. There is a better appraisal of their business affairs including production costs, return on equity, product pricing, inter-firm financing and other agreements. Apparently, the answer to the above question is in the negative.

The important point that may be considered in deciding whether the first part of this provision be retained, modified or deleted is that the entrepreneur has the primary right to decide on the corporate structure of its business. If for any reason (e.g. for increasing the capital base, taking advantage of the tax rate differential, etc.) the entrepreneur decides to establish a 'private company' (Company Ordinance 1984 allows establishing one director company that is no different from sole proprietorship except for certain legal safeguards), it may have the choice to retain it in that form or convert to a public company.

Further, GOP Investment Policy allows holding of 100% capital by foreign investors and conduct businesses in Pakistan through incorporating a domestic company or a

branch of the foreign company or its representative office. Retention of the provision concerning divesting where a person shareholding exceeds 50% of public company shares appears to be contrary to Government's investment policy and a disincentive for foreign investors. The provision may be considered for deletion.

The second aspect of Sec. 4, dealing with inter-corporate financing, is intended to deny the corporate entities the capability of 'driving out' other entities from market place by reducing their production and marketing costs through the provision of concessionary financing. Retention of this provision could provide safeguards against 'forced exits'.

- Section 5

This section deals with the associated firms, acquisitions and mergers. The underlying intention is to deny the enterprises the potential to abuse their 'market power' unless they establish that they qualify under the 'gateway' provisions of the law. The prescribed threshold for the Authority to take cognizance of the proposed action for acquisitions or mergers is $1/3^{rd}$ market share. There is no provision for 'pre-merger control' by the enterprise concerned; hence the Authority mostly relies on third party information.

Determination of market share, both for the Authority and the enterprise is not an easy job particularly in the absence of clear segregation of markets and product differentiation, presence of unorganized production and selling market, smuggling of identical/similar products or their substitutes, non-availability of reliable secondary data.

Several competition laws provide indicative rather than rigid threshold bases/criteria. These may be market share, turnover, and/or aggregate assets. Combination or otherwise of similar indicative thresholds or, for that matter, number of competitors left in the market place in the post-merger situation deserves consideration. Further,

the incorporation of the provision for pre-acquisition and pre-merger control and preparation of 'Pre-Merger Guidelines' for the Authority and the entrepreneurs concerning market share determination, product lines and differentiation deserves serious consideration.

While the law takes cognizance of acquisitions and mergers resulting in market dominance, there is no concept of 'single monopoly firm' in law. Consider intervention in such situations in cases where market size exceeds a given threshold and there is likelihood for abuse of 'public interest'. Behavioral abuse could be regulated through several or one of the following regulatory measures:

- ✓ Price controls by the relevant agency,
- ✓ Imposition of fines by the Authority,
- ✓ De-linking in cases of tight selling,
- ✓ Competition advocacy,
- ✓ Authority's recommendations asking Government to remove tariff and non-tariff protections – at least beyond the stipulated period.

Consider preparation of Guidelines in the form of rules, both for the Authority and enterprises on the basis and mechanism for determination of market segregation and share, submission of pre-merger notice, and time limitation for the Authority to decide in cases of acquisition and mergers failing which firms' action will be deemed as accepted.

- Section 6

This provision caters both for situations of horizontal and vertical constraints. While it is easy to investigate and decide in cases of hard core cartels (i.e. where written agreements exist between firms in collusive arrangements), it is easy to investigate/decide on soft core cartels (i.e. where only an understanding or arrangement exists).

Consider preparation of Guidelines for investigation of cartels, particularly soft-core cartels. ECC Guidelines and investigative techniques in UK, Germany and Australia may serve as reference work.

The law does not treat 'unfair trade practices' as constituting monopoly. This is, however covered under the model Consumer Protection Law (as well as the Consumer Protection Act for Islamabad).

Consider incorporating a provision for treating 'unfair trade practices' constituting monopoly situation. Firms' behavior e.g. deceptive advertisements, incomplete/inaccurate/misleading description of contents on packages, etc. may form as basis for treating an action as 'unfair trade practice'.

- Section 7

This provision empowers the Authority to declare any situation other than that specified in Sec. 4, 5 and 6 of MRTPO, 1970 as the 'monopoly situation'.

Consider preparation of detailed rules concerning the basis of deciding on various situations as 'monopoly situations', period within which public comments (written or verbal) must be received on the pre-published notice for the proposed provision, period for finalization of the proposed change.

- Section 8

This provision concerns 'composition of Authority'. Consider prescribing the academic and work experience requirements for selection of the Chairman and Members, minimum tenure (irrespective of their retirement age) and representation of practicing experts in law and commerce, members of the judiciary – serving or retired.

- Section 10 dealing with 'Appointment of Officers' and 'Functions of MCA':

  Changes consequent to the amendments in section 8 may be necessary.

- Section 11

  This provision concerns the issue of show cause notice in cases where the Authority is satisfied that there exists a monopoly situation in the meanings of Sec. 3 of MRTPO, 1970 (i.e. the aggregate value of assets of a private limited company has exceeded the prescribed threshold, firm's market share exceeds the prescribed threshold as a consequence of the proposed acquisition or merger, or firms enter into collusive arrangements – written or otherwise) and that it is contrary to or likely to be contrary to public interest.

  Review the type of enquiries to be conducted to reach the level of satisfaction underlying Sec.11. Is it envisaged to conduct the formal enquiry to be signed by the Authority or the noting on the relevant file adequately constitutes the 'enquiry' in the legal sense? Should the enquiry be conducted by the technical team with full participation of the Authority or end at the person heading the 'Investigation Wing' who is available for cross examination by the Authority/Firm during adjudication of cases. These are some of the important questions because their answers will define the organization of MCA.

  There may be a need to suggest some guidelines on these points

Section 12 read with 19 & 21

Section 12 empowers the Authority to make appropriate orders in cases it issues show cause notices and conducts hearings. In case of non-compliance of these orders, the Authority may impose fine under Sec. 19. Similarly, fines may be imposed where information under Sec. 21/ Supply of Information Rules are denied

by the undertakings or the undertakings/individuals required to register do not register with the Authority u/s 16.

The law does not provide any penalty for resorting to a restrictive practice even where it is established. Similarly, clear provisions on penalties for not obtaining Authority's approval for acquisitions/mergers cognizable under the law is required do not exist. It is only for non-compliance of Authority's orders that penalties are attracted. Similarly, the non-compliance of the rules on supply of information *per se* is not being punished. It is only in the event of no response to Authority's specific directions for supply of such information (otherwise not voluntarily provided) that attracts penalties.

Consider levy of penalties at two steps – first penalty at the time contravention is established, and the second penalty for non-compliance of order under sec. 12. Rules on supply of information may accordingly provide for provision of information at prescribed intervals – non-compliance triggering automatic penalties (without any orders under sec. 19).

- Section 16

This provision concerns registration of certain firms and agreements. The underlying purpose for registration appears to develop a data base and a system of periodically examining the information appearing in annual accounts such firms are required to file with the Authority.

This purpose apparently has not been achieved as it is only a small number of firms, individuals and agreements that have registered over the last 33 years. Authority's limited resources do not justify an extensive exercise of registration of all firms required to register under the law. Further, the expected backlash from influent businesses is not worth the effort.

Consider deleting this provision and develop various alternatives to achieve the purpose of creating an integrated large data base on firms' profiles. A detailed discussion follows under 'Data base Development'.

- Section 19

Penalties and fines prescribed in this section are very low. Each time Authority decides to levy penalty, it must issue a notice for hearing and make an order imposing penalty/fine. Consider increasing the amount of fine, providing for prosecution/imprisonment in appropriate cases, and automatic imposition of fines (without issuing a notice and hearings by the Authority except for the original penalty for non-compliance of Authority's order).

- Section 20

The law provides remedy of appeal against the orders of the Authority before the High Court on matters of law. There is a proposal to consider similar appeal on matters of facts.

- Consider introducing legal changes necessitated consequent to the administrative reform.

4.8 OVERVIEW OF COMPETITION ORDINANCE 2007

4.8.1 Nomenclature of the Law

The official title of the Competition Law of Pakistan is "Competition Ordinance of 2007. The National Assembly of Islamic Republic of Pakistan was not in session; so the "President of Islamic Republic of Pakistan by exercising powers conferred by clause (1) of Article 89 of the Constitution of Islamic Republic of Pakistan, 1973 promulgated the Ordinance which was published on 2 October, 2007[79].

