

# **ROLE OF REGULATORS IN PROTECTING CONSUMER INTERESTS AND COMPETITION IN PAKISTAN**

THE THESIS SUBMITTED TO THE DEPARTMENT OF LAW,  
INTERNATIONAL ISLAMIC UNIVERSITY ISLAMABAD  
IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE  
DEGREE OF MASTER OF LAW (LL.M. INTERNATIONAL TRADE LAW)



BY

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Accession No. TH-8532

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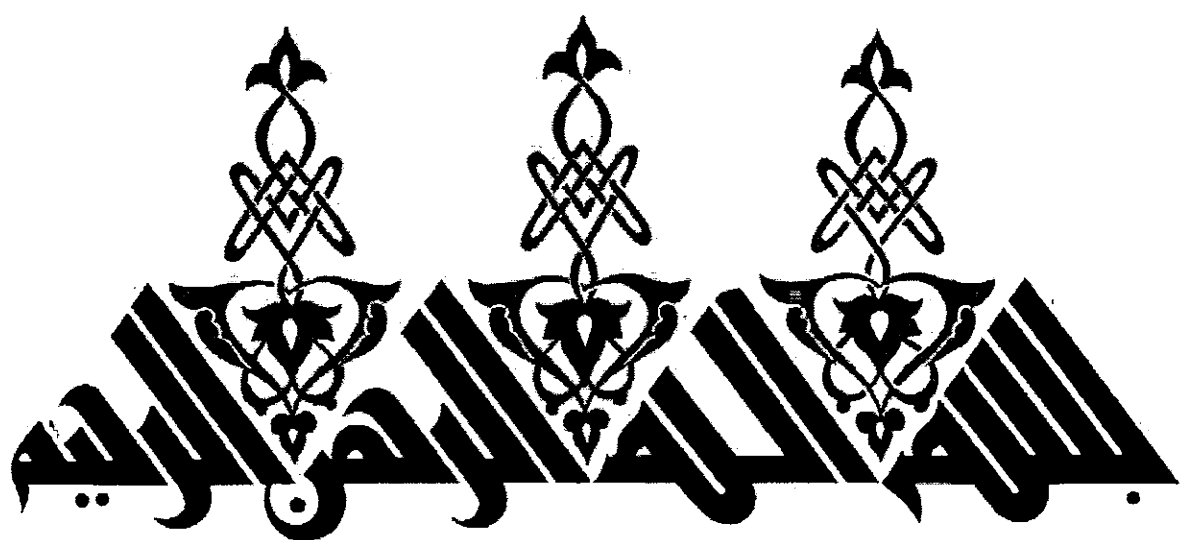
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1- Consumer protection; Law and legislation

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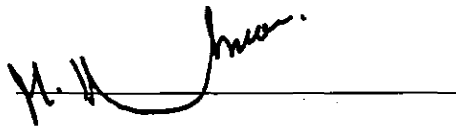
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in Partial Fulfillment of the Requirements for the Award of the Degree of Master of Law  
(LL.M. International Trade Law)

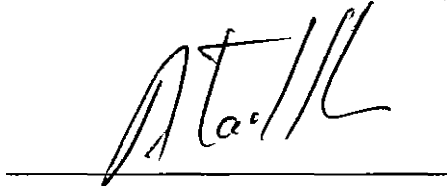
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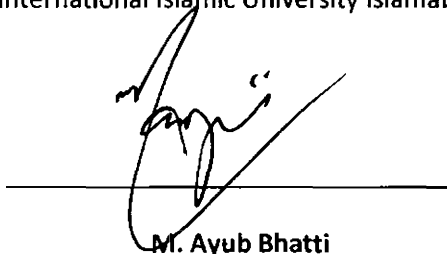
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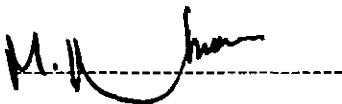
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## **ACKNOWLEDGEMENT**

*I humbly thank Allah Almighty, the merciful and beneficent, who gave me health, Thoughts and co-operative people to enable me achieve this goal.*

*I am heartily thankful to my supervisor, Mr. Muhammad Khurram Siddiqui, whose encouragement, guidance and support from the initial to the final level enabled me to develop an understanding of the subject. His sage advice, insightful criticisms, and patient encouragement aided the writing of this thesis in innumerable ways.*

*This research work would not have been possible without the support of many other people; my teacher Professor Dr. Muhammad Munir and Assistant Professor Major(R). Attaullah, who were abundantly helpful and offered invaluable assistance, support and guidance in my research.*

*I am deeply and forever indebted to my family for their love, support and encouragement throughout my entire life. So are my friends especially Tufail Shahzad, whose contribution in any direction of my life can never be under estimated.*

*Last but not the least; my gratitude goes to faculty of Shariah and Law, International Islamic University Islamabad (I.I.U.I.) and its entire staff for providing me the opportunity of qualifying to work on this topic. I am extremely grateful to faculty member and supporting staff.*

*To each of the above and many others, I extend my deepest appreciation. And I pray to Almighty Allah to reward them with best of reward in their life.*

*Aameen*



### **Dedication**

**I wish to dedicate this work to my mother,  
who always offered me unconditional love and  
support throughout my life.**

# LIST OF ACRONYMS

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<b>BCPA</b>	Baluchistan Consumer Protection Act, 2003
<b>CCP</b>	Competition Commission of Pakistan
<b>CCs</b>	Consumer Courts
<b>CNG</b>	Compressed Natural Gas
<b>COPRA</b>	The Consumer Protection Act Of India, 1986
<b>CP LAWS</b>	Consumer Protections Laws
<b>CPC</b>	Code of Civil Procedure, 1908
<b>CPCs</b>	Consumer Protection Councils
<b>Cr.PC</b>	Code of Criminal Procedure, 1898
<b>DFID UK</b>	Department for International Development, United Kingdom
<b>FAB</b>	Frequency Allocation Board
<b>ICPA</b>	The Islamabad Consumer Protection Act, 1995
<b>LDCs</b>	Least Developed Countries
<b>LPG</b>	Liquefied Petroleum Gas
<b>MCA</b>	Monopoly Control Authority
<b>MRTPO</b>	Monopoly and Restrictive Trade Practices (Control and Preservation) Ordinance
<b>NGRA</b>	Natural Gas Regulatory Authority
<b>NEPRA</b>	National Electric Power Regulatory Authority
<b>NTC</b>	National Telecommunication Corporation
<b>NWFPCPA</b>	The NWFP Consumer Protection Act, 1997
<b>OECD</b>	Organization for Economic Co-Operation and Development
<b>OGDCL</b>	Oil and Gas Development Corporation Limited
<b>OGRA</b>	Oil and Gas Regulatory Authority

<b>PCPA</b>	The Punjab Consumer Protection Act, 2005
<b>PEMRA</b>	Pakistan Electronic Media Regulatory Authority
<b>POL</b>	Pakistan Oil Limited
<b>PPC</b>	Pakistan Penal Code, 1860
<b>PPL</b>	Pakistan Petroleum Limited
<b>PTA</b>	Pakistan Telecommunication Authority
<b>PTC</b>	Pakistan Telecommunication Corporation
<b>PTCL</b>	Pakistan Tele-communication Limited
<b>SCPO</b>	Consumer Protection Ordinance, 2004
<b>SECP</b>	Security and Exchange Commission of Pakistan
<b>UNO</b>	United Nations Organization
<b>WAPDA</b>	Water and Power Development Authority
<b>WB</b>	World Bank
<b>WTO</b>	World Trade Organization

# **ROLE OF REGULATORS IN PROTECTING CONSUMER INTERESTS AND COMPETITION IN PAKISTAN**

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# Chapter 01

## REGULATORY BODIES

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### 1.1 NOTION OF THE REGULATORY BODIES

It is the responsibility of state to provide the basic and necessary utilities like electricity, telecom, Gas, etc. to all the citizens of the state, by maintaining Competition in the relevant markets and protecting consumer rights, To achieve this goal; state owned utilities were being transferred to private entities with a purpose to provide utmost services to end users efficiently. In carrying out the said purpose, the concept of regulatory regime came into being around the globe. A regulatory agencies are (also regulatory authority, regulatory body or regulator) normally a public authority or agency, given an autonomous status by government being responsible to deal in the area of administration, regulation or legislation (codifying and enforcing rules and regulations and imposing supervision or oversight for the benefit to the public at large).

The existence of independent regulatory agencies is justified by the complexity of certain regulatory and supervisory tasks that require expertise, the need for rapid implementation of public authority in certain sectors, and the drawbacks of political interference. Some independent regulatory agencies perform investigations, and some are authorized to impose fine upon violators/ culprits. It has the major responsibility to ensure



good business practice, efficient use of scarce resources, non-discrimination, protection and safeguarding consumer rights etc.

Beside the afore-mentioned attributes of any regulatory authority, these institutions are also required to maintain healthy Competition in the relevant market and prevent markets for anti-trust activities which may be in form of Price fixing, Cartels, Misuse of market power, and Misleading or Deceptive business conduct.

In most cases the spirit of the act, and thus the actions regulatory bodies may not favors neither consumer nor supplier, but strives to achieve a competitive market without artificial restrictions. For example, refusal of supply – a producer refusing to supply a potential retailer or customer with a product – is not itself illegal unless the action would have an anti-competitive effect on the market as a whole.

Well-functioning or independent regulatory bodies need adequate resources, proper legal mandate and healthy operating procedure. The regulatory authorities are mainly concerned with promotion of transparency and competitiveness in specific sector to implement Government's policies. The authorities do play an advisory role to the Government and explain the orders of the Government and give Recommendations when it is asked.

The Entity minimizes the thinking (perception) of risk to investors due to the existence of an independent and objective regulatory body in a market. For the immediate need and long -term stability of the sector accordingly an autonomous regulatory agency is necessary.

## 1.2 REGULATORY BODIES IN PAKISTAN

An independent regulatory agency is defined and known as an institution which is independent from other branches or arms of the government<sup>1</sup>. In response to overcome on the challenges of the modern theory of Global village and to fulfill the guidelines of World Trade Organization<sup>2</sup> (Placeholder1)(WTO) as Pakistan being a signatory to WTO. The Government Pakistan has established many regulatory Authorities through legislations these are;

- 1) Pakistan Telecommunication Authority (PTA)<sup>3</sup>
- 2) National Electric Power Regulatory Authority (NEPRA)
- 3) Oil and Gas Regulatory Authority (OGRA<sup>4</sup>)
- 4) Pakistan Electronic Media Regulatory Authority (PEMRA<sup>5</sup>)

## 1.3 AN OVERVIEW OF THE AUTHORITIES

### 1.3.1 PAKISTAN TELECOMMUNICATION AUTHORITY

Telecommunication in sub-continent has the history as old as the history of our slavery. Before partition this sector was under the Indian post and telegraph department as it developed into a successful industry. Pakistan telecommunication's role can be divided in

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<sup>1</sup> Model Law on Competition (2010)–Chapter VII, United Nations Conference on trade and development at Geneva, August 30<sup>th</sup> 2010

<sup>2</sup>“*Agreement Establishing The World Trade Organization*” available on:  
[http://www.wto.org/english/docs\\_e/legal\\_e/04wto.pdf](http://www.wto.org/english/docs_e/legal_e/04wto.pdf), visited on 21/05/2011 at 3:45 PM

<sup>3</sup> The role of regulatory authority emerged in the telecom sector in 1994, when Pakistan telecommunication Ordinance 1994 was promulgated. Subsequently it was transformed to Telecom re-organization Act; this established again the frame work for the telecommunication industry including Pakistan telecommunication Authority (PTA).

<sup>4</sup> 28 March 2002, replaced NGRA

<sup>5</sup> PEMRA has been established under PEMRA Ordinance 2002

four phases<sup>6</sup>.