[79]http: www.mca.gov.pk/ordinance

4.8.2 Scope and Jurisdiction of the Law

The Ordinance extends to whole of the Pakistan. It is applicable to all undertaking, natural person, and legal governmental bodies, Regulatory Authorities, Body Corporate, Partnerships, Associations, Trust, an Association of Undertaking and any other Entity. Also such Undertaking, which are engaged directly or indirectly engaged in production, supply, distribution of goods, or provision or control of services likewise the Ordinance is applicable upon all the undertakings or juridical persons mentioned hereinabove. It is also applicable upon all the actions and matters that take place in Pakistan and such matter and activities which distort the competition within Pakistan.

4.8.3 Purpose of the Ordinance

The Ordinance has been framed to provide the country free competition in all spheres of commercial and economic activities to enhance economic efficiency and to protect consumers from anti-competition behaviour. The Ordinance aims to prohibit the abuse of dominant position, prohibited agreements, control of merger and deceptive marketing practices. In order to enforce, implement and administer the various provision of the Ordinance the Ordinance itself has established Competition Commission of Pakistan which is a body corporate comprising upon Chairman and member.

4.8.4 Provisions defining the Prohibited Actions

Section 3 to 11 deals with Prohibition of Abuse of dominant position, certain agreements, Deceptive marketing practices and approval of Merger.

4.8.5 Abuse of Dominant Position

It means the practices which prevent, restrict, reduce or distort competition in the relevant market. The practices mean limiting production, sale, and unreasonable increase in price or unfair trading conditions. Abuse of dominant position also means and includes sale of goods or services with the condition on the purchase of other goods or services, placing the parties at a competitive disadvantage, apply predatory pricing in order to drive out the other competitors out of market and monopolize the market.

4.8.6 Prohibited Agreement

Article 4 deals with prohibited agreement and it provides that the undertaking/association of undertakings is prohibited to make any decision in respect of production, supply, and distribution acquisition, control of goods and or provision of services whose purpose is to prevent, restrict or reduce the competition with the relevant market. The agreement made or entered into contravention of the provision of Section-4 is void agreement and is legally not enforceable.

4.8.7 Exemption from Section 4

The Commission is competent to grant exemption from the provision of Section-4. The exemption must cover following factors:-

The agreement should contribute in improving production or distribution.

The agreement which arrange for promoting technical or economic progress. It is deemed that if allowed consumers will fairly benefit.

The agreements whose benefit clearly outweigh the adverse effect of absence or lessoning of competition.

4.8.8 Procedure for Exemption

The Commission may grant exemption as it deem fit and proper, such exemption is applied as admissible under the Rule made in order to facilitate the administration of Competition Ordinance 2007. The period of exemption shall be specified by the Commission. The Commission may extend the period of exemption in the specified circumstances. During the currency of exemption the Commission is competent to cancel the individual exemption. While doing so the Commission may by Notice in writing proceed as under:-

- Cancel the exemption.
- Vary or remove any condition or obligation
- Impose one or more additional conditions or obligations

The above mentioned steps are taken in case the Commission has reasonable doubt on its own initiative or on complaint made by any person. The good reason for cancellation

of individual exemption is that exemption was incomplete, false, and misleading in a material particular.

4.8.9 Block Exemption

The agreement which are of categories to improve production or distribution, promoting technical or economic progress and have no adverse effect upon lessening the competition; the Commission may make block exemption order in respect of such agreements the block exemption may provide that breach of a condition imposed by the order has effect of canceling the block exemption in respect of agreement. In case the agreement is neither for the promotion of technical progress nor imposing production or distribution, then the Commission may cancel the agreement/block-exemption.

4.8.10 Procedure for Block Exemption.

Before making block exemption Commission shall publish details of its proposed order as it think most suitable for bringing it to the attention of those likely to be affected. In case anyone is affected from such publication and put up representation about it the commission shall consider and adjudicate upon it.

4.8.11 Deceptive Marketing Practices.

Under the law deceptive marketing practices are extremely prohibited. The deceptive marketing practices are and include following:-

1. The distribution of false or misleading information by which business interest of undertaking are harmed.
2. Similarly the distribution of information which leads false or misleading information to the consumer; such information lack reasonable basis related to price, character, method or place of production, properties, suitability for use, or quality of goods. Deceptive practices are included misleading comparison of goods in process of advertising. Also fraudulent use of another trade mark, firm name, product labeling and package.

4.8.12 Merger and Its Approval

The merger is not allowed which substantially lessens competition by creating or strengthening a dominant position in the relevant market. When an undertaking intends to acquire the share of or assets of another undertaking, it is acceptable and lawful only if such undertaking apply for clearance the prescribed procedure for merger permission is as under:-

- The undertaking will apply to the Commission by way of filing a petition under section 11 for approval of merger. Immediate after the undertaking becomes principally agree and sign a non-binding letter of intent(LOI).
- The merger petition shall be accompanied by a processing fee. The merger is permissible and is subject to condition to which the acquisition is subject. In case of doubt as to compatibility the intended merger may be revived. At last as a conclusion the Commission may allow or prohibit the merger. In case the Commission does not decide the merger petition within 30 days it will be deemed that the Commission has no objection to intended merger.
- On initiation of 2nd phase of review the Commission shall within 90 days of the requested information review the merger on the line to assess whether the proposed merger substantially lessens the competition by creating or attaining dominant position in the relevant market. The Commission shall decide on proposed transaction. If no information is submitted then the Commission may reject the application due to non submission of information. If the Commission does not decide it within 90 days, then it is deemed that the Commission has no objection to intended merger.

4.8.13 Review Criteria for Approval of Merger

At 2nd stage of review the Commission may adopt following criteria and take into consideration:-

i. Whether the merger contribute substantially to the efficiency of production or distribution of goods or to the provision of service.

ii. The Commission may authorized proposed merger

iii. Whether such efficiency could not reasonably have been achieved by a less restrictive means of competition.

iv. The benefit of such efficiency clearly outweighs the adverse effect of the absence or lessening of competition.

v. Whether it is the least anti-competitive option for failing undertaking's assets, when one of the undertakings is faced with actual or imminent financial failure.

The undertaking is liable for legal action if such undertaking has consummated the merger, without complying with the provision of the Ordinance. The Commission may impose penalty of an amount of Rs.50 Million or an amount of not exceeding fifteen percent of annual turnover of the undertaking. The Commission is competent to review its merger order if it was granted conditionally. The Commission if feels that the merger was based on false or misleading information submitted by the undertaking or there is violation of condition prescribed while granting the merger. The Commission may reverse the order of merger or acquisition, prescribe modifications or make addition in the original order after affording the undertaking an opportunity of being heard.

4.8.14 Establishment of Competition Commission of Pakistan.

The Section-12 to 27 deals with the establishment of Competition Commission of Pakistan. Every law is implemented or enforced by an agency, authority or legal entity. The same is created or established by the specific provision of law. Likewise competition Ordinance 2007 vide Section 12 has established enforcement body namely Competition Commission of Pakistan. The Commission is a body corporate with perpetual succession, common seal and it can sue any person before any court of law; similarly it can be sued by any other person before an appropriate legal forum. In order to fulfill the objectives of Ordinance the Commission can execute contract, acquire, purchase, take, hold and enjoy the right of moveable and immoveable property of any description. The Commission being a juridical person can convey, assign, surrender, yield up, charge, mortgage deed, and transfer any moveable or immoveable property; the Commission can also dispose of or take up deal in respect of any interest vested in the property. The Commission is administratively and functionally independent body and the Federal Government is obligated to use its best efforts to promote, enhance and maintain the independence of the Commission. The Head Office of Competition Commission of Pakistan is in Diplomatic enclave G-5 Islamabad.

The composition of the Commission is that it consists upon 5 to 7 members who are appointed by the Federal Government amongst the members there may be only 2 members from Federal Government. The qualification of member is that the person to be appointed as a member he should be known for his integrity, expertise, eminence and experience of 10 years in the field of Industries, commerce, economics, finance, law, accountancy and public administration.

4.8.15 Disqualification of the Members of the Commission

The Federal Government is competent to prescribe qualification, experience, and disqualification of the members in case any member suffer from following factors which disqualify to a person to be a member of the Commission and he can be removed from the service of the Commission.

i. He has been convicted of an offence involving moral turpitude.

ii. He has been adjudged insolvent.

iii. He is incapable of discharging his duties by reason of physical, psychological or mental unfitness. In order to establish these factors proper declaration is required by the registered medical practitioners.

iv. He becomes absent from 3 consecutive meeting of the Commission without obtaining leave of the Commission.

v. That he fails to disclose any conflict of interest that contravene with any provisions of the Ordinance. Section-25 of the Ordinance emphasize that conflict of interest may arise and is deemed to be in existence when a conflict between his duty to perform honestly his function under this Ordinance and such interest arises during the course of his employment.

vi. He becomes inefficient or incapable of carrying out his responsibility.

vii. He put up resign to Federal Government by giving notice period.

Under Section 19(2) the member or Chairman are not removed from Service unless and until an enquiry by an impartial person or body of persons is constituted by the Federal Government in accordance with the Rule. The term of the Chairman and Member is for 3 years, the Chairman is Chief Executive of the Commission and is responsible for the administrative affairs of the Commission along with other members.

4.8.16 Functions and Powers of the Commission

Section-28 to 37 deals with the functions, power, procedure, and inquiry proceedings administered by the Competition Commission, which are as hereunder:

- to initiate proceedings in accordance with the procedures of this Ordinance and make orders in cases of contravention of the provisions of the Ordinance;
- to conduct studies for promoting competition in all sectors of commercial economic activity;
- to conduct enquiries into the affairs of any undertaking as may be necessary for the purposes of this Ordinance.
- to give advice to undertakings asking for the same as to whether any action proposed to be taken by such undertakings is consistent with the provisions of this Ordinance, rules or orders made there under.
- to engage in order to make programs for competition advocacy.
- to take all other actions as may be necessary for carrying out the purposes of this Ordinance.

The Commission is competent to pass any order against any person in respect of any contravention under the Ordinance. Before making any order the Commission is deem to follow the procedure as under:-

i. The Commission will serve a notice upon an undertaking by mentioning therein its contention by stating the reason to take the action in respect of the contravention committed by the undertaking.

ii. The Commission keeping in view the principle of audi altrum partom provides an opportunity to an undertaking of being heard on a date fixed by the Commission.

iii. In case no one appears on behalf of the undertaking the Commission shall take ex-parte decision. And the decision so made by the Commission will be published in the public gazette.

iv. Under Section-32 where the Commission is of the opinion that the final disposable of the complaint may take time and the situation of emergency, serious or irreparable damages exist. Then the Commission is empowered to pass the interim order with

direction against the undertaking to do, or refrain from doing or continue to do any act or thing specifically mentioned in the Order.

v. The interim order can be reviewed, modified or cancelled by the Commission, and it shall remain in force unless and until it is specifically recalled.

For the purpose of proceeding and inquiry under Ordinance the Commission is empowered with the power of civil court under the court of civil procedure, 1908 and such powers are as under:-

i. summoning and enforcing the attendance of any witness and examining him on oath;
ii. discovery and production of any document or other material object producible as evidence;
iii. accept evidence on affidavits;
iv. requisitioning of any public record from any court or office; and
v. Issuing of a commission for the examination of any witnesses, document or both.

Any proceeding before the Commission is judicial proceeding within the meaning of Section-193 and 228 of PPC, 1860. As far as the status of Commission is concerned it is deemed to be civil court under Section-195 and Chapter XXXV of the code of criminal procedure of 1898. The Commission is competent to order the undertaking to allow, examine any book, accounts or any other documents by an officer appointed by the Commission. The undertaking is bound to furnish such information to an officer which is related to the subject matter. The officer has also power to enter and search the premises of the undertaking subject to the authorization by the Commission in order to enforce any provision of the ordinance. The officer may have free access to premises, place, account, document and computer. He may have extract a copy of any account document or electronic information and may retain for as long as it may be necessary. Under Section-35 which resembled to provision of search warrant, and an Investigating Officer of the Commission may enter into any place or building forcibly for search entry, written order issued by any two member is necessary. In case the investigating officer uses his authority vexatiously, excessively or with malafide intention, the such officer is liable to be dismissed from service or be convicted for a fine up to 5,00,000/-.

4.8.17 Competition Advocacy

Section-29 of the Ordinance provides that the Competition Commission will make best endeavor to promote the competition by creating awareness and imparting training about competition issues, competition culture. The Competition Commission can review the policy frame work in order to foster the competition and can recommend suitable recommendation for amendments to this Ordinance and also in other laws that are relevant to competition. The Commission is authorized to hold open hearing on any matter which is affecting the state of competition, contrary to commercial activities. The decisions and inquiries under review completed, merger guidelines and educational material can be placed on its website.

4.8.18 Penalties and Appeal

The Competition Commission has power to direct any undertaking, its director, officer or employee to pay the fine imposed during course of trial or adjudication of the cause relating to offences and prohibited action mentioned in Section-3 to 12. The Commission can impose the penalty in case the undertaking is found engaged in prohibited activities, fails to comply with direction, fails to furnish information, agreement, other documents, information requisitioned by the Commission, knowingly abuses, interferes with, impedes, imperils or obstructs the process of Commission, or contravene with the provisions of Chapter-2 i.e. Section-3 to 11 which deals with prohibited action. If the violation of any order continues by an undertaking further penalty of 1 million rupees is extended for every day. Any recovery of penalty imposed by the Ordinance is recoverable under Section-40 in following manners:-

a. Attachment of immoveable or sale of any moveable property, including bank account of the person or undertaking;

b. Appointment of a receiver for the management of the moveable or immoveable property of the person or undertaking.

c. Recovery of the amount as arrears of land revenue through the District Revenue Officer;

d. May order in writing to a person to deduct any money which is due or may become due to the undertaking.

e. Commission may order for controlling the receipt or disposal of any money or may hold any amount belonging to the undertaking.

A Bank, Receiver, District Revenue Officer, upon the order of Commission, is bound to pay such sum as is directed by the Commission. In case any Bank, Receiver, District Revenue Officer or undertaking fail to pay, attach, receive, recover, deduct and pay as the case may be, such bank, receiver, District Revenue Office or undertaking shall be treated as defaulter and such amount is recoverable from him or it. For the purpose of recovery Commission has power of civil court under CPC 1908.

4.8.19 Appeal

Any aggrieved person can prefer an appeal to appellate Bench of the Commission against the order passed by any member or authorized officer of the Commission within 30 days after the passing of any order. The appellate Bench is constituted by the Commission. The Appellate Bench consists upon members not less than two and no member shall be included in the appellate Bench who participated or have been associated in the decision being appealed against. In case of any order passed by the Commission comprising upon two or more members or the decision of the appellate bench is appealable. The appeal lies direct to Supreme Court of Pakistan against such order passed by appellate bench of the commission. The limitation for filing of appeal is 60 days.

4.8.20 Power to Exempt from the Provision of Ordinance

The Section 52 to 55 deals with the provisions of powers relating to the Federal Government. The Federal Government is competent to exempt to any body, any agreement, any treaty and government body from the application of this Ordinance or any provision thereof for such a period as is notified in the official gazette. The Ordinance is also not applicable to the trade unions which are governed by the Industrial Relation Act, 2008. Federal Government when considered it necessary is competent to issue policy directives to the Commission but not inconsistent with this Ordinance and the Commission shall comply

with such directives. All the Rules which are required to be made by the Commission can be only effective when such Rules are approved by the Federal Government

4.9 RECOMMENDATIONS FOR PAKISTAN

4.9.1 Recommendation In Respect Of Publication of Reported Decisions

By the perusal of Section-41 it appears that the Order passed by Appellate Bench and Bench of two or more than two members is appealable to Supreme Court of Pakistan, so it is appropriate, that the important decision delivered by the Commission may be published in the law journal namely Corporate Law Journal. So that the progress and decision delivered by the Competition Commission of Pakistan may be available to the legal fraternity and all other concerned. In this way the public at large and advocates shall find it easy to have the information and reference about the matter relating to Competition Law otherwise the Competition Commission shall have to arrange for the certified copy of the decision or shall have to provide it through reference section in its library. Hence necessary provision may be added in Section-37 of the Competition Ordinance, 2007.