- i. PAKISTAN POST AND TELEGRAPH WORKED UPTO 1962
- ii. PAKISTAN TELEPHONE AND TELEGRAPH (PT&T)
- iii. PAKISTAN TELECOMMUNICATION CORPORATION (PTC)-1990<sup>7</sup>
- iv. PAKISTAN TELECOMMUNICATION COMPANY LIMITED (PTCL)

The major breakthrough in the history of telecom sector emerged when the Pakistan telephone department (PT& T) changed into a statutory body “Pakistan Telecommunication Corporation”<sup>8</sup>, a separate legal identity. This new introduction enabled PTC from administrative to contractual relationship with customer, which was a satisfaction for the customers. Pakistan Telecommunication Company Limited (PTCL) is a company established to undertake the telecommunication business formally carried on by Pakistan. On first January, 1996 Pakistan Telecommunication Corporation (PTC) was converted into Pakistan Telecommunication Company Limited (PTCL), under Pakistan Telecommunication Re-organization Act, 1996 under the act the following bodies were established.

- Pakistan Telecommunication Company Limited (PTCL)
- Pakistan Telecommunication Authority (PTA)
- National Telecommunication Corporation (NTC)
- Frequency Allocation Board (FAB)

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<sup>6</sup> a brief history of telecommunication in Pakistan available on [www.hubpages.com/hub/historyofptcl](http://www.hubpages.com/hub/historyofptcl)

<sup>7</sup> Haroon, Yousaf, “*Pakistan telecommunication liberalization*” part-1, Management national post graduate institute of telecommunication and informatics (NPGIT & I) available on [www.pakistaneconomics.com/pagesearch/search-engine2002/S.E112.ASP](http://www.pakistaneconomics.com/pagesearch/search-engine2002/S.E112.ASP)

<sup>8</sup> Dec. 5<sup>th</sup> 1990 PT & T department was transformed into Pakistan Telecommunication Corporation.

PTA is a regulatory body responsible for monitoring the telecommunication business in Pakistan. It frames regulation for private telecom companies such as mobile phone companies, internet service providers, paging companies and pay card phone companies. It also issues licenses to the new companies in entering to this business<sup>9</sup>.

### **1.3.2 NATIONAL ELECTRIC POWER REGULATORY AUTHORITY**

At the time of separation in 1947, Pakistan inherited 60MW of power generation ability for a population of 31.5 million, yielding 4.5 units per capita consumption. The Government of Pakistan owned KESC by acquiring the majority of its shares in 1952, engaged in generation, transmission and distribution of electric energy to the industrial, commercial, agricultural and domestic consumers of the urban city of Karachi<sup>10</sup>.

Semi-autonomous body “Water and Power Development Authority (WAPDA) was created In 1958, as a for the purpose of organizing and giving a unified direction to the development of schemes in water and power sectors, which were previously being dealt with by the respective electricity and irrigation department of the provinces<sup>11</sup>. The country was in the phase of development in 1959, the generation capacity of power sector increased to 119MW which required a dependable and solid infrastructure, electricity being its most significant part. The duty of power development was undertaken by WAPDA for accomplishing a number of hydro and thermal generation schemes, a transmission network and a distribution system, which could deal the load of the rapidly increasing demand of

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<sup>9</sup> The role of regulatory authority emerged in the telecom sector in 1994, when Pakistan telecommunication Ordinance 1994 was promulgated. Subsequently it was transformed to Telecom re-organization Act; this established again the frame work for the telecommunication industry including Pakistan telecommunication Authority (PTA).

<sup>10</sup> Pakistan power sector, Compiled by consulate general of Switzerland and Pakistan on 9<sup>th</sup> Oct.2009

<sup>11</sup> Saleem Hasan“ *Power Shortage in Pakistan*” published in Daily “Pakistan Times” on May 14, 2008

electricity. In After the first five years of its operation by, the electricity generation capability rose to 636 MW from 119 MW in 1959, and power generation to about 2,500 MKWH from 781 MKWH.

However, the consumption of electricity in Pakistan grown at very high speed as compared to economic growth and expansion of the population. Huge increase in price and demand of electricity occurred during period from 1970-90s<sup>12</sup>.

The Government of Pakistan to overcome the problem of power/ load shedding in the minimum possible time constitutes an energy task force in 1993. On the recommendation of the said task force a “Policy Framework and Package of Incentives for Private Sector Power Generation Projects” was launched on March 1994, which attracted the Private/ Foreign investors to invest the power sector of Pakistan. The framework offered number of incentives to the investors. The policy was a successful step as it eliminated the power shortage, rather it resulted surplus power<sup>13</sup>.

### **1.3.2.1 Creation of National Electric Power Regulatory Authority**

The Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997, has promulgated on Dec. 16, 1997, National Electric Power Regulatory Authority has been established under the provision of the Act<sup>14</sup>.

NEPRA has been formed to ensure transparent and judicious economic regulation, based on

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<sup>12</sup>From 1970 to the early 1990s, the supply of electricity was unable to keep pace with demand that was growing consistently at 9-10% per annum. In the early 1990s, the peak demand exceeded supply capability by about 15-25%, necessitating load shedding of about 1,500 - 2,000 MW.

<sup>13</sup>“*Pakistan power sector*”, Compiled by consulate general of Switzerland and Pakistan on 9<sup>th</sup> Oct.2009, Available at [http://www.osec.ch/internet/osec/de/home/export/countries/pk/export/economic\\_report.-RelatedBoxSlot-98778-ItemList-51087-File.File.pdf/0910\\_E\\_SectorReport\\_Power\\_Pakistan.pdf](http://www.osec.ch/internet/osec/de/home/export/countries/pk/export/economic_report.-RelatedBoxSlot-98778-ItemList-51087-File.File.pdf/0910_E_SectorReport_Power_Pakistan.pdf) , visited on 4/4/2011, 5:40 pm

<sup>14</sup> Section 3(1) of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997

sound commercial principals, to the electric power sector of Pakistan. NEPRA reflects the country's resolve to enter the new era as a nation committed to free enterprise and to meet its social objectives with the aim of improving the quality of life for its people and to offer them opportunities for growth and development.

### **NEPRA'S MAIN RESPONSIBILITIES**

NEPRA main responsibilities under the provisions<sup>15</sup> of NEPRA Act are to;

- Issue Licenses for Generation, Transmission and Distribution of Electric Power;
- Establish and enforce standards to ensure quality and safety of operation and supply of electric power to consumers;
- Approve Investment and Power Acquisition Programs of the Utility Companies;
- Determine Tariffs for generation, Transmission and Distribution of Electric Power; and
- Suppliers of Power Plants, Machinery & Equipment Used by power producers in Pakistan:

### **1.3.3 OIL AND GAS REGULATORY AUTHORITY**

In the year 1948-49 Pakistan Petroleum Limited (PPL) and Pakistan Oilfields Limited (POL) were established for exploration and production was occurred PPL<sup>16</sup> succeeded in discovering Pakistan's Largest Gas Reserves at Sui Baluchistan. In the year 1954 the Government of Pakistan executed agreements with Standard Vacuum Oil Company. Other

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<sup>15</sup> See section 7, Ibid.

<sup>16</sup> Pakistan Petroleum Limited

foreign investors i.e. Hunt International oil Company, Shell oil Company. Sun oil Company was attracted for further discoveries of oil and natural gas. Despite new gas discoveries during this period, the exploration activities registered a downward trend because of lack of oil discoveries. Government of Pakistan then decided to undertake the search for oil and gas directly and established the state oil exploration company.

In September 1961, Oil and Gas Development Company Limited was established.

In 1965 OGDCL's first success was the small gas discovery at Sari Singh (Sindh) and in 1968 POL discovered oil at Meyal (Potwar, Punjab).

In the year 2000 Natural Gas Regulatory Authority (NGRA) was established<sup>17</sup>. NGRA was replaced later on in 2002 by the newly established Oil and Gas Regulatory Authority (OGRA)<sup>18</sup>. All properties and works done by the (NGRA) Natural Gas Regulatory Authority were transferred to and protected under the OGRA Ordinance.

The Federal Government has now with effect from March 15, 2003 assigned functions for the regulation of the activities related to LPG<sup>19</sup> and CNG sectors in the country to the oil and gas regulatory authority and has designated the OGRA as an authority in place of Director General Gas<sup>20</sup>. OGRA is mandated to issue licenses for LPG and CNG activities. OGRA is consisted on six main departments namely Gas, Oil, Finance, Administration, Registrar Office and Legal.

### **1.3.4 PAKISTAN ELECTRONIC MEDIA REGULATORY AUTHORITY**

Before partition the Indian broadcasting company was the only body to control the

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<sup>17</sup>NGRA Ordinance 2000

<sup>18</sup> Oil and Gas Regulatory Authority Ordinance dated 28th March 2002

<sup>19</sup>Liquid Petroleum Gas and Compressed Natural Gas

<sup>20</sup>Director General Gas of the Ministry of petroleum and Natural resources.

radio services in sub-continent which later on converted into all India radio. The Pakistan Broadcasting Corporation, popularly called Radio Pakistan came into being as Pakistan Broadcasting Service on 14 August, 1947 when Pakistan emerged on the world map as a new country. In that time there were six Radio stations; three each in East and West Pakistan.

Pakistan entered to visual broadcasting on 26<sup>th</sup> November 1964 when the government of Pakistan signed an agreement with Nippon Electronic Company of Japan. At that time all studio programs were telecast live as on VIR recording machine. That time it was private limited company, serving called television promoters limited, which later in 1967 converted into public limited company. Legal protection was given to Pakistan Broadcasting Corporation by promulgating PBC Act, 1973. Government radio and television traditionally have been used in an attempt to harnesses folk, culture tradition for political and non-political purpose. There was no need of regulatory as there was sole service provider in the sector. PBC Pakistan was itself service provider and at the same time performing the functions of an authority to regulate the affairs of audio and visual broadcasting in Pakistan. In the mid-90s when most of the developing countries established regulatory authorities media Pakistan also went in that flow to establish an authority with the mandate to look after the affairs of electronic media .

## PEMRA'S MANDATE

Provision<sup>21</sup> of PEMRA Ordinance 2002 including amended Act 2007<sup>22</sup> describes the

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<sup>21</sup> See Section,4 of PEMRA Ordinance 2002

<sup>22</sup>“Former Section 4 which read as “4. Functions of the Authority: The Authority shall be responsible for regulating the establishment and operation of all broadcast and CTV stations in Pakistan established for the purpose of international, national, provincial, district, local or special target audiences” substituted by PEMRA Act, 2007”



mandate of the Authority as under to:

- I. Improve the standards of information, education and entertainment ;
- II. Enlarge the choice available to the people of Pakistan in the media for news, current affairs, religious knowledge, art, culture, science, technology, economic development, social sector concerns, music, sports, drama and other subjects of public and national interest;
- III. Facilitate the devolution of responsibility and power to the grass roots by improving the access of the people to mass media at the local and community level; and
- IV. Ensure accountability, transparency and good governance by optimization the free flow of information.

## 1.4 PRESENT SITUATION OF THE REGULATIONS IN PAKISTAN

### 1.4.1 TELECOMMUNICATION

#### PAKISTAN TELECOMMUNICATION AUTHORITY (PTA)

The vision of Pakistan Telecommunication Authority is to “create a fair regulatory regime to promote investment, encourage Competition, protect consumer interest and ensure high quality Information Communication Technology services”. It is extended to the whole of Pakistan. Under the Act, PTA issues licenses for establishment, maintenance telecommunication system and provision of telecommunication services in Pakistan. Main features of PTA under the Act are as under:

- I. To promote and protect, the interest of users of telecommunication services in Pakistan<sup>23</sup>.
- II. To investigate and adjudicate on complaints and other claims made against licensees<sup>24</sup>.
- III. Every license granted under this Act is under obligations for the protection of consumers' interest<sup>25</sup>.

In order to protect the interest of telecommunication users, PTA in exercise of its powers conferred upon under the Act of Telecom Consumers Protection Regulations 2009, whereby any person being aggrieved by action or omission of the license holders of PTA can approach PTA for redressal of grievances<sup>26</sup>.