4.9.2 Establishment of National Competition Prosecutor

The Competition Commission is a qusia-judicial forum and it has a prime duty of adjudication of matter relating to competition and prohibited acts which are adverse to the Competition in the market. It is very difficult particularly to handle the adjudication and investigation proceeding simultaneously. In the various countries like the Canada and Chile the investigation, inquiry and prosecution wings are separate from the Commission. In Canada the department is established for this purpose is known as Competition Bureau
It is headed by the Commissioner of the Competition who is responsible for the administration and enforcement of Competition Act. The Bureau investigates the complaints and decides whether to proceed with the filing of an application under the Act to the Competition Tribunal or otherwise. Like this in Chile the investigation and prosecution duties are performed by National Economic Prosecutor, which is a full-fledged separate office. The National Economic Prosecutor has been given various powers and duties in order to direct the investigation as deemed appropriate to prove the violation. It is further

recommended that it will be appropriate for the Competition Commission of Pakistan to establish Competition Prosecutor among the officers and staff of the Competition Commission of Pakistan with the following constitutions, powers and duties.

4.9.2.1 National Competition Prosecutor its Qualification

The Competition Prosecutor should be a person who is qualified in degree of law and professional practice at High Court level for the period of 10 years in the field of law, public administration, accounts, finance and matter relating to competition law. The Competition Prosecutor may be under the control and supervision of President of Islamic Republic of Pakistan. In order to meet the requirement of the investigation, inquiries and prosecution in respect of Competition Law and its enforcement the Govt. can appoint additional and assistant Competition Prosecutor

4.9.2.2 Powers and Duties of the Competition Prosecutor

i. In order to prove the violation of Competition Ordinance 2007, the Competition Prosecutor can direct Investigation by giving Notice to the affected Party, with the cognizance of Chairman Competition Commission. In order to facilitate the process of investigation the Senior Superintendent of Police of the District may be requested to put at the disposal of Competition Prosecutor such number of personnel as it may require for the attainment of the duties, assignments and investigation indicated in the letter.

ii. The Competition Prosecutor with the cognizance of the Chairman of the Competition Commission may pass that the investigation instructed at its own motion by virtue of the reports.

iii. The Competition Prosecutor may also instruct to his subordinates that there is no need to give the notice in respect of commencement of investigation against the effected party. But this act of Competition Prosecutor is subject to the authorization of Competition Commission.

iv. The Competition Prosecutor may act as a party when the question of public importance is involved in respect of any economic matter which falls within the jurisdiction of Competition Commission and civil courts of Pakistan. The Competition Prosecutor is authorized to exercise all powers and duties of which it is entitled under the law and rules made under the provision of Competition Ordinance 2007.

v. Competition Prosecutor may endorse the charges brought on record by an additional or assistant prosecutor as a record of investigation. And for trial before Competition Commission.

vi. To ensure the implement of the judgement ruling, decrees and direction issued by Competition Commission or other courts of justice.

vii. Also to issue report and advice in the matters in which Competition Prosecutor is not party to proceeding upon the request of Competition Commission. Competition

Commission can have collaboration of any officer of Public Service among municipalities Corporations etc.

viii. Competition Prosecutor may have such information and document which are necessary for investigation.

ix. To enter into moveable and immoveable property and execute all kinds of acts and contracts.

x. Summon the representative, manager, advisor and dependent of the entities, and other person who have the knowledge of facts, acts, and agreement which is the subject of investigation.

xi. To request for the help of technical organization of State and have a report and retain the services of expert or technicians.

xii. May execute any agreement or memorandum of understanding with agencies or other foreign to bodies intending to promote or defend Free Competition in economic activities.

In addition to the general requirements the following suggestions are hereby proposed for staff:

- The staff category may be attached with the office of Competition Prosecutor who are law graduates like the judicial assistants having law degree who are working in the Supreme Court in the various branches.
- The person who will be attached may be among various field having at least bachelor degree in business administration, law graduates, engineering graduates and having knowledge about corporate affairs.

4.9.3. Law Enforcement Officer:

After the investigation and then on the completion of trial of the case the judgement is passed, in case the party does not prefer an appeal before the appropriate forum the judgement is required to be implemented. In case it is observed by the judgement debtor as per the operative part of the judgement then it stands implemented. In case the judgement debtor neither comply with the contents of the judgement nor prefer an appeal, then it is essentially required that the order of Competition Commission must be implemented. Here we can have the example of Federal Service Tribunal, it has no power of execution or implementation of judgement, then the party has to file a writ petition before the High Court for its implementation. In case of Competition Commission for the enforcement of order an officer may be assigned the duty of enforcement of judgement.

4.9.4. Procedure for Removal from Service for the Officers and Staff

The Competition Ordinance 2007 has given it mandatory to impose major penalty of Removal from Service directly in case the officer commits misconduct in respect of carrying the duties under the provision of Ordinance. It is proposed that the proper procedure should be adopted to impose a major penalty upon any officer or staff. The maxim of "audi altrum partum" directs that before passing any order against a person he should be heard at least before the imposition of any adverse order against him. The said principle is applicable to judicial as well as non-judicial proceedings. It is read into every statute as its part if right of hearing has not been expressly provided. Violation of maxim would be equated with the violation of provision of law. In case the Competition Commission has no rule then it will be against the principle of natural justice while taking action against the employee neither issuing show cause notice/charge sheet nor giving him opportunity of hearing. It is the divine of law that when the Iblees was expelled from the paradise the Almighty Allah show cause him on the line that you denied My order and shown arrogant behaviour so either repent (do Tauba) or be prepare for punishment. The above mentioned contention has been reported in so many judgments[80]

4.9.5 Procedure for Review of the Judgement

The provision of review is beneficial for the parties as well as for the court. To power the review in the existence law is that the judgement can be reviewed by a special

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[80] The chief commissioner and an other versus Mrs. Dina Sohrab Katrak PLD 1959 SC 45; the university of Dacca and another versus Zakir Ahmed PLD 1965 SC 90; Pakistan and others v. Public-at-Large and others PLD 1987 SC 304; Mst. Maryam Yunus v. Director of Education, Cantonment G.H.Q. Rawalpindi and others PLD 1990 SC 666; Olga Tellis and others v. Bombay Municipal Corporation and others AIR 1986 SC 180; St. Jude's Secondary School and others v. Employees' Old-Age Benefits Institution and another PLD 1988 Sc 473; Mst. Afroz Jehan v. Mst Noor Jehan and others 1988 CLC 1318; M/S Capital Sports Corporation, Sialkot v. Government of Pakistan 1989 MLD 999 and Haji Muhammad Aslam Aijaz Ali and Bros. v. Cotton Trading Corporation 1989 MLD 2886 rel.

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bench constituted by the Commission and such bench shall consist upon the members other than the author of judgement who were present in the judgement under review. The review can be authorized at two stages:-

a. A review of the interim order passed by the bench, the review of interim order must be exercise by the bench who is conducting trial. As it is appropriate that the review order can be passed in most reasonable manner by the bench who submitted its view in the interim order.

b. The review of final judgement must be exercised by a special bench in which existence of a judicial member should be mandatory. The practice of the review at Supreme Court is that review can be conducted by a bench comprising upon the judges who passed the original order and an extra judge is added in the bench who conducted the review.

4.9.6. Recommendation In Respect Of Inclusion of Certain Offences and Prohibited Acts

With the passage of time and development in the various fields of technology the mode of unlawful activities has also changed. By the emergence of electronic transaction and marketing the offensive activities in shape of electronic crimes have emerged as new unlawful activities. The undertakings and corporate bodies through their individual commit crimes which are punishable under the provision of relevant laws. It is appropriate that following types are the unlawful activities may be inserted as prohibited acts in the provision of Competition Ordinance, 2007:

4.9.6.1. Conspiracy

Conspiracy is an indictable offence, the element of conspiracy are that any person who conspires combines, agrees or arrange with other person to limit unduly the facilities for transporting, producing, manufacturing supplying, storing or dealing in any product or entrance unreasonably the price thereof. Likewise to prevent or lesson, competition in the production, manufacture, purchase, barter, sale, storage, rental, transportation or supply of product, or in the price of insurance on persons or property. Also otherwise restrain or injure competition unduly. The punishment for conspiracy may be 5 years or fine as deemed fit by the court

4.9.6.2 Foreign Directives

Foreign directives mean that when any corporation wherever it has been incorporated and it carries business in Pakistan and that implements or directives, instructions, intimation of policy or other communication to the corporation or partially or totally in Pakistan. And such directives are instructions as mentioned above is from a person in a country who is residing outside Pakistan, he is also in a position to influence the policies of the corporation in Pakistan. And it would be deemed such person or a corporation who issued the communication has committed offence. Upon the conviction the officer or any director of the accused corporation is liable to pay fine as determined by the court according to its discretion power.

4.9.6.3 Conspiracy relating to professional sport

It is defined as any Act which relates to conspiracy, combination, agreement, arrangements with another person by which it limit unreasonably the opportunity for another persons to participate as a player or limit unreasonably the opportunity for any other person to negotiate to play for the team or club of his choice in a professional league. The offender is liable to a fine in the discretion of court or to imprisonment for a term not exceeding 05 years or to both

4.9.6.4 Prohibited Arrangement and Agreement of Bank

The arrangements and agreement written or oral made by a bank or financial institutions with each other and such arrangement and agreement lessen the competition among the financial institution legally prohibited. Every Federal /Provincial Financial Institution that makes, execute agreement or arrangement with other Federal/Provincial Institution in respect of following may amount to offence :-

i) The rate of interest on the deposit.

ii) The rate of interest or the charges on a loan.

iii) The amount or kind of any charge for a service provided to a customer.

iv) The amount or kind of loan to a customer.

v) The kind of service to be provided to a customer.

vi) The person or classes of persons to whom a loan or other service will be made or provided or from whom a loan or other service will be withheld.

The financial Institution who commits above mentioned acts and proceeding, the director, officer or employee of such Institution is liable to fine not

exceeding ten million rupees or imprisonment for period of five years or both.

4.9.6.5 Deceptive telemarketing

It means the practice of using interactive telephone communications for the purpose of promoting directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest or make a promise knowingly it is false and the offender believes that the listener has no knowledge about the facts. The offender conveys to the listener that he has won the price, and during the course of telephonic conversation instigate to the listener to send an amount/fund transferred electronically in his account.

If a person engaged in telemarketing and observes the followings precautions then he may exempted from the offence unless

(a) disclosure is made, in a fair and reasonable manner at the beginning of each telephone communication, of the identity of the person on behalf of whom the communication is made, the nature of the product or business interest being promoted and the purposes of the communication;

(b) disclosure is made, in a fair, reasonable and timely manner, of the price of any product whose supply or use is being promoted and any material restriction, terms or conditions applicable to its delivery; and

(c) Disclosure is made, in a fair, reasonable and timely manner, of such other information in relation to the products my be prescribed by the regulations of using interactive telephone communications for the purpose of promotion directly or indirectly the supply or use of product or for the purpose of promoting business interest. In order to avoid from the offence it is necessary to disclose the identity and nature of product, business interest being promoted in a fair and reasonable manner during telephone communication to the customer

4.9.6.6 Deceptive Notice of winning prize

When any person for the purpose of promoting, directly or indirectly any business interest, supply of product, or use of product send or cause to be sent by electronic or regular mail or by means of other document and gives general impression that the

recipient has won, will win, a prize or other benefit, and the recipient is asked or given option to pay money or to do any thing that will incur a cost, such person commits the crime of Deceptive Tele Marketing. The punishment for the offence of telemarketing is fine to the discretion of the court or to the imprisonment for a term not exceeding 05 years or both.

4.9.6.7 Refusal to Deal

Refusal to deal in respect of provision of services in technical field especially for the maintenance of machinery or plants or industrial units of national importance and such refusal creates monopolistic trends among the service providers. It may be declared an offence or prohibited act, the punishment of the same may be prescribed as deemed fit and proper

4.9.6.8. Power to Enter into Premises In order to discharge the duties in respect of entry and search into any premises and subordinate department, the necessary help of concerned Police Station may be beneficial. So the concerned Sub. Divisional Police Officer is required for his kind coordination and a Notification in this respect is required to be issued for general information.

4.9.7 Inquiry Procedure for conducting Inquiry under Section-30 of Competition Ordinance 2007

based on an extensive review of the of the inquiry procedure existing in various jurisdictions, following detailed procedure for conducting inquiries in the Pakistani context is recommended as a follow up of the recommendation for establishment of the office of the National Prosecutor vide paragraph 4.9.2. above.

4.9.7.1 Contents of Information or the Reference Made by Fed.Govt. OR an Undertaking under Section-37 of the Ordinance

1. The information for the purposes of making 'reference' under section 30 read with Section 37 of the Ordinance shall, *inter alia,* separately and categorically state the following seriatum-

(a) Legal name of the person/undertaking or the enterprise giving the information or the reference.

(b) Complete postal address in Pakistan for delivery of summons or notice by the Commission, with Postal Index Number (PIN) code.

(c) Telephone number, fax number and also electronic mail address, if available.

(d) Mode of service of notice or documents preferred.

(e) Legal name and address (es) of the enterprise(s) alleged to have contravened the provisions of the Ordinance.

(f) Legal name and address of the counsel or other authorized representative, if any.

2. The information of reference referred to the Commission shall contain-

(a) A statement of facts i.e. like pleading.

(b) Details of the alleged contrventions of the Ordinance toegehter with a list enlisting all documents, affidavits and evidence, as the case may be, in support of each of the alleged contraventions.

(c) A succinct narrative in support of the alleged contraventions.

(d) Relief sought, if any.

(e) Such other particulars as may be required by the Commission.

3. The contents of the information or the reference mentined shall be complete and duly verified with date and place by the person submitting it.

4.9.7.2 Procedure for Filing of Information or Reference in Electronic Form by an Undertaking-

Subject to the provisions of section 28 (c) of the Ordinance, a person or enterprise would submit the information or a reference to the Commission in an electronic form duly authenticated with digital signature by the complainant undertaking as and when so desired by the Commission.

Explanation- For the purpose of regulation 28 (c):

(a) "Digital signature" means the digital signature as defined under the law of the country. or the Electronic Transaction Ordinance, 2002;

(b) "Electronic form" with reference to information or a document means the electronic form as defined in the Electronic Transaction Ordinance, 2002.

4.9.7.3 Procedure for inquiry under section 28 © & 30 of the Ordinance

1. Where an undertaking files a complaint to the Commission which is completes in all respect as per the procedure prescribed at paragrapg 4.9.7.1 and 4.9.7.2, the Commission, while proceeding under the relevant provisions of the Ordinance, may impose or delegate all of its powers upon the National Competition Prosecutors. The National Competition Prosecutors will conduct inqury in accordance with the procedure prescribed at paragrah 4.9.2.2.

2. The received from the National Competition Prosecutor shall be placed before the Commission for further orders and, in accordance with the directions of the Commission, copies thereof shall be forwarded to the Federal Government, or Undertaking Registered Association or the parties concerned, as the case may be for its comments/objections. The Commission may there after fix date for hearing/trial of the case.

(2) Where the report submitted by the National Competition Prosecutor is not in variance or contravention of the provisions of the Ordinance, the Commission may convey its directions for inviting objections or suggestions from the undertaking on such report of the National Competition Prosecutor.

(3) Where the Commission decides to close the matter after giving due consideration to the objections or suggestions made on the report, or agrees with the findings of the National Competition Prosecutor, the office shall convey the orders of the Commission to the Federal Government, or Undertaking Registered Association or the parties concerned, as the case may be

(4) Where the Commission, after due consideration of the objections or suggestions, directs further investigations in the matter by the National Competition Prosecutor or further inquiries in the matter to be made by an officer of the Commission so authorized by it, the office shall convey the directions of the Commission to the National Competition Prosecutor.

(5) On the appointment of National Competition Prosecutor, duly authorized by the Commission justifying the production of specified books or other documents, as may be required to make further inquiries, the Commission may direct any person to produce such specified books or other documents relating to any trade carried out by such person or enterprise, as provided under the provisions of section 28 of the Ordianance.