Pursuant to the provisions of the Act<sup>27</sup>, where a licensee violates or contravene any provision of the Act, rules made there under or terms and conditions of the license, the

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<sup>23</sup> Section 4(c) of the Pakistan Telecommunication (Re-organization) Act, 1996

<sup>24</sup> See section 4 of the Pakistan Telecommunication (Re-organization) Act, 1996

<sup>25</sup> See sections 4(m), 6 and 21 (4)(l) of the Pakistan Telecommunication (Re-organization) Act, 1996

<sup>26</sup> See section 5, of Telecom Consumers Regulations, 2009

<sup>27</sup> Section 23, the Pakistan Telecommunication (Re-organization) Act, 1996

Authority established under section 3 of the Act is empowered to issue show cause notice calling upon the accused to remedial the contravention. In case of non-responding, unsatisfactory reply the Authority may impose additional conditions or appoint an administrator to manage the affairs of the licensee. The Authority may also impose a fine upon the licensee up to Pak Rupees Three hundred and Fifty Million. In addition to the above the authorities under the act is also empowered/mandated to file complaint against accused under section 319 of the Act.

## 1.4.2 NATIONAL ELECTRIC POWER REGULATORY AUTHORITY

In December 16, 1997 an enactment the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997, was promulgated. For power sector National Electric Power Regulatory Authority<sup>28</sup> (NEPRA) has been established with mandate to introduce clear (transparent) and judicious economic regulation, based on sound commercial principles.

The establishment of NEPRA was made under the Transmission and Distribution of Electric Power Act 1997<sup>29</sup>. It is a statutory autonomous body headed by the Chairman, who is appointed by the Federal Government, comprising of four members i.e. one from each province that is appointed after considering the recommendations of the respective Provincial Governments. The vision and mission of the Authority is **to develop and pursue a Regulatory Framework, which ensures the provision of safe, reliable, efficient and affordable electric power to the electricity consumers of Pakistan**. Further the authority shall facilitate the transition from a protected monopoly service structure to a competitive environment where several power sector entities function in an efficiency oriented or market driven environment and shall maintain a balance between the interests of the consumers and service providers in unison with the broad economic and social policy objectives of the Government of Pakistan.

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<sup>28</sup>Established under sec.3 of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997

<sup>29</sup> Regulation of Generation, accepted by IRG (International Resource Group) Report

## **MAIN RESPONSIBILITIES OF THE AUTHORITY:**

The main responsibilities of NEPRA<sup>30</sup> are to:

- I. Provide Licenses for generation, transmission and distribution of electric power;
- II. Regulate the provision of electric power in Pakistan;
- III. Set the terms and conditions of licenses;
- IV. Establish and set the standards for consumers to provide them with quality and safety of operation and supply of electric power;
- V. Prescribe procedures and standard for investment of utility companies;
- VI. Determine tariffs for generation, transmission and distribution of electric power;
- VII. Make a uniform system of accounts by generation, transmission and distribution companies;
- VIII. Prescribe fees including fees for grant of license and renewal thereof; and
- IX. Perform any other function which is incidental or consequential to any of the foresaid functions.

## **PROTECTION OF CONSUMER INTEREST UNDER NEPRA ACT**

1. In performing its functions the Authority shall protect the interests of consumers<sup>31</sup>;
2. Whilst determining the tariff the Authority shall protect consumers against monopolistic and oligopolistic prices<sup>32</sup>;

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<sup>30</sup>Under section 7 of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997

<sup>31</sup>See section 7(6) of the NEPRA ordinance

<sup>32</sup>See Section 31(2) (a) ibid ordinance

3. Whilst determining the tariff the Authority shall provide an opportunity for customers and interested persons to participate meaningfully in the tariff approval process<sup>33</sup>;
4. Any interested person may file a written complaint with the Authority against a license<sup>34</sup>;
5. The Authority may make rules for the procedure to resolve disputes between consumers and licensee<sup>35</sup>;

According to section 39(1) of the NEPRA Act, consumer must file complaints regarding the electric power services or service providers to the NEPRA directly. The complaint must be made to the service provider first properly through registered delivery service. With their response, if consumer is not satisfied, then copy of the written complaint can be attached with the complaint authority as proof that the service provider know about the complaint and their response thereto.

In order to enforce license terms and conditions, the Act<sup>36</sup> further that where a licensee contravenes any provision of the Act, rules or the terms and conditions of the license, NEPRA can issue a show cause notice to the licensee. The authority has the power to make sure enforcement of the term and condition under the license which is binding upon the licensee<sup>37</sup> or upon the non-fulfillment of the above mentioned conditions NEPRA is empowered to award or impose damages or compensation in response to consumer complaint<sup>38</sup>.

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<sup>33</sup> See Section 31(3)(b) of the NEPRA Act, 1997

<sup>34</sup> See Section 39(1), *ibid*

<sup>35</sup> See Section 42(2) (f), *ibid*

<sup>36</sup> See Section 39(1), *ibid*

<sup>37</sup> See section 7(6), *ibid*

<sup>38</sup> See section 24(4) *ibid*

Besides the supply of electricity, the state is responsible for security and maintenance of the distribution systems and electricity provision of such services at affordable price to an ordinary man. Unfortunately, due to the lengthy procedures Consumers are facing a number of problems and are becoming more and more frustrate, but they have no other choice to switch over.

I. The most important issue and consumer complaints relates to **load-shedding**.

Hydro and thermal are the basic sources for generating electricity in Pakistan. Electricity generation from the hydro sources remain 20 to 30% lower than the generating capacity of the units, because of the considerable fall in water flow during winters. Therefore, the generating capacity of Hydal units keeps on fluctuating depending on the water flow of the rivers. Due to daily and extended load-shedding in both cities and villages continue to create problems for consumer, despite assurance of successive governments.

II. Consumer protection with regard to electrical services is of fundamental importance. It is job of the supply companies to fulfill with the required safety standards and undertake effective actions to lower hazards of electricity. Such actions need to be taken on the basis of risk assessment at three levels; at the point of use, transmission, and generation. Problems at any of these three levels create risks for both property and life. In the view of poor safety standards, frequent incidents of electrocution and short circuits are reported throughout the country.

NEPRA is regulating tariff of the power distribution companies, which they charge from the consumers, but it has no power to regulate the prices, which the distribution companies pay to the government for the purchase of electricity. This may result in arbitrary or uninformed haphazardly increase in the rates of electricity by the government, having a direct bearing on the consumers of electricity, but NEPRA is unable to regulate it, and hence, its role remains ineffective.



### 1.4.3 OIL AND GAS

Initially Oil and Gas sector was regulated by Natural gas Regulatory Authority. The authority was established<sup>39</sup> In January 2000, and by March 2000, it was fully operational, with staff as well as office facilities. However, the Authority has failed to regulate the gas sector, and so far the gas tariff has been revised twice at the behest of the government. Being run on taxes paid by the consumers, the employees of the NGRA were getting huge salaries for doing nothing, whereas the consumers of gas services are left at the mercy of the government, which revise tariffs arbitrary.

## OIL AND GAS REGULATORY AUTHORITY

Later on, Oil and Gas Regulatory Authority was created under the OGRA Ordinance 2002 on 28th March 2002 for regulating the mid-stream oil and gas sector. NGRA was subsumed in OGRA. All properties and works done by the Natural Gas Regulatory Authority (NGRA) were transferred to and protected under the OGRA Ordinance<sup>40</sup>.

### DEREGULATION OF LPG

In September 2000, government exempted import of Liquefied Petroleum Gas (LPG) from the levy of 10% customs duty in order to ensure availability of imported LPG at competitive rates in Pakistan. With this deregulation, it was expected that an abundant import

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<sup>39</sup>under Natural Gas Regulatory Authority Ordinance, 2000

<sup>40</sup>The Federal Government has now with effect from March 15, 2003 assigned functions for the regulation of the activities related to LPG and CNG sectors in the country to the oil and gas regulatory authority and has designated the OGRA as an authority in place of Director General Gas. OGRA is mandated to issue licences for LPG and CNG activities. OGRA consisted of six main departments namely Gas, Oil, Finance, Administration, Registrar Office and Legal.

of LPG in the domestic market would help in substituting kerosene and wood, as well as natural gas in areas or regions where gas supply is not viable for technical or economic considerations. It was also hoped that deregulation would encourage establishment of small industrial units on the basis of imported LPG in remote and distant areas, lying outside the natural gas distribution networks. However, there have been reports of massive irregularities in LPG quota, including violations in the policy of providing 50 % of LPG allocations to the backward areas. As a result consumers of backward areas remain at a disadvantage without access to a cheap substitute of LPG fuel.

The Ordinance does not provide for a compulsory, involvement of consumers in tariff and technical standards determination process. OGRA make the necessary tariff determination, which is then notified by the Government of Pakistan<sup>41</sup>. The same procedure applies to retail consumers<sup>42</sup> under the provision of OGRA ordinance. Notwithstanding section 20(c), the ordinary retail consumers is placed under a disadvantage by section 20(d), wherein, 'the license shall not interrupt its service to its consumers except retail consumers unless it is 'expressly' agreed to the contrary between the license and the retail consumer. This appears to be an unrealistic provision, since the retail consumers has no opportunity to directly influence tariff determinations. It is much more likely that the retail consumer will have to agree gas supply on a standard contract and it's therefore unable to vary or negotiate the term and conditions. There is, therefore, discrimination between the retail and other consumers in term of the provision of non-interrupted supply.

According to section 27 of OGRA Ordinance technical standards are to be set following consultation with 'interested persons'. There is, however, no definition of interested

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<sup>41</sup> See section 18 Oil and Gas Regulatory Ordinance 2002

<sup>42</sup> See section 19, *ibid*

persons. It is, therefore, arguable that where technical standards affect retail consumers, then retail consumers are an interested person.

It also does not provide for compensation or damage to retail consumers in case of any damage, loss or inconvenience caused to them through the unwarranted conduct on the part of licensees. Furthermore, the Ordinance leaves the complaint procedures unexplained. OGRA was created under the provision<sup>43</sup> of Oil and Gas Regulatory Authority Ordinance, 2002 on 28<sup>th</sup> March 2002 for regulating the mid-stream oil and gas sector.

## **MAIN OBJECTIVES OF OGRA**

OGRA has been established as an independent regulator with the following objectives;

- To provide efficient and effective regulation to protect public/consumers interest in term of Quality, Price, Standards and Customer Services; and
- Increase Private Sector investment in the mid and downstream Oil and Gas sectors by providing level playing field through transparent regulation and thus foster Competition.

Under section 6 of the Ordinance, it is empowered to.

- Grant licenses for Oil and gas pipelines, Refineries, oil marketing companies;
- Develop and enforce performance and service standards;
- Enforce compliance of licenses;
- Promote effective Competition;
- Prescribe procedures and standards for investment programs of the gas companies

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<sup>43</sup> Under Section.3 (1) of Oil and Gas Regulatory Authority Ordinance, 2002

and ensure prudence thereof;

- Determine the revenue requirements of gas companies;
- Resolution of complaints and disputes;
- Enforce standards and specifications for refined oil products, as notified by the federal government;
- Ensure the provision of open access, common carrier and common operator in pursuance of policy guidelines of the Federal government; and
- Implement the policy guidelines of the Federal government, not inconsistent with the provisions of the Ordinance.

## CONSUMER PROTECTION UNDER OGRA

Consumer is protected under different provisions of OGRA Ordinance 2002, to meet the

The global and national requirements of consumer interests;

- I. Ensure the provision of open access, common carrier and common operator as may be deemed necessary or expedient by the Authority in the public interest based on an application made by an interested party to the Authority<sup>44</sup>.
- II. Determine the well-head gas prices for the producers of natural gas in accordance with the relevant agreements or contracts<sup>45</sup>.
- III. The Authority shall determine an estimate of the total revenue requirement of each licensee for natural gas engaged in transmission, distribution and the sale of natural

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<sup>44</sup> Section 6(2) (j) of OGRA Ordinance 2002

<sup>45</sup> see section 6(2)(W), *ibid*

gas to a retail consumer for natural gas, in accordance with the rules, and on that basis advise the Federal Government<sup>46</sup>.