(6) On receipt of the report of the National Competition Prosecutor on further investigation or report of the authorized officer on further inquiries, as the case may be, the office shall place it before the commission for consideration thereof.

(7) If the report of the National Competition Prosecutor finds contravention of any of the provisions of the Ordinance, the matter will be placed before the Commission for trial and adjudication.

4.9.8 Provision Of Appellate Forum

The Ordinance does not provide the appellate forum other than the appeal to the Supreme Court. It is advisable that the provision of Regular First Appeal (RFA) may be provided to the aggrieved party through High Court under whose jurisdiction the impugned order has been passed.

Conclusions

This comprehensive study encompasses the conceptual framework and legislative history of competition policy and law; reviews the Model Competition Laws and those in various jurisdictions including those in Pakistan, India, Saudi Arabia, Taiwan and Indonesia in Asia, Canada in North America, and Mexico and Chili in Latin America; attempts to bring out the commonalities and differences in terms of the scope and extent of their applicability, definition of core competition related concepts and definitions, exclusions, enforcement and adjudication of the respective laws.

Concept of Competition Policy

While the concept of *competition* varies in terms of the definitions adopted by the scientists, merchants and economists, it is the one adopted by the economists which is most relevant for the purposes of the competition policy and law. The competition policy aims at ensuring that the un-hindered market forces determine the pricing structures in the market place without there being any artificial constraint in the supply and demand pattern of capital, goods and services. The competition laws provide various legal instruments for the implementation of competition policy at large. These instruments would vary depending upon the aims and objectives assigned to the competition policy in a particular jurisdiction. Hence, we observe differences in the scope and core concepts of the competition and anti-trust laws of various countries.

History of Competition Policy and Law

The history of competition laws can be traced to the efforts of Roman legislatures' efforts to control price fluctuations and unfair trade practices – essentially through heavy fines and property confiscation. The English common law doctrine of restraint of trade is the precursor to the modern competition law. Adam Smith, in the 18th century, was the first to describe the concepts and terms like: *restrictive trade practices, law of monopolies, combination acts* and *restraint of trade* subsequently used in the competition laws. The modern competition law begins with the US legislation of the Sherman Act of 1890 and the Clayton Act of 1914. While several countries, particularly European, had some legislation on monopolies and cartels, the US codification of common law on *restraint of trade* had a wide spread effect on subsequent competition law development. Post-World War II, the competition law has gone through phases of renewed emphasis and legislative up-dates

around the world. Competition law has been mostly internationalized along the US Model. However, in the decades of eighties and nineties, increasingly active UNCTAD, OECD, World Bank and WTO based on extensive discussion on competition related trade issues have developed Model Competition Laws which are steering the future direction of competition policy and law in developed, developing and transition economies of the world.

Trade and Competition Policy

Trade liberalization and the enforcement of market economy free from the concept of trade barriers and restriction continues to be the basic objective of GATT and WTO. There is emphasis on enforcement and strengthening of practices which are conducive to competitive forces, and restricting those which are anti-competitive. Taking this reality into mind there is a hue and cry against restrictive business practices such as *mergers* (vertical and horizontal), *acquisitions, import* and *export cartels* and the most *concentration* is on the prohibition of hardcore cartels. Therefore, the European Union, Japan and Korea are the *demandeurs* for a multilateral framework on trade and competition policy. The underlying reasons advocated include:

- Import cartels, export cartels, mergers (both vertical and horizontal) and acquisitions are creating obstacles in the process of trade liberalization and promotion of market forces. Cartels such as OPEC, Boeing, MC Donald and Douglas merger and the recently merger of General Electric and Honey well are sited as significant examples of creating anti- competitive practices, and causing enormous harms to their interests.

- Anti-dumping practices, countervailing duties and safe guards are the measures for the promotion of competitive practices but, being in themselves anti-competitive practices on the part of domestic firms, may be done away with.

- Foreign firms and domestic firms are dealt differently by competition authorities so the concept of national treatment and most favored nation status are ingrained in the contour of trade and competition policy.

The WTO Working Group on trade and competition recommends that, whatever may be the contour of the multilateral framework on trade competitions, it may be based at least on the following points:

(1) Core principles must include:

a. Most favored nation treatment (MFN),

b. National treatment,

c. Transparency: publication and notification of laws, regulations, judicial decisions and administrative ruling of general application,

d. Flexibility: the ability of a country to choose prohibitions in the competition law that is relevant for its particular economy,

e. Progressivity: gradual and selective introduction of instruments to control anti- competitive behavior especially in case of developing countries.

f. Special and differential treatment: special concessions for developing and least developed countries in the form of time extensions, transfers of technology, capacity building, etc.

g. Voluntary co-operation amongst the competition authorities of different countries

(2) Prohibition and condemnation of hard-core cartels which are otherwise dampening the flow of competitive forces in letter and spirit.

Developing countries are, however, against such arrangement because of the following reasons:

1) Trade and competition will not only cover trade policy but it will also have serious ramifications on investment policy, industrial policy, and labor policies.,
2) Most of the developing countries are lacking competition policies, laws and institutions.
3) Such arrangement will increase un-employment, social and economic disruptions and the decay of domestic industries.
4) Anti dumping, countervailing duties and safeguards are the only instruments in the hands of developing countries to deal with serious injury and damage to domestic industries. If these instruments are done away with (under the fold of trade and competition policy) it will erode the domestic industry completely.
5) There are already many provisions in WTO, which deal with competition including: GATT Article I (MFN treatment), Article III (National treatment), Article X (Transparency), GATT Article VI and WTO Agreement on antidumping (concept of

injury), GATT Article XVI (concept of injury), Agreement on TRIMS (deletion programs), Agreement on TRIPS (example anti competitive practices in contractual licenses), GATT Article XVII and Understanding on State Trading Enterprises (example monopolies and government actions), and GATT Article XIX and WTO agreement on Safeguards (example concept of injury, export constraints).

Essential Concepts of Competition Policy and Law under Various Jurisdictions

Division of markets, creation of monopolies and cartels, fixing of prices, creation of trade barriers affect consumers first. Competition policy goals are and should be maximization of consumers' welfare. All other considerations i.e. overall welfare, economic efficiency, or wide social goals are secondary. Lack of influence over new trade agenda is of particular concern in relation to TRIMS. This mandates WTO to look at issues of competition and investment policy with a view to possibly incorporating them into the agreement.

Generally, the competition polices and laws of the countries studied aim at:

1. Limiting the power of corporations to wield undue influence over a particular market, and use that influence to exploit that market for their own gain. Within this definition lie the dual aims of competition policy, i.e. to maximize consumer welfare, and to maximize overall economic efficiency which can be translated into:
    a. Prohibiting, restrictive trade practices.
    b. Preventing and penalizing collusion between market operators.
    c. Forestalling abuse of market power.
    d. Fixing maximum prices (when absolutely necessary) for goods and services supplied by monopoly undertakings.
2. Merger laws- underlying:
    a. Trade promotion i.e. substantially more efficient unit with lower production costs and greater marketing thrust,
    b. Competition protection particularly where the transactions reduce competition in the domestic market and increase the ability to manipulate domestic prices in accordance with the principle of oligopolistic interdependence.

c. Development objectives i.e. mergers are disadvantageous in the sense that these discourage labor intensive technology in lieu of capital intensive production technology.

3. Eliminating the abuse of dominant market power where a single corporation or a combination of corporation has power to influence price or supply irrespective of the activities of other corporations through:
   a. Tide selling. Resale price maintenance.
   b. Mergers and acquisitions.
   c. Exclusive dealings.
   d. Reciprocal exclusivity.
   e. Refusal to deal.
   f. Differential pricing.

Drivers of Competition Policy in Countries Studied

Each country had a different set of considerations underlying their competition policy. The most common policy drivers include the following:

1. Consumer welfare.
2. Public interest.
3. Producer welfare.
4. Overall aggregate welfare.
5. Response to outside pressures.
6. Need to regulate mergers.
7. Models of regulatory development:
8. Public interest model.
9. Private interest model.
10. Organizational approach.

Paths of competition law development

The most common paths of competition policy and law in most jurisdictions reviewed in this study can be boiled down to:

1. Response to domestic pressures.
2. Policy and position by occupation.

3. Response to external pressures.
4. Response to changing geopolitics.
5. Joining the club.

Major Challenges to National Enforcement of Competition Policy

The country studies reveal that major enforcement challenges come from:

1. Cross border mergers and acquisitions.
2. Strategic business alliances.
3. National industry and trade policies.

Globalization imperatives and competition law

Competition policy is directly national and indirectly international, i.e. an instrument of regulation that seeks to maximize welfare (be it consumer or systemic) on a national or regional basis. The international dimension of competition law is mostly secondary. It is generally perceived that enforcement rather than the policy formulation. At national level, competition authorities need to be established (or reformed) so that they conform to a number of key principles including:

1. National harmonization of law and institutions dealing with competition law.
2. Consumer representation through establishing, at the highest level of influence, a body charged with representing consumer interest in competition policy.
3. Prohibitions of a core set of activities that are blatantly anti-consumer.
4. Competition bodies must be cut free from real or political influence.
5. All steps of the processes of investigation, prosecution and appeal should be open and transparent.
6. Jobs of investigating, prosecuting and adjudicating over cases should be separated as far as possible.
7. Competition authorities should have powers to severely punish anti-competitive practices.
8. Competition authorities should have an oversight role in all government policy making and should be primary agency in the establishment of competition law and policy.

Pakistan Competition Policy and Law

Importantly, the present study was initiated in the backdrop of the MRTPO 1970. The study aimed at reviewing the competition policy and laws in an international setting, identify the deficiencies and short comings of the MRTPO 1970 and propose major changes in policy and practice of the completion law in Pakistan. While this study was progressing, GOP initiated the major review of the existing law, procedures and practices with the technical assistance of InWent (successor to German Foundation for International Development), the World Bank and DFID. Based thereon, Government promulgated Competition Ordinance 2007 and established the Competition Commission of Pakistan replacing the erstwhile MRTPO 1970 and the Monopoly Control Authority of Pakistan.

The stated objectives of the new competition policy include: deepening of competive forces through active policy and institutional reforms, integrating domestic and international markets, introducing effective competition policy supportive of business environment which improves efficiencies and leads to better allocation of resources.

The Competition Ordinance 2007 is modeled after the OECD/World Bank Model. Broadly, the Law is stated to:

1. Seeks to prohibit the abuse of market dominance, anti-competitive agreements, deceptive market policies, and mergers of undertakings that substantially reduce competition,
2. Avoids procedures that may pose unnecessary transaction or compliance cost on firms, obstacles to beneficial mergers and acquisitions, and unnecessary restrictions on horizontal and vertical arrangements among firms.
3. Implement the law through an operationally body autonomous, quasi-judicial Competition Commission of Pakistan.
4. Apply to both Public and private sector undertakings.
5. Grant block exemptions if a particular category of agreements fulfill the prescribed criteria according to block exemption procedure.
6. Obtain prior approval for acquiring shares or assets of another undertaking or proceeding with mergers.
7. Increase monetary penalties without providing for imprisonment particularly in case of undertakings guilty of restrictive trade practices,
8. Provide single adjudication path by way of direct appeal to the Supreme court of Pakistan against the orders of the Commission.

The above law is presently being reviewed by the National Assembly Committee on Finance and is expected to undergo some material changes particularly reduction in the amount of penalties and introduction of High Courts as the first forum of appeal against the orders of the Competition Commission.

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GLOSSARRY and KEY TERMS

a)	Abuse of Dominant Position	Anticompetitive business practices in which a dominant firm may engage in order to maintain or increase its position in the market. These business practices by the firm, not without controversy, may be considered as "abuse" or improper explain control of market aimed at restricting competition. The term abuse of dominant position has been explicitly incorporated in competition legislation of various countries such as Canada, EEC and Germany. In the United States, the counterpart provision would be those dealing with monopoly and attempts to monopolize of a market.
b)	Acquisition	Refers to obtaining ownership and control by one firm, in whole or in part, of another firm or business entity. As distinct from a merger, an acquisition does not necessary entail amalgamation or consolidation of the firm.
c)	Administered prices	Administered prices are prices set by firm that do not vary in response to short-run fluctuations in demand and supply conditions. This price rigidity has been viewed by some economists as arising from the exercise of market power.
d)	Agreement	Agreement refers to an explicit or implicit arrangement between firms normally in competition with each other to their mutual benefit. Agreements to restrict competition may cover such matter as prices, production, markets and customers. These types of agreements are often equated with the formation of cartels or collusion and in most jurisdictions are treated as violations of competition legislation because of their effect of increasing prices, restricting output and other adverse economic consequences.

e)	Anticipative Practices	Refers to a wide range of business practices in which a firm car group in order to restrict inter-firm competition to maintain or increase their relatives market position and profits without necessarily providing goods and services at a lower cost or of higher quality.
f)	Antitrust	Antitrust refers to field of economic policy and laws dealings with monopoly and monopolistic practices. Antitrust laws or antitrust policy are terms primarily used in the United States, while in many other counties the terms competition law or policy are used.
g)	Bid Rigging	A situation where there is a single (or few) buyer(s) and seller(s) of given product in a market. The level of concentration in the sale of purchase of the product results in a mutual inter-dependence between the seller(s) and buyer(s).
h)	Bilateral Monopoly Oligopoly	A situation where there is a single (or few) buyer(s) and seller(s) of given product in a market. The level of concentration in the sale of purchase of the product results in a mutual inter-dependence between the seller(s) and buyer(s).
i)	Cartel	A cartel is a formal agreement among firms in an oligopolistic industry. Cartel members may agree on such matters as price, total industry output, **market shares**, allocation of customers, allocation of territories, bid-rigging, establishment of common sales agencies, and the division of profits or combination of these. Cartel in this broad sense is synonymous with "explicit" forms of collusion. Cartels are formed for the mutual benefit of member firms. The theory of "cooperative" oligopoly provides the basis for analyzing the formation and

		the economic effect of cartels. Generally speaking, cartels or cartel behavior attempts to emulate that of **monopoly** by restricting industry output, raising or prices in order to earn higher profits.
j)	Collusion	Adam Smith observed in his book An Inquiry Into the Nature and Causes of the Wealth of Nature published in 1776 that: ...people of the same trade seldom meet together, even for merriment sad division, but the conversation ends in a conspiracy against the public, or in some contrivance to raise prices.
k)	Combination	In the parlance of competition law and policy, the term combination refers to funs organized together to form a **monopoly,** cartel or **agreement** to raise or fix prices and restrict output in order to earn higher profits. This tenor has been interchangeably used with conspiracy and collusion as well. For further details see discussion under these headings.
l)	Competition	A situation in a market in which firms or sellers independently strive for the patronage of buyers in order to achieve a particular business objective , e.g.., profits, sales and/or market share. Competition in this context is often equated with rivalry.
m)	Concentration	Concentration refers to the extent to which a small number of firms or enterprises account for large proportion of economic activity such as total sales, assets or employment.
n)	Conglomerate	A firm or business enterprise having different economic activities in different unrelated industries. Conglomerate firms may emerge through **mergers** and **acquisition** and/or investments across a

		divers range of industries for variety of reasons such as minimize of risk, increased access to financial and management resources, and move efficient allocation of resources.
o)	Consolidation	Generally refers to combination or amalgamation of two or more firms into one new firm through the transfer of net assets. The new firm may be specially organized to distinguish it form of a merger.
p)	Conspiracy	Normally a covert or secret arrangement between competing firms in order to earn higher profits by entering into an **agreement** to fix prices and restrict output. The terms combination, conspiracy, agreement and collusion are often used interchangeably. For further details see discussion under these headings.
q)	Consumer Welfare	Consumer welfare refers to the individual from the consumption of goods and services. In theory, individual welfare is defined by an individual's own assessment of his/her satisfaction, given prices and income. Exact measurement of welfare therefore requires information about individual preferences.
r)	Cut-Throat Competition	Also know as destructive or ruinous competition; refers to situation when competition results in prices that do not chronically or for extended periods of time cover cost of production, particularly fixed cost. This may arise in secularly declining or "sick" industries with high levels of excess capacity or where frequent cyclical or random demand downturns are experienced.