- IV. A licensee for natural gas referred to in sub-section (1), shall submit for review by the Authority its total revenue requirement after incorporating the actual changes in the well-head prices, as notified Authority and after relevant factors and the Authority shall advise the Federal Government promptly of the revised prescribed prices for the licensee for natural gas<sup>47</sup>.
- V. Category of retail consumers for natural gas means a category of retail consumers for natural gas designated as such by the order of federal Government<sup>48</sup>.
- VI. Development surcharge means the amount payable by each licensee for natural gas and calculated in accordance with the rules and which represents, in respect of each category of retail consumer for natural gas to which it is applicable, the amount, if any, by which it is applicable, the amount, if any, by which the sale price exceeds the prescribed price<sup>49</sup>.
- VII. Minimum charges means the amount a licensee for natural gas may charge a retail consumer for natural gas as notified, from time to time<sup>50</sup>.
- VIII. Prescribed price means the price determined under this section, which represents the amount a licensee for natural gas would be entitled to receive from each category of

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<sup>46</sup> See Section 8(1), of OGRA Ordinance 2002

<sup>47</sup> See Section 8(2), *ibid*

<sup>48</sup> Section 8(6)(a), *ibid*

<sup>49</sup> Section 8(6)(b), *ibid*

<sup>50</sup> Section 8(6) (e), *ibid*

its retail consumers for natural gas in order to achieve its total revenue requirements<sup>51</sup>.

IX. Total revenue requirement means for each financial year, that total amount of revenue determined by the Authority for each licensee for natural gas so as to ensure it achieves the rate of return provided in the license for natural gas<sup>52</sup>.

X. Extension of facilities and services to supply natural gas to new arrears and persons respectively<sup>53</sup>.

## COMPLAINTS

A proper complaint mechanism is available under the OGRA ordinance 2002. Any aggrieved person or a group of person can file a complaint against any order of the authority or against service provider act which amount the violation of the consumer rights or contravention of any provision of this law to the authority<sup>54</sup>. Against any order passed by the authority in pursuant to a complaint can appealed to the authority within thirty days, the authority is under obligation to decide within ninety days<sup>55</sup>.

Following are the consumer related problem which can be seen in the Oil and Gas sector:

### A. AVAILABILITY AND ACCESSIBILITY

At present, gas supply is restricted largely to major cities and town. Most of small cities and towns fall outside the gas supply networks. Rural areas are almost totally excluded. Even the

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<sup>51</sup>Section 8(6) (f), of OGRA Ordinance 2002

<sup>52</sup>Section 8(6) (h), *ibid*

<sup>53</sup>Section 41(2) (j), *ibid*

<sup>54</sup>Section 11, of the OGRA Ordinance 2002

<sup>55</sup>Under section 12 of the OGRA Ordinance 2002

sectors inhabiting poor populations in big cities generally do not have access to gas supply. Hence, gas being a clean and cheap fuel, benefits mostly the affluent sections of society. The unavailability of Oil and Gas is not only affecting the domestic user but also affecting the industry badly.

## B. PRICING ISSUES

Recent years have witnessed significant increase in gas prices in view of government's efforts to enhance profitability of exploring and marketing companies. In July 2000, government increased gas prices by 15%. Between September 1999 and July 2000, gas prices increased by 60%, including 15% GST. Increase in the price is the most vital problem for the consumer.

## C. QUALITY OF SERVICE

Quality of service with regard to gas marketing companies remains substandard and highly unsatisfactory from consumer perspective, most frequent complaints include:

- Long delays in getting new connections, particularly in small cities and towns;
- Heavy Charges for new connections, virtually excluding the poor from access to gas services;
- Irregular meter reading, often resulting in accumulation of units. Cumbersome bill correction process; and
- Discriminatory attitudes towards marginalized consumers.

#### **1.4.4 PAKISTAN ELECTRONIC MEDIA REGULATORY AUTHORITY (PEMRA)**

PEMRA has been established under PEMRA Ordinance 2002 as to facilitate and regulate the private electronic media. It has been given a mandate to improve the standards of information, education and entertainment and to enlarge the choice available to the people of Pakistan Including news, current affairs, religious knowledge, art and culture as well as science and technology.

The authority is originated to regulate and promote the establishment and the operation of all private broadcast media and distribution stations in Pakistan, established for the purpose of international, national, provincial, district, local or special targeted audience. The authority is further mandated to regulate and distribute foreign and local TV and radio channel in Pakistan under the provisions of PEMRA ordinance<sup>56</sup>. The authority is to regulate the establishment and operation of all broadcast CTV station in Pakistan<sup>57</sup>.

#### **PEMRA OBJECTIVES**

- Improve the standards of information, education and entertainment ;
- Enlarge the choice available to the people of Pakistan in the media for news, current affairs, religious knowledge, art, culture, science, technology, economic development, social sector concerns, music, sports, drama and other subjects of public and national interest ;
- Facilitate the devolution of responsibility and power to the grass roots by improving the access of the people to mass media at the local and community level ; and

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<sup>56</sup> Section 4(1&2) of Pakistan Electronic Media Regulatory Authority Ordinance, 2002

<sup>57</sup>Section 4 substitute by PEMRA Act, 2007



- Ensure accountability, transparency and good governance by optimization the free flow of information.

Electronic media has become the part of our lives as each home have TV, Radio. They watch TV, and listen to the Radio. It is so connected to today's life that can't be separated now. By that mean all of us are consumers to the Media. PEMRA gives weights to the rights of its consumer, by setting up choice through Competition and preventing abuse of market dominance which ultimately protects the consumer. It provides remedies to individuals under a complaint handling mechanism. It arranges public hearing and allows organization-representing consumers. It provides information on price and performance through website, press and electronic media and protects consumers' interests through a well-defined regulatory regime<sup>58</sup>.

PEMRA Act provides a comprehensive complaint mechanism. The provision of the act provides that the Federal Government may establish the complaint council for the capital area and provinces as the authority thinks fit for the better operation of the complaints<sup>59</sup>. Where the Complainant can directly address their complaints to the authority. Each council is authorized to receive, review any complaint by any person or organization. With such complaints the council may recommend the authority for appropriate action on the issue.

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<sup>58</sup>Electronic Media in Pakistan an individual research paper National management college, Lahore 92<sup>nd</sup> National Management Course. A paper submitted to the Faculty of the National Management College, Lahore, in partial fulfillment of the requirements of the 92<sup>nd</sup> National Management Course, by Muhammad Azam khan

<sup>59</sup>See section 26 of the PEMRA Act

The establishment of cable TV network and FM radio is a licensable activity under PEMRA Act<sup>60</sup>. In case violation of any provision of the law the council may on its own motion or complaint take cognizance of the matter. In case violation of the stated provision the council will direct the violator a show cause notice notification. The council shall have the power under newly inserted sections<sup>61</sup> to summon a licensee on a matter regarding its operation on the reception of any complaint. The council may take the following actions against the violators.

- Show cause Notice;
- Suspension of the license; and
- Other punishments as prescribed by the authority.

A large number of complaints are frequently reported about the quality of PEMRA services. Consumers of electronic media service often complaints about the quality of transmitted signals, contents of the broadcasted program against the National, Religion, social, cultural norms and un-ethical advertisement.

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<sup>60</sup> See section 19(2) of the PEMRA Act

<sup>61</sup> Under section 3, new sub-section (3A) inserted by the PEMRA (Amendment) Act 2007 (Act No. II of the 2007).

## Chapter 02

# CONSUMER, COMPETITION AND LAW

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### 2.1 AN OVERVIEW OF CONSUMER AND COMPLETION LAW

The history of consumer protection and control of dishonest traders goes back to the pre-Christ era. Ancient Mesopotamia, China and India all used to enforce laws related to short weighting, adulteration and harmful products. Food and drug laws were also legislated but all these laws were regulatory in nature and not as such responsive to different aspects of consumer's rights. The background of consumer protection development in many countries is similar.

Earlier, the mechanisms for consumer protection law were closely associated with local units of government, justices of peace as the official dignities of the county were responsible for maintenance of bridges, highways, paving, lighting and cleansing of streets. In seventeenth century, manorial courts known as "courts leet"<sup>62</sup> had a persistent role in safeguarding the trading standards and suppression of local nuisance, and in supervision of all other functions that we would associate with consumer protection and public health. Court

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<sup>62</sup>Definition in word web dictionary [Brit] (historical) a regular court in which the certain lords had jurisdiction over local disputes, or the physical area of this jurisdiction

of "leet" appointed an officer styled an "aleconner", more like a modern weight and measure inspector, to examine pricing, weight and quality of bread, ale and beer for sale. Same system was also prevalent until sixteenth century in England (1664) to control coal price and weight.<sup>63</sup>

The concept of Consumer Protection throughout the 18<sup>th</sup> century was only restricted to protection from excessive prices levied on primary commodities and protection from short measures. The statutes of those times, encompassing different jurisdictions, were related to certain price related items such as bread, beer, meat and fuel. These laws were not as such covering all aspects of consumer protection but were designed to keep the states regulatory role over some areas while neglecting important aspects of consumer protection. The motivation behind these laws was to protect the honest traders from unfair competitors. For instance, laws related to enforce uniformity in weight and measures as, the size of bread and ale<sup>64</sup> of 1226 laid down a scheme to control the amount of bread and ale.<sup>65</sup>

Similarly, the weight of bread was controlled by Bread Act 1836 which required bread<sup>66</sup> to be unadulterated and sold by weight. The reference to the uniformity in weight can be traced back to *Magna Carta* in 1225.<sup>67</sup>

In the 20<sup>th</sup> century, consumer protection was placed under the supervision of special organizations which were specific to consumer rights like establishment of Office of Fair

<sup>63</sup> Brian W Harvey and Deborah L Parry" The Law of Consumer Protection and Fair Trading", Fifth edition, London, Dublin & Edinburgh; Butterworth 1996,1-4

<sup>64</sup> A general name for beer made with a top fermenting yeast; in some of the United States an ale is (by law) a brew of more than 4% alcohol by volume

<sup>65</sup> V Bala Krishna Eradi "Consumer protection jurisprudence" India; Lexis nexus and Butterworth publishers, 1999

<sup>66</sup> Adulteration of bread is strictly prohibited (Haram) in Islam, chapter3, Akbar khan, LL.M thesis on "consumer protection in Islamic Law an analytic study".

<sup>67</sup> Rachagansothi. "The Asian experience with consumer protection law and redress mechanism", the paper was presented at 6<sup>th</sup> international conference on the issue of consumer protection in Malaysia organized by University of Malaysia.1997

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Trading in UK, federal consumer Agency in Alaska in 1930 and the consumers union 1936 in America. These lead to the formation of Consumers association in UK 1956, Consumer federation of America (1960) and many others in different countries. By the end of 1960, five main organizations had been formed in the developed part of the world; ,

- 1) Consumentenbond, Netherlands;
- 2) Consumers Association, UK;
- 3) Union Belge des Consommateurs, Belgium;
- 4) Union Fédérale de la Consommation, France; and
- 5) Australian Consumer Association<sup>68</sup>

The modified consumer legislation in this era was inclusive of many other features, for instance; extensive and exaggerated advertising, which exploits various methods governing consumer's choices and shaping the consumption patterns, unsafe products, and unilateral contract terms set by seller, which consumers can't influence.

The introduction of the doctrine of "*Caveat Emptor*"<sup>69</sup> has also propelled the emergence of other independent and social bodies around the world which are concerned with the protection of the consumer rights and interests against defective products<sup>70</sup>. In Malaysia, the Consumer Association of Penang (CAP) is a good example.

In the United Kingdom, consumer law has moved away from the caveat emptor model, with laws passed that have enhanced consumer rights and allow greater leeway to return goods that do not meet legal standards of acceptance. Many companies operating in

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<sup>68</sup> Ammara Waheed, unpublished LL.M thesis IIUI. "Consumer protection in Pakistan" pp.23-23

<sup>69</sup> Caveat emptor is Latin for "Let the buyer beware".