s)	<u>Diversification</u>	The term refers to the expansion of an existing firm into another product line or market. Diversification may be related or unrelated. Related diversification occurs when the firm expands into similar lines. For example, an automobile manufacturer may engage in production of passenger vehicle and light trucks. Unrelated diversification takes place when the products are very different from each other, for example a food processing firm manufacturing leather footwear as well.
t)	<u>Dominant Firm</u>	A dominant firm is one which accounts for a significant share of a given market and has a significantly large market share than its next rival. Dominant firms are typically considered to have **market shares** of 40 per cent or more. Dominant firms can raise competition concern when they have the power to set prices independently.
u)	<u>Dumping</u>	The practice by firms of selling products abroad at below costs or significantly below prices in the home market. The former implies **predatory pricing;** the latter, price discrimination. Dumping of both types is viewed by many governments as a form of international predation, the effect of which may be to disrupt the domestic market of foreign competitors. Economists argue, however, that price discriminatory dumping, where goods are not sold below their incremental costs of production, benefits consumers of the importing countries and harms only less efficient producers.
v)	<u>Duopoly</u>	A duopoly is an industry consisting of two sellers. It is therefore a special case of **oligopoly**. In industrial organization economic theory, duopoly is often analyzed as simplified example of oligopoly behaviour.

w)	Franchising	A special type of vertical relationship tow firms referred to as the "franchisor" and "franchisee" The two firms generally establish a contractual relationship where the franchisor sells a proven product, trademark or business methods and ancillary services to the individual franchisee in return for a stream of royalties and other payment. The contractual relationship may cover such matter as product prices, advertising, location, type of distribution outlets, geographic area, etc. Franchise agreement generally fall under the purview of competition laws, particularly those provisions dealing with **vertical restraints.**
x)	Intellectual Property Rights	The general term for the assignment of property rights through patents, copyrights and tr5ademarks. These property rights allow the holder to exercise a monopoly on the use of the item for a special period. By restricting imitation and duplication, monopoly power is conferred, but the social cost of monopoly power may be offset by the social benefits of higher levels of creative activity encouraged by the monopoly earnings.
y)	Interlocking Directorate	An interlocking directorate occurs when the same person sits on the board of directors of two or more companies. There is a danger that an interlock between competing firms (direct interlocks) may be used to co-ordinate behaviour and reduce inter-rivalry.
z)	Joint Venture	A joint venture is an association of firms or individuals formed to undertake a specific business project.

aa)	<u>Licensing</u>	Refers to granting legal permission to do something, such as produce a product. The license confers a right which the person or firm did not previously possess.
bb)	<u>Market</u>	A market is where buyers and seller transact business for the exchange of particular goods and services and where the prices of these goods and services tend towards equality.
cc)	<u>Merger</u>	An amalgamation or joining of two or more firms into an existing firm or to form a new firm. A merger is a method by which firms can increase their size and expand into existing or new economic activities and markets. A variety of motives may exist for mergers: to increase economic efficiency, to acquire market power, to diversify, to expand into different geographic market, to purpose financial and R&D synergies, etc. Mergers are classified into three types: 1. **Horizontal Merger:** Merger between firms that produce and sell the same products, i.e., between competing firms. Horizontal merger, if significant in size, can reduce competition in a market and are often reviewed by competition authorities. Horizontal mergers can be viewed as horizontal integration of firms in a market or across markets. 2. **Vertical Merger:** Merger between firms operating at different stages of production, e.g., from raw materials to finished to distribution. An example would be a steel manufacturer merging with an iron ore producer. Vertical mergers usually increase economic efficiency, although they may sometimes have an anticompetitive effect. See vertical integration. 3. **Conglomerate Merger:** Merger between firms in unrelated business, e.g., between an automobiles manufacturer and a food processing firm.

dd)	Monopoly	Monopoly is a situation where there is a single seller in the market. In conventional economic analysis, the monopoly case is taken as the polar opposite of perfect competition. By definition, the demand curve facing the monopolist is the industry demand cure which is downward sloping. Thus, the monopolist has significant power over the price it changes, i.e. is a price setter rather than a price taker.
ee)	Monopsony	A monopsony consists of a market with a single buyer. When there are only a few buyers, the market is defined as an oligopsony. In general, when buyers have some influence over the price of their inputs they are said to have monopsony power.
ff)	Natural monopoly	A natural monopoly in a particular market if a single firm can serve that market at lower cost than any combination of two or more firms. Natural monopoly arises out of the properties of productive technology, often in association with market demand, and not from the activities of government or rivals (See monopoly). Generally speaking, natural monopolies are characterize buy steeply declining long-run and marginal-cost curves such that there is room for only one firm to fully exploit available economies of scale and supply the next.
gg)	Oligopoly	As oligopoly is a market characterized by a small number of firms whole realize they are independent in their pricing and output policies. The number of firms is small enough to give each firm some **market power.**
hh)	Patents	Patents give investors property rights to the exclusive use of their invention for a specified period of time.
ii)	Perfect Competition	Perfect competition is defined by four conditions (in a well-defined market). (a) There is such a large number of buyers and sellers that none can individually after the

		market price. This means that the demand curve facing an individual firm is perfectly elastic (see elasticity of demand). (b) In the long run, resources must be freely mobile, meaning that there are no barriers to entry and exist. (c) All market participants (buyers and sellers) must have full access to the knowledge relevant to their production and consumption decisions. (d) The product should be homogeneous.
jj)	Predatory	A deliberate strategy, usually by a dominant firm, of driving competitors out of the market by setting very low prices or selling below the firm's incremental costs of producing the output (often equated for practical purposes with average variable costs). Once the predator has successfully driven out existing competitors and deterred entry of new firms, it can raise prices and earn higher profits.
kk)	Price Discrimination	Price discrimination occurs when customers in different market segments are charged different prices for the goods or services, for reasons unrelated to costs. Price discrimination is effective only if customers.
ll)	Privatization	Refers to transfer of ownership and control of government or state assets, firms and operations to private investors. This transfer takes the form of issue and sale or outright distribution of shares to the general public.
mm)	Price Fixing Agreement	An agreement between sellers to raise or fix prices in order to restrict inter-firm competition and earn higher profits. Price fixing agreement is formed by firms in an attempt to collectively behave as a monopoly.
nn)	Profit	In economic theory, profit is surplus earned move the normal return on capital. Profits emerge as the excess of total revenue over the opportunity cost of producing the good. Thus, a firm earning zero economic profits

		is still earning a normal or competitive return. Positive economic profits therefore indicate that a firm is earning more than the competitive norm.
oo)	Reciprocity	A form of bilateral (or multilateral) arrangement between firms to bestow favourable terms on, or buy and sell form, each other to the exclusion of others.
pp)	Refusal To Deal/Sell	The practice of refusing or denying supply of a product to purchaser, usually a retailer or wholesaler. The practice may be adopted in order to fore a retailer to engage in resale price maintenance (rib), i.e., not to discount the product in question, or to support an exclusive dealing arrangement with other purchaser or to sell the product only to a specific class of customers or geographic regions. Refusal to deal/sell may also arise if the purchaser is a bad credit risk, does not carry sufficient inventory or provide adequate sales service, product advertising and display, etc. The competitive effect of refusal to deal/sell generally have to be weighed on a case-by-case basis.
qq)	Regulation	Broadly defined as imposition of rules by government, backed by the use of penalties that are intended specifically to modify the economic behaviour of individuals and firms in the private sector
rr)	Rules Of Reason	A legal approach by competition authorities or the courts where an attempt is made to evaluate the pro-competitive features of a restrictive business practice against its anticompetitive effects in order to decide whether or not the practice should be prohibited.
ss)	Subsidiary	A company controlled by another company. Control occurs when the controlling company owns more than 50 per cent of the common shares. When the parent owns 100 per cent of the common shaves, the subsidiary is said to be wholly-owned. When

		the subsidiary operates in a different country, it is called a foreign subsidiary. The controlling company is called holding company or parent a subsidiary is a corporation with its own charter and is not division of the controlling company.
tt)	Takeover	The acquisition of control of one company by another or occasionally by an individual or group of investors. Takeovers are usually instituted by purchasing shares at a "premium" over existing prices and may be financed in a variety of ways including cash payment and/or with shares of the acquiring company. While the terms mergers, acquisitions and takeover are often used interchangeably, there are subtle differences between them.