<sup>70</sup> Muhammad Ma'sum Billah (1997), Caveat Emptor Versus Khiyar Al-Ayb., The American Journal of Islamic Social Sciences, Summer 1997, Vol. 14, No. 2, Pgs. 208-230. Available

On: <http://instituteofhalalinvesting.org/content/Derivative%20Instruments.pdf>, visited in June 2011, 3:45 pm

the UK, as well as most consumers based economies will allow customers to return goods within a specified period for a full refund, even if there is no problem with the product. Therefore, to understand the nature of consumer law in UK, we must analyze the common law principal of caveat emptor. Generally caveat emptor is the property law doctrine that controls the sale of real property after the date of closing, but now it is applied almost in sale of all types of properties, goods and products.

The general principles which govern the doctrine of "*Caveat Emptor*" could be highlighted as follows:

- I. The seller is under an obligation to allow the buyer to inspect the goods so as to ensure that they are free from any defect before the conclusion of the sale and purchase contract;
- II. The seller is under no obligation to disclose to the buyer any existing defect in his goods and, hence, the seller has a right to remain silent;
- III. The buyer has no right to return the goods or seek damages for any defect found in the goods after the conclusion of said sale and purchase agreement. This is because, as far as the doctrine of caveat emptor is concerned, the buyer has been given full right and liberty to inspect the goods before the agreement is concluded and any defect found after the conclusion of the said agreement due to careless inspection on behalf of the buyer will not bind the seller in any manner; and
- IV. The seller is also under no duty to inform the buyer of his mistake in his inspection of the quality of the goods to be sold.

The exceptions to the general principles are as follows:

The buyer, after the agreement, has the right to rescind the sale and purchase contract and

return the goods purchased if the defect is purposely concealed by the seller before the agreement. Hence, the seller shoulders full responsibility for any fraud made purposely by him as regards to the quality of the goods to be sold.

Such fraud or misrepresentation in concealing any defect of the goods to be sold by the seller could be done in various ways such as by artificial suggestions, words, and promises or by fraudulent acts or omissions such as active concealment of the defects.

- i. Even though the seller is not bound to inform the buyer of the actual defect of the goods to be sold, he may be under an obligation to do it if so requested by the buyer. If the seller fails to disclose the actual defect of the goods upon such a request, the seller may become liable for misrepresentation if the defect be discovered after the agreement.
- ii. The seller is bound to disclose the defect of the goods which are represented by the seller intentionally if the seller thinks that the buyer has made a mistake as to the actual quality of the goods.
- iii. The seller is also under the duty to disclose the defect of the goods to the buyer before the sale and purchase agreement if the seller has a fiduciary relationship with him. Such relationships include the relationship between a solicitor and his client, a trustee and his *cestuique trust*, a spiritual advisor and his client, a doctor and his patient, a

woman and her confidential managing agent, parents (or guardians) and their child, a creditor and a debtor, and a fiancée and her fiancée, but not a husband and his wife.<sup>71</sup>

## FACTORS FOR THE CONSUMER PROTECTION LAW

Two factors dragged the attention to the development of consumer protection law. Firstly the growth of multinational in the developed countries with pre-decided standard contract<sup>72</sup>. Secondly the UN guideline for the protection of consumer rights guided the members to have modified their laws<sup>73</sup>.

The objective of the UN guidelines mainly is to facilitate the member countries to have such measures to curb the abusive business practices by the business entities national and international level which directly and indirectly affect the consumers. Further the guidelines give the members a path to protect the consumer from any hazard to their health and safety, to development, implement and monitor consumer policies, and to facilitate the consumer to have choices. The enterprises are to follow the national and the international standards for consumer protection; that such provisions must be in accordance with international trade obligation<sup>74</sup>.

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<sup>71</sup> Muhammad Ma'sum Billah (1997), Caveat Emptor Versus Khiyar Al-Ayb., The American Journal of Islamic Social Sciences, Summer 1997, Vol. 14, No. 2, Pgs. 208-230. Available

On: <http://instituteofhalalinvesting.org/content/Derivative%20Instruments.pdf>, visited in June 2011

<sup>72</sup> Analyze the Unfair Contract Terms Act 1997 in United Kingdom; European community directives leading to regulations in member countries for instance, UCTTR 1998.

<sup>73</sup> General Assembly Resolution 39/248

<sup>74</sup> United nations guidelines for consumer protection" Resolution No.39/248, dated: 09/04/1986 as expanded in 1999, UN doc. No A/C /254/L.24, principal E. available at [www.un.org](http://www.un.org)



## 2.2 CONSUMER PROTECTION LAW IN PAKISTAN

Consumer protection in Pakistan, like in all other developing countries, started much earlier. Pakistan inherited consumer legislation from the pre-independence period, especially laws developed in the period of Ala-u-Din Khilji (1296AD-1316AD) during Delhi Sultanate period. He introduced the consumer laws related to strict price-control measures and established separate shopping centers in Delhi for many food items. Sultan appointed market controllers and secret inspectors to submit independent report on price violation. The shopping centers were also under the control of commerce ministry that is why every merchant were to register to the commerce ministry of commerce.<sup>75</sup>

Currently, in Pakistan two kinds of legislation are available for Consumer Protection.

1. All inclusive provisions which protect consumer indirectly, including Sale of goods Act,1930, Pakistan Penal Code1860, Contract Act,1872, Dangerous Drugs Act,1930, Sale of Goods Act 1930.
2. Special legislation which are made mainly for the protection of consumer such as Islamabad Consumer Protection Act 1995 and NWFP Consumer Protection Act 1997 etc.<sup>76</sup>

The Pakistan penal Code 1860, the Dangerous Drugs Act, 1930 and the Sale of Goods Act 1930 were the enactments of that time to control trade and the law & order situation and

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<sup>75</sup>Waheed, Ammara, LL.M thesis (unpublished), Consumer protection in Pakistan, p.6

<sup>76</sup>The NWFP Consumer Protection Act was passed in 1997, The Baluchistan Consumers Protection Act in 2003, then The Punjab Consumer Protection Act in 2005 and finally the Singh Consumer Protection Ordinance in 2007, Sindh consumer protection Ordinance lapsed and not yet been passed by the respective provincial assembly.

less focused on consumer protection usually provided to citizens. Pakistan is still striving for a strong and independent consumer policy and specific consumer legislation. Half of our history is under the martial law, which not only suppressed the human rights but also curbed consumer movements<sup>77</sup>.

The earlier legislation in Pakistan treating the consumers is deficient in express consumer welfare thinking. For example, Pakistan has two kinds of anti-trust or price-fixing legislation<sup>78</sup>, one which is directly related with anti-trust or price fixing matters like “Price Control and Prevention of Profiteering and Hoarding Act, 1977(PCPPHA), while the other indirectly deals with price fixing and specifically with restrictive trade practices like, Monopolies and Restrictive Trade Practices(control and preservation) Ordinance 1970. These statutes are concerned with consumer related issues but there is no express provision for consumer participation in it. Consequently consumers as an independent and interested party excluded in price fixing process and the matter dealt with from a governmental perspective. The decisions under these statutes are mostly under the pressure of powerful multinational suppliers.<sup>79</sup> Food and Drugs laws<sup>80</sup> are comprehensive in nature but they do not cover the issues like false and misleading description of goods and services by imposing criminal sanctions on wrong doers. The other two statutes such as Contract Act, 1872 and the Sale of Goods Act, 1930 are important in this regard but they require the consumer to be vigilant by themselves as “Caveat Emptor” can’t work in this globalize world. These laws are

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<sup>77</sup> Akbar khan, LL.M thesis, “*Consumer Protection in Islamic Law an Analytic Study*” IIUI.

<sup>78</sup> Sikandar Aqeel Ansari and Abrar Hafeez, Consumer Laws in Pakistan, Consumer Rights Commission of Pakistan (2000), Volume II (See Introduction to Volume I).

<sup>79</sup> Ibid.

<sup>80</sup> Drug Act, 1976 and West Pakistan Pure Food Ordinance, 1960

promulgated in order to regulate the commercial practices and consumer protection as such has never been a central theme of these laws.<sup>81</sup>

## 2.3 JURISDICTION OF CONSUMER COURTS IN PAKISTAN

There are many governments' agencies which have substantially incorporated the consumer interests and their policies.<sup>82</sup> In Pakistan there is no unified statute to protect the consumer as none has been introduced under the Federal statutory umbrella. The reason for this is said to be the lack of constitutional Jurisdiction for the enactment of consumer protection's law at the Federal level<sup>83</sup>. Therefore, it is said, this area falls in the Provincial Jurisdiction. While in neighboring country India the federal statutory consumer protection Act "COPRA" was enacted in 1986.

Currently in Pakistan out of five consumer protection laws four are enacted in various parts, namely:

- The Islamabad Consumer Protection Act, 1995 (hereinafter referred to as "ICPA")
- The NWFP Consumer Protection Act, 1997 (hereinafter referred to as "NWFP CPA")
- The Baluchistan Consumer Protection Act, 2003 (hereinafter referred To as "BCPA")

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<sup>81</sup> The Network for Consumer Protection (Needs and element of consumer protection law) Manuscript submitted for Publication.

<sup>82</sup> (Beyond consumption) unpublished raw data The Network for consumer protection.

<sup>83</sup> "It is argued that the Federal Government does not have the jurisdiction to frame consumer protection law as it falls neither in the Concurrent Legislative list nor in the Federal Legislative List given in the Constitution of Pakistan 1973. Article 142, and forth schedule of the constitution of Islamic republic of Pakistan Consumer protection has to be a provincial subject matter. The constitution clearly distributes the legislative powers between the Federation and the Provinces supported by the two lists i.e. forth schedule, which demarcate the domain of legislation by driving a federal legislative list and concurrent list. Consumer Protection is not specifically in either two of these lists hence according to Art.142 all residuary powers to legislate lie with provinces". See the Network for Consumer Protection "Why National Consumer Protection Law in Pakistan". Islamabad: The Network Publications, 2005.

- The Punjab Consumer Protection Act, 2005 (hereinafter referred to as “PCPA”)
- The Sindh Consumer Protection Ordinance, 2004 (lapsed)<sup>84</sup>

Territories and areas falling under the Federal or provincial administration with or without a constitutional status (such as FATA, PATA, and Northern Areas)<sup>85</sup> have no consumer protection laws.

All the above-mentioned laws as a matter of routine prescribe that they “shall come into force at once<sup>86</sup>”, and prescribe the establishment of two institutions:

I. Consumer Courts.

II. Consumer Protection Councils (CPCS);<sup>87</sup>

## 2.4 ESTABLISHMENT OF CONSUMER COURTS

All consumer courts with the exception of ICPA are established under the provision of enacted laws, for example, section 12 of BCPA prescribes for the establishment of consumer courts and empowers the provincial government to confer powers of the court on judicial magistrate to act under the law. According to Section 26 of Punjab Consumer Protection Act 2005 “The Government shall, by notification, establish one or more separate Consumer courts in each district to exercise jurisdiction and powers under this Act. So is the case in NWFP to establish separate Consumer Courts under the provision of the NWFP CPA.

<sup>84</sup>SCPO, ordinance (Sindh Consumer Protection Ordinance, 2004) promulgated in the province of Sindh has since lapsed, as the same was not presented before the provincial assembly.

<sup>85</sup>Gilgit Baltistan

<sup>86</sup>Sec. 1(iii) of NCPA, ICPA, BCPA & sec. 1(3) of PCPA

<sup>87</sup>All laws prescribed the establishment of CPCs at the district and provincial levels except ICPA.

The above three Acts purpose the establishment of consumer courts with the exception of ICPA wherein the court of session has been empowered the Forum of Consumer complaints, in view of the small size of ICT.

#### 2.4.1 CONSUMER COURTS IN ISLAMABAD

Islamabad capital territory is the first of all areas of Pakistan to have enacted a consumer protection law in 1995<sup>88</sup>. Islamabad Consumers Protection Act, 1995 is extended to the Islamabad Capital Territory<sup>89</sup>. The provision of enacted law further prescribed the jurisdiction of the authority/consumer court<sup>90</sup>.

(1) The ICPC shall receive complaints of the consumers and those made on behalf of the council for investigation and determination thereof.

(2) The police, Capital Development Authority and other agencies of the Federal

Government and Islamabad Capital Territory Administration shall act in aid of the Authority for performance of its functions under this Act.

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<sup>88</sup>Secretary General CRCP statement 10<sup>th</sup> January 2007

<sup>89</sup> See section 1 (2) of Islamabad Consumer Protection Act, 1995.

<sup>90</sup> See Section 6 *ibid*

## 2.4.2 CONSUMER COURTS IN KHYBER PUKHTOON KHWA

The aim of The NWFP Consumer Protection Act, 1997 is to provide promotion and protection to the consumer interests. The jurisdiction of NWFP CPA is extended to the whole of KHYBER PUKHTOONKHWA Province.<sup>91</sup> Separate courts have been established under newly incorporated Section 11(A) in 2005<sup>92</sup>. Jurisdiction of Consumer Courts under the NWFP CPA<sup>93</sup>;

(1) Subject to the other provisions of this Act, The Authority having jurisdiction to entertain complaints within the local limits.

(a) The opposite party or each of the opposite parties, where there are more than One, at the time of the institution of the complaint, actually<sup>94</sup> and voluntarily Resides or carries on business or personally works for gain<sup>94</sup>; or

(b) any of the opposite parties, where there are more than one, at the time of the Institution of the complaint, actually and voluntarily, resides, or carries on Business, or personally works for gain provided that in such case either the Permission of the Authority is given, or the opposite party who do not Reside, or carry on business, or personally work for gain, as the case may be, acquiesce in such institution<sup>95</sup>; and

(c) The cause of action wholly or in part arises<sup>96</sup>.

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<sup>91</sup> under Section 1 (ii) of North West Frontier Province Consumer Protection Act 1997

<sup>92</sup> North West Frontier Province Consumer Protection Act 1997 was amended in 2005, section 11(A) were inserted for the establishment of consumer courts at different location.

<sup>93</sup> See Section 12(1)(a)(b)(c) of North West Frontier Province Consumer Protection Act 1997

<sup>94</sup> See section 12(1)(a) ibid

<sup>95</sup> See section 12(1)(b) ibid

<sup>96</sup> See section 12(1)(c) ibid

The NWFPCPA provides a complete procedure and manner for making complaints to the consumer courts / authority<sup>97</sup>. The NWFPCPA further provides detailed procedure for the court to deal with the complaint.<sup>98</sup> The courts are authorized under the Provision of NWFP CPA to award the below punishments<sup>99</sup> as given below;

1. Imprisonment up to 2 years or with fine which may extend to 50 thousand rupees or with both, in case of infringement of different rights of consumers such as information, right to redress, and right to easily availability of basic needs of life etc.<sup>100</sup>
2. Causing any lose to the consumer by false advertisement , misrepresentation, misleading are punishable with Imprisonment which may extend to two years or fine up to 25 thousand rupees or both<sup>101</sup>.

Any person aggrieved by the order of Consumer Protection Court may go for appeal to Court of Session within thirty days after passing of such order.

### 2.4.3. CONSUMER COURTS IN PUNJAB

Jurisdiction of consumer courts Established under the provision of Punjab Consumer Protection Act, 2005(PCPA) is extended to the whole of Provence of the Punjab<sup>102</sup>. The provincial government may establish more than one court to exercise jurisdiction, under the

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<sup>97</sup> See section 13 of North West Frontier Provence Consumer Protection Act 1997

<sup>98</sup> See Section 14, *ibid*

<sup>99</sup> See section 16 *ibid*

<sup>100</sup> On the violation of rights mentioned under Section 10, NWFP CPA 1997 as amended in 2005.

<sup>101</sup> On the violation of rights mentioned Section 7, NWFP CPA 1997 as amended in 2005.

<sup>102</sup> See section 1(2) of Punjab Consumer Protection Act, 2005

provision of the PCPA<sup>103</sup>. currently eleven courts are working in Punjab. A court shall consist of a District judge or an additional District judge, appointed by government in consultation with the Lahore High Court<sup>104</sup>. The PCPA 2005 Provide provision for the jurisdiction of the consumer courts within the territorial limits of Punjab<sup>105</sup>.

- (a) the defendant or each of the defendants, where there are more than one, at the time of filing of the claim, actually and voluntarily resides or carries on business or personally works for gain; or<sup>106</sup>
- (b) Any of the defendants where there are more than one, at the time of the filing of the claim, actually and voluntarily resides, or carries on business, or personally works for gain; provided that in such a case the permission is granted by the Consumer Court or the defendants who do not reside, or carry on business, or personally work for gain, as the case may be, acquiesce in such institution; or<sup>107</sup>
- (c) The cause of action wholly or in part arises.<sup>108</sup>

Consumer protection courts in Punjab are empowered under the provision of PCPA 2005 to award the punishments<sup>109</sup>.

In case of below standard goods/product or services, the court upon receiving complaint may award two year of imprisonment or fine up to one lac rupees or both. If the

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<sup>103</sup>See section 26(1) of Punjab Consumer Protection Act, 2005

<sup>104</sup>See section 26(2), Ibid

<sup>105</sup>See section 27(a)(b)(c), Ibid

<sup>106</sup>See section 27(a), Ibid

<sup>107</sup>See section 27(b), Ibid

<sup>108</sup>See section 27(c), Ibid

<sup>109</sup>See section 32(1)(2), Ibid



court finds the allegation bogus/false and in appropriate against defending party can dismiss the case at any stage, and can fine the plaintiff up to ten thousand rupees to make good the expenses of other party. There may further be additional damages or compensation determined by the court. The consumer court has been given the same powers as are vested in civil court under the Code of Civil Procedure 1908<sup>110</sup>. Furthermore it is stated that proceedings before the court shall be considered proceedings within the meaning of sections 193 and 228 of Pakistan Penal Code 1860 as well as section 195 and chapter XXXV of the Code of Criminal Procedure, 1898<sup>111</sup>. Appeal can be made against the order passed by CPCs within thirty days to the High Court<sup>112</sup>.

#### 2.4.4 CONSUMER COURTS IN BALUCHISTAN

The movement of consumer protection reached the province Baluchistan as the provincial Assembly passed a bill called Baluchistan Consumer Protection Act, 2003 (BCPA). This law brings a sigh of relief for consumers in Baluchistan. The law passed by the provincial assembly which covers many aspects of consumer rights. The BCPA is extended to the whole of Baluchistan. The law empowers the provincial government to establish the consumer courts<sup>113</sup> and further empowers the provincial government to confer powers of the court on judicial magistrate to perform under the law. The courts established under this act enjoy almost the same jurisdiction as the consumer protection courts enjoy in the others

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<sup>110</sup> Especially in matters relating to summons, examination of defendants and witnesses; discovery and production of documents or other evidence Section 30 (3)

<sup>111</sup> Section 193 of P.P.C. allows punishment for fabrication and giving of false evidence. Section 228 stipulates punishment for intentional insult to a judicial person or causing interruption in his work. Section 195 of Cr. P.C. provides procedure for prosecution for contempt of public functionary or for giving false or fabricated evidence

<sup>112</sup> See Section 32 and 33 of PCPA, 2005

<sup>113</sup> See Section. 12 of Baluchistan Consumer Protection Act 2003

provinces<sup>114</sup>.

BCPA subsequently amended on 18<sup>th</sup> Aug.2007,through the amendments BCPA is considered as a model consumer protection law in Pakistan, as the amendment came after conducting many important steps like public and experts' opinion set forth taking these amendments.

In the amendments a specialized capacity laboratory has been established with purpose to check the quality and stander of a product available in the market.<sup>115</sup> For the performance of the functions of the BCPA a consumer protection Fund was to be established<sup>116</sup>. However, most importantly BCPA does not allow any authorized officer to inspect any place except with permission of the court<sup>117</sup>.

## **2.5 COMPETITION REGIME IN PAKISTAN**

Pakistan maintained in the early years after its independence economy called "Mixed Economy" the combination of both public and private sector. This combination played an important role to generate growth in the economy, provide employment opportunities and supply consumers goods and services. Public sector monopolies emerged in a number of key sectors i.e. postal service, banking, railways and telecommunication etc. due to lack of incentives and capacity of the private sector.

In 1960s the Government of Pakistan started the process of industrialization in the

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<sup>114</sup> See Section .15 of Baluchistan Consumer Protection Act 2003.

<sup>115</sup> Sec.10(6) Baluchistan Consumer Protection (Amended Act, 2007)

<sup>116</sup> Sec.9-A ,Ibid

<sup>117</sup> Sec.22-A ,Ibid

which much more importance were given to the public sector and parallel emphasis on private role in the economy was also given to create an environment of Competition in economic activity in specific sector. But this policy of industrialization does not come with fruitful results and the dream of a competitive market converted into a nightmare. The policies, such as Trade liberalization, privatization, investment and Competition legislations foster the culture of Competition in economy. The concentration of economic power was in few hands<sup>118</sup> in 1960 which necessitated the introduction of Competition law in Pakistan.

In the economic History of Pakistan 1960s is considered the era of High economic growth. Special incentives were given to the private sector which caused the expansion of industrial sector. This unprecedented growth brought the problem concentration of wealth in few hands. In fact the concentration of economic power necessitated the Competition regime in Pakistan. In the late 1960s, Z.A. Bhutto party capitalized of popular discontent with this situation and engaged in nationalization.

## ESTABLISHMENT OF MONOPOLY CONTROL AUTHORITY

In 1970 the Federal Government circulates a draft of anti-monopoly and restrictive trade practices law. This law was commented by the expertise, chamber of commerce and industries and the public. Due to the socio-economic development of Pakistan, at that time, was pursuing the policy of encouraging private sector. The "Monopolies and Restrictive Trade Practices (control and preservation") was Promulgated, which came into force on August 17, 1971.<sup>119</sup>

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<sup>118</sup> It was evident from the fact that 66% of the industrial assets and 87% of the banking and insurance assets in the country owned and controlled by only 22 families.

<sup>119</sup> Competition law report by Shahrukh Rafi Khan

Monopoly Control Authority (MCA) was established under the provision of Monopolies and Restrictive Trade Practices (control and preservation), with the aim to solicit suggestions to improve the regulatory framework<sup>120</sup>. It was a quasi-Judicial organization to administrator this law. The administrative structure of the MCA was divided into four departments;

- Registration;
- Information management system;
- Research and investigation; and
- Administration.

It comprises three members including chairman appointed by Federal Government for a term of five years. The authority was mandate to administer the Competition law of the country. Also to perform the functions of assisting the Government in formulation of Competition policy and control undue concentration of economic power, development of unreasonable power, unreasonable restrictive trade practices, to conduct enquires and advises the person or undertakings.

The MCA got functional in the year 1972. The government again re-initiated the policies of the early 70s and started the privatization of nationalized industries in 90s. New liberal policies were adopted through which the foreign direct investors and domestic enterprises were encouraged to take part in the economy growth. Pakistan also took the responsibility to reduce and erase the tariff and non-tariff barriers by signing the WTO agreements<sup>121</sup>.

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<sup>120</sup> Amjad Saeed, Khawaja "Monopolies and restrictive trade practices" article available on: [http://findarticles.com/p/articles/mi\\_hb092/is\\_n4\\_v24/ai\\_n28625775/](http://findarticles.com/p/articles/mi_hb092/is_n4_v24/ai_n28625775/) visited on: 18/06/2011, 9:45pm

<sup>121</sup> GATT members, available On: <http://www.worldtradelaw.net/uragreements/gatt.pdf>

This development compelled the government to revive the Competition law as to ensure domestic Competition and protection of consumer interest. These processes brought back the monopoly control authority in its footsteps and were given independent status with the mandate to administer MRTPO; 1970. As a first step the authority conducted a survey for collecting necessary data from the enterprises about their assets. To review of the MRTPO 1970 Commission was established. The commission delivered its recommendations for the amendments. In 1980 the cabinet approved the recommendations and passed to Ministry of law and justice. The ministry in august 2002 suggested that there is no need to change the existing law, except approved the amendments into it<sup>122</sup>. The Ministry further asked the authority to submit a proposal of capacity building.

The MRTPO was amended by the government,<sup>123</sup> and the privatized public enterprises were made excluded from the jurisdiction of the Monopoly law, with a purpose to accelerate the privatization process. The step was though in good faith but it further narrowed the applicability of anti-monopoly law. With the implementation of the MRTPO 1970, MCA was not effective as it was due socio-economic political constraints. MRTPO was made applicable only to private sector while public sector was excluded from its jurisdiction. Restricted trade practices were slipped out of its ambit. So was the case with several services including communication, real estate, shortage, money changing, medical, legal education accounting etc. Implementation mechanism was made very weak as there were very low penalties for non-compliance.

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<sup>122</sup> Formal presentation was made to Finance Minister in Aug 2002.

<sup>123</sup> In Sep. 2002 by President of Pakistan

## 2.5.1 ESTABLISHMENT OF THE COMPETITION COMMISSION OF PAKISTAN

Due to evolutionary changing in national and global economic environment, the MRTPO, 1970 became inadequate to the meet Competition issues effectively on the following grounds;

- The MRTPO, 1970 law was outdated to modern market economy;
- Large limitation and exception in the law; and
- New reforms, a policy that liberalizes the economy and encourages private sector involvement in economy.

Realizing current economic challenges and to promote and protect Competition the government through Ministry of Finance and MCA with the collaboration of World Bank and DFID, UK started work on a new Competition law<sup>124</sup>. Finally, approved Competition Ordinance 2007 later transferred to the Competition Commission Act 2010, which replaced MRTPO. CCP is now an independent *quasi-judicial* body working to ensure for the healthy competitive environment for the growth of economy. The introduction of Competition Act and establishment of CCP are considered as Modern Competition regime of Pakistan. Major aim of the regulation was to provide a legal framework to build business atmosphere based on healthy Competition for improving economic efficiency, developing competitiveness safeguarding consumer interests from anti-competitive practices. The Competition Act and 2010 cover the present economic realities as well as to heal the deficiencies of the MRTPO connected to definitional aspects, penalties, procedural and other matters.

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<sup>124</sup> A project Under second Generation reforms initiatives

The Commission disallows the abuse of the dominant position in the market, anti-competitive agreements and deceptive market practices. It also looks closely the mergers of the undertakings which could result in lessening the Competition. The Commission will take advocacy as a tool for the promotion and development of "Competition Culture" in the economy. In line with modern Competition regimes, the Commission adopts a "*Carrot and Stick*"<sup>125</sup> approach- where the law provides strict punishments for the non-compliance, combine with fine and imprisonment; while the Carrot is sweetened with soft provisions that may lead to no strict punishments, on certain conditions. The Competition is authorized to conduct inspection to maintain high evidence against the cartel<sup>126</sup>.

## 2.5.2 COMPETITION LEGISLATION IN PAKISTAN

Pakistan is poor country but its economy is the 27<sup>th</sup> largest economy of the world because of its purchasing power, economic review indicate that growth rate of Pakistan better than global average growth rate which is 7 per cent per year till 2007<sup>127</sup>. The economy of Pakistan with the help of foreign investment and international organization like IMF progressed. Introduction of macroeconomics reforms and the privatization banking sector were also among the factors for the growth of economy in 2000. Due to global recession, political and economic instability the growth of economy was affected in years 2009, which caused high inflation and unemployment. To overcome the challenges of the global scenario and economy, it is needed to have a better market and encourage the involvement of the foreign investment to use the scarce resources of the country for the development of the

<sup>125</sup> an idiom that refers to a policy of offering a combination of rewards and punishment to induce behaviour

<sup>126</sup> "Introduction of Competition Commission of Pakistan" available on Official website: <http://www.cc.gov.pk>, sighted on 22/05/2011.

<sup>127</sup> [www.economywatch.com/economic-review/pakistan.html](http://www.economywatch.com/economic-review/pakistan.html)

economy. A better market can only be possible if there is a competitive environment and consumer protection. An effective Competition law can serve for this purpose to secure both the Competition and consumer rights. The aim of Competition law is to protect public interest and promote competitiveness. Public interest is a broader concept than consumer interest and it goes beyond the concept of emerging entrepreneurship and community constituencies. The promotion of competitiveness creates opportunities in the market (preventing market dominance by few or one), which will encourage foreign investment, because investors always avoid markets where monopolies flourish<sup>128</sup>.

Broadly defined Competition and market based economies refer to a situation in which firms or sellers independently strive for buyers. Patronage to achieve particular objective, e.g. profit, sale or market share. Competition is viewed as an important process by which firms are forced to become efficient and offer greater choices of products and services at lower price. It gives rise to increase consumer welfare and efficiencies. It includes the concept of dynamic efficiency by which firms engage in innovation and foster technological change and progress<sup>129</sup>.

### 2.5.3 COMPETITION LAW AND POLICY OF PAKISTAN

Gentle revolutions are going through the world in recent years. In which, many countries are moving to adopt Competition law. More than half have prepared completion law or in the position to introduce it in some time in the near future, e.g. Finland new

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<sup>128</sup>Nauman Farrukh "*Competition law in general*"

<sup>129</sup> Glossary of industrial organization economics and competition law, compiled by R.S. Khemani, adjunct professor, faculty of commerce and business administration, university of British Columbia, Vancouver, B.C. Canada and B.M. Shapiro. Principal school of community and public affairs, Concordia University, Montreal, P.Q. Canada.



Competition Act enter into force in 2011, The Malaysian Competition Act, 2010 is implemented in January 2010 and the Hong Kong Government submitted the long waited Competition Bill for debate in coming 2010-11 Session. The purpose is to maximize the chances of promoting competitive market and to protect consumers<sup>130</sup>.

Competitive market environment needs to have a strong consumer protection law and Competition policy. In Pakistan legislation and statutes were missing or were inadequate on the issue of consumer protection. Consumer had no redressal to their grievances. Model consumer law drafted by non-governmental organizations<sup>131</sup> and presented to the governments both in the Federal and Provinces. A good consumer law can help in making the competitive environment in the market, as every business entity strives to deliver the best product and services to stay at the market. Markets may fail for a number of reasons, with anticompetitive practices, including collusion<sup>132</sup> and mistreatment of market dominance being common and important causes. The broad objective of Competition policy is to make markets work better; Working better involves efficiency and fairness<sup>133</sup>.

The Competition law was re-promulgated in the year 2010, to regulate the Competition and to remove the unethical trade practice and reduce the scope for corruption in the market. The Act is with the aim of consumer protection from the monopoly and cartelization in the market. This Act also rendered many powers to CCP, to prohibit abuse of market dominance in the market. The CCP a statutory body, its ordinance was promulgated

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<sup>130</sup> *Fighting Poverty and Economic Stagnation in LDCs through Competition Law & Policy*, Article published in *Quarterly Newsletter "ReguLetter"*; vol. 11, No.3/2010, available at: [www.cuts-ccier.org/pdf/reguletter3-10](http://www.cuts-ccier.org/pdf/reguletter3-10), visited on 18/05/2011.

<sup>131</sup> Model Consumer Protection Act 2000 by CRCP.

<sup>132</sup> Collusion can result in prices being fixed at levels that are higher than are needed to continue the provision of adequate supplies and in the division of markets geographically or by customer type. Bid rigging is a fairly common problem, and that can significantly increase the cost of public procurement.

<sup>133</sup> N. Meetarbhhan Kiran "*Competition Law: Doing Business differently*", article published by Competition Commission of Mauritius. That appeared on [www.lexpress.mu](http://www.lexpress.mu), on August 13, 2010, 12:00pm

three times from 2009 to 2010. It is a defunct entity since August 14, 2010 as the Competition Ordinance lapsed after completing its three months. Legislation on the Competition law is not sufficient but a lot more as the wish of the government to enforce the law in its true spirit to provide the consumer legal cover against the corporations and anti-competitive activities.

## 2.6 COMPETITION COMMISSION AND ITS JURISDICTION

Competition Commission of Pakistan established under the provision of Competition Act, 2010<sup>134</sup>. Major aim of the law was to provide for a legal framework to ensure a business environment based on healthy Competition for improving economic efficiency, encourage competitiveness and protecting consumer from anti- competitive practices. The Competition Commission of Pakistan is an independent and quasi- regulatory, quasi-judicial body. The commission is a body corporate with perpetual succession; common seal and it can sue and can be sued before any court having the jurisdiction.<sup>135</sup> The commission will consist of not less than 5 and not more than 7 members appointed by the Federal Government. Among the members there will be two from the Federal Government. Integrity, expertise, eminence and experience of ten years in the industries, commerce, finance, accountancy, law and public administration are the qualification for the membership.<sup>136</sup> The federal government is obliged to use its best efforts to enhance, maintain and promote the independency of the commission.

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<sup>134</sup> See section 12 of Competition Act 2010.

<sup>135</sup> Chapter iii section 12(2) CCA 2010

<sup>136</sup> Section 14 of CCA2010

## 2.6.1 FUNCTIONS AND POWERS OF THE COMMISSION:

Competition Act provides provisions for the powers, functions, and procedure and inquiry proceedings administered by the Competition commission of Pakistan<sup>137</sup>.

- To initiate proceeding and make orders in case of contravention of the Act;
- To conduct studies for the promotion of the Competition in all sectors;
- To conduct inquiry necessary for the purpose of this Act;
- To give advice to undertakings asking for the same;
- To engage an order to make programmes for Competition advocacy and
- To take other necessary actions for the purpose of this Act.

The broad objectives of the Competition law are to provide measure against **Undue Concentration of Individual Economic Power, Prohibited Agreements<sup>138</sup>, Restrictive Trade Practices, Monopoly Power and Merger and Acquisition**. The Commission is empowered to take cognisance of factors endangering the competitive environment in the market e.g. Commission took cognisance of prohibited agreement against Wateen Telecom (Pvt.) Limited (“Wateen”) and Defence Housing Authority (“DHA”), for *prima facie* violation of provision of the Competition Act, 2010. The core issue in this case was that Wateen and DHA have entered into an agreement for the provision of telecommunication and media services in the area controlled by DHA in Lahore, which can result into

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<sup>137</sup> See sections 28, 29, 30, 31, 32 of Competition Act 2010

<sup>138</sup> See section 4 of the Competition Act 2010

preventing, restricting Competition within the market, thereby violating Section 4(1) and Section 4(2) (b) of the Act<sup>139</sup>.

The Commission is empowered to pass any order against any person/ authority in respect of any contravention of the Act. The commission is itself restricted to follow the procedure set by the provisions of the Act<sup>140</sup>.

The Commission will be considered as civil court under sec.195 and chapter XXXV of the Code of Criminal Procedure of 1898. And any proceeding before the commission is judicial proceeding within the meaning of Pakistan Penal Code, 1860<sup>141</sup>.

The Commission is empowered under the provisions in chapter 5 of the Competition Act, 2010 to award penalties in case of any contraventions of the Act. The Act further provides detailed grounds for the punishments and its pecuniary limitations to the Commission<sup>142</sup>, which are;

- I. An amount of not exceeding 7.5 million or an amount not exceeding 10 % of the annual turnover of the undertaking in case of contravention of any provision of Chapter II.
- II. An amount not exceeding one million rupees in case of non-compliance to any order of the Commission.
- III. The Commission may also ask an undertaking to pay a sum per day which may extend to one million rupees on such violation which's nature is continues.

<sup>139</sup>(File No. 09/Reg./Comp/CAP/CCP/2010) available at <http://www.cc.gov.pk>

<sup>140</sup>See section 33 of the Competition Act 2010

<sup>141</sup> See sec.193 and 228 PPC, 1860

<sup>142</sup>See section 38(1) & (2) of the Competition Act 2010

IV. The recovery of the fine imposed by the Commission is collected in the manner prescribed in the Act, 2010<sup>143</sup>.

V. Any party failing to comply with any order of the Competition Commission be considered to have committed criminal offence and may be punished with imprisonment or fine which may extend to twenty five million rupees or with both.

## APPEAL

An appeal can be made against the decision of the commission to the Appellate bench within a month or thirty days. And against the appellate bench the appeal lies within two months or Sixty Days to the Supreme Court of Pakistan<sup>144</sup>.

## CONCLUSION

The introduction of the Competition law helps in washing doubts over the future of Pakistan's anti-trust Law and can boost up the confidence of supporters and those who are fighting against the anti-Unfair market practice. Ever since the Law has been promulgated the corporations are appeared as strong opposition to it. The Government must ensure the protection of Consumer through providing legal cover against the corporations and anti-competitive practices. The Government must also ensure to keep the Commission from all sort of attribute which affect the performance of the Commission.

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<sup>143</sup>See section 40 of the Competition Act 2010.

<sup>144</sup>See section 42 & 44 of the Competition Act 2010.

## Chapter 3

# FUNDAMENTAL PRINCIPLES GOVERNING THE REGULATORY BODIES

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The man's life is not simple as it was in the past. One's can't hunt for his food to survive. His basic needs of life are provided to him by others. Who are actually those "Others"? They are service providers and manufacturers who provide all the needs of life now a days. Simply man's life is very much attached to those service providers and manufacturers rather it can't survive without their role. The formation of an organization/body is a need in the aforesaid situation to protect both the consumer and service providers' reciprocal rights.

A regulatory agency (also regulatory authority, regulatory body or regulator) is a public authority of the government exercising autonomous authority from the government over specific area of the human activity. An independent regulatory authority mainly deals in that specific area of administration, regulation or legislation; codifying rules and oversees the benefits of public at large. These regulatory bodies play an important role in the implementation of the directive and the establishment, development of the competitive market in the relevant sector<sup>145</sup>.

Today the presence of regulatory bodies has become a subject of public concern all

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<sup>145</sup>Larsena Anders, Lene Holm Pedersenb, Eva Moll Sorensena and Ole Jess Olsenc "*Independent Regulatory Authorities in Europe*", P-2, AKF, Institute of Local Government Studies – Denmark,

over the world. A number of countries have laws and bodies to regulate deceptive and unfair trade practices, Competitive Environment and to provide adequate consumers protection like UK, USA, Australia and India etc.

In the last few years there have been significant changes to disciplinary regimes of the various regulatory bodies. There have been a number of factors behind these changes<sup>146</sup>.

*First*, a chain of high-profile cases involving consumer's rights, unfair trade practices, Competition and monopoly in market.

*Second*, there has been judicial disapproval and criticism of the disciplinary procedures of the regulatory bodies. These criticisms have been reinforced and broadened with the arrival of the Human Rights Act, 1998<sup>147</sup>. One of the principle issues has been the problems (and potential for unfairness) arising where a regulatory body is at the same time investigator, prosecutor and judge.

*Thirdly* the principal of the need for change was embraced as to oversee and promote the functions of the regulatory bodies for a good professional and effective self-regulation. This drive for change has resulted in an extensive overhaul of the disciplinary procedure of the regulatory bodies<sup>148</sup>.

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<sup>146</sup> Kennedy Andrew "*The role of the regulatory bodies*" available at: [www.1cor.com](http://www.1cor.com), last visit: 3/05/2011, 7:20pm

<sup>147</sup> The UK Human Rights Act 1998 has the potential for enforcing a radical culture change, in terms of both the number of claims made to local authorities, and also the level of accountability of Members and officers. The driving force behind this change is the introduction of cash sums for unjustified interferences with people's human rights, and the potential for convenient local adjudication of claims about human rights

<sup>148</sup> Op.cit, Ibid

### 3.1. FUNDAMENTAL PRINCIPLES OF REGULATORY BODIES

Regulatory bodies or regulators are to be run with some fundamental principles. Those principles are to be equally observed by all the regulatory bodies without any restriction of their sectors and boundaries. The main principles governing the regulatory bodies are the exclusion of interference of the state in term of supervising the administration of specific sector mandate i.e. telecom, power, oil & gas and media etc. Having said that principle of governing the regulatory bodies with respect to protecting consumer interest including the rights of others entities in the market and the Competition in the relevant sector.

The objective of fundamental principles is to improve regulatory bodies' ability to adapt changes to compete with global and local challenges. Better guideline and structural changes are necessary complements to sound fiscal and macroeconomic policies. Constant and far-reaching social, economic and technological<sup>149</sup> changes require governments to consider the cumulative and inter-related impacts of regulatory regimes, to ensure that their regulatory structures and processes are relevant and healthy, transparent, accountable, effective and forward-looking. Regulatory reform is not a one-off effort but a dynamic, long-term, multi-disciplinary process<sup>149</sup>. Some principles which are the hallmark of the regulatory bodies are as under:

### 3.2. INDEPENDENCE

The role of the independent regulatory bodies is very vital in the establishment, implementation of directives and development of competitive market. The example of

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<sup>149</sup>OECD guiding principles for regulatory quality and performance, available: <http://www.oecd.org/dataoecd/19/51/37318586.pdf>, visited on 8/6/2011, 10:10am



liberalization can be seen in the member states of the EU, like Denmark<sup>150</sup>, where regulatory commissions have been built on corporatist representation, the market participants can no longer have seats in the regulatory commission. In other member states, like France, where state-owned public monopolies have prevailed, the liberalization process recommended a clear separation of the state as regulator as the state is owner of public utilities, either through privatization or through the establishment of independent regulators or both. Majority of the EU member states have now adopted to create sector specialized independent regulators, combining the independence from commercial interests with separation from the ministerial administration.

## THE CONCEPT OF REGULATORY INDEPENDENCE

There are many different recommendations by expert institutions and other academics regarding independent regulators and regulatory independence. Their connection to theory is not always clear, but looking at them in retrospect they try to install regulators with trustworthiness and in this tried they focus on various threats. Fesler's definition captures what most authors seem to understand by regulatory independence in the field of utility regulation. He says that regulatory independence is often used in the meaning independence of control by the government and legislature, independence of control by utility companies, and independence in the sense of integrity and impartiality (Fesler quoted in Mitnick, 1980:69). Fesler's definition stresses the independence not only from government, but also from the regulated parties, ruling out traditional corporatist arrangements. The emphasis on

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<sup>150</sup>Member States shall designate a competent authority, which must be independent of the parties, to settle disputes relating to the contracts and negotiations in question. In particular, this authority must settle disputes concerning contracts, negotiations and refusal of access or refusal to purchase. (Article 20, paragraph 3, European Parliament and Council, 1996).

intangible qualities such as integrity and impartiality is quite in line with other scholars Like Stern (1997) and Teitgen-Colly (1988: 26-27), who point to the role of independent regulators in balancing interests and making all parties understand the rules of the game.

In his definition from 1997, Smith mentions three dimensions of regulatory Independence, which are much in line with Fesler's stress on independence from Government, independence from stakeholders and integrity (Smith, 1997).

Regulatory body can be independent in true sense when it is free from the influences of the below mentioned three dimensions.

### 3.2.1 INDEPENDENCE FROM GOVERNMENT

When it comes to the first dimension of independence – its relation to the government and the legislature the desired independence from the government and legislature is surrounded by some limitation as it is part of state machinery. Even with a formal independence a regulatory body cannot be fully secured from the government influence e.g. by cutting their budgets or dismissing unpopular regulators. However, some measures have been devised to support the arm's-length relationship with the political system<sup>151</sup>. These measures are the exception from the government's discretionary powers and clearly defined and exclusive competencies including the right to impose sanctions. Other measures address the risk of informal pressure from the political authorities, like measures include irreversible appointments of regulators for fixed terms and prevent appointment and removal from office on political grounds. To overcome a situation where the regulator takes directions from the

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<sup>151</sup> Stern, 1997; Stern and Holder, 1998; Majone, 1996; OECD, 2001; Greve, 2002 available at <http://www.sessa.eu.com/documents/wp/D73.1-Larsen.pdf>

appointer in order to get reappointed, appointment mechanism, which engage several parties (e.g. parliament and government) and provisions against reappointment can be made. An organization can be independent only when it is autonomous. The autonomy of organization depends on the availability and control of its resources. In this case, a constant source of funding, e.g. by a fee levied on the regulated industries, and the authority to control appointment, allocation, promotion, dismissal and salary policies in relation to the regulatory authority's staffs are important resources<sup>152</sup>.

### 3.2.2 INDEPENDENCE FROM STAKEHOLDERS

The second dimension of the independence is the relation with stakeholders. The various study discovered three different threats to the independence of the regulators.

*Firstly*, there is a possibility that the regulated parties may »take into control« the regulators, e.g. by holding up the prospect of well-paid jobs if the regulators are compassionate to the views of industry (Laffont and Tirole, 1993; Stigler, 1971; Peltzman, 1989).

*Secondly*, there is a possibility that the industry can influence the regulator due to the asymmetric access to information (Mitnick, 1980).

*Finally*, there is a risk that the regulator's independence is in a give and take position by the regulator's private interest in the sector, e.g. when the regulator holds stocks in a unit trust

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<sup>152</sup> Anders Larsena, Lene Holm Pedersenb, Eva Moll Sorensena and Ole Jess Olsenc "Independent Regulatory Authorities in Europe", P:9, published by: AKF, Institute of Local Government Studies – Denmark,

investing in the regulated industry.

The independence of the regulatory can be safeguard against industry by taking some measures as recommended by some theorist (Stern, 1997; Elforsyningsloven, 1999; Majone, 1996; OECD, 2001).

In those measures, some of them are related to good governance, e.g. it is general practice that regulators cannot have personal benefit in industry. In some cases, there are formal rules barring informal discussions of pending cases with any of the parties engaged. There can also be rules omitting the employment of regulators in the regulated industry prior to, during and post their term in order to enlarge the relational distance between the regulator and the regulated parties and to prevent that regulators defend certain companies against strict regulation in order to get a good job in the sector afterwards. Some of these rules can be difficult to honor in the real world, where there are usually a limited number of people with insight in the quite technical issues involved in regulation<sup>153</sup>.

### 3.2.3 INDEPENDENT IN DECISION-MAKING

The third dimension of the independence of regulatory bodies deals with the scope of decision making. There is a distinction between regulatory agencies that are truly regulatory and possess actual decision-making powers and agencies that are merely consultative (Colliard and Timsit, 1988; Demarigny, 1996; Dupuis, 1988). Thus, according to this situation, independent regulatory authorities must hold exclusive decision-making powers. Ideally, independent regulatory authorities do not produce services or perform ordinary administrative tasks nor do they engage in policy-making. Instead, they are given the power

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<sup>153</sup> Ibid P:10,

to lay down rules, regarding, for example, the rules about tariffs for network access, in order to achieve the objectives set out in the legislation (Teitgen-Colly, 1988:26).

In addition to this task, the independent regulators often perform as a board of complaints and settle disputes between the regulated parties, protect consumers and establish competitive environment. Thus, the independent regulators may mix three functions that are normally separated: rule making, rule application and litigation (Demarigny, 1996).

Independencies for the regulatory bodies are the core principle means the exclusion of any directly or indirectly external or internal attributes of the governments in the affairs of the regulatory body. The government is to facilitate the regulatory bodies by providing with sufficient funds, security and full support to achieve their allotted goals rather than using them for their political purposes to spoil their main goal<sup>154</sup>.

### 3.3 TRANSPARENCY AND FAIRNESS

The commercialization demands the need for some more secure environment from the regulatory agencies around the globe. As regulation become more complicated, it becomes challenging to guarantee the appropriateness and clarity of the pathway to be taken in order to get regulatory approval. As part of this effort, the need for transparency in regulatory processes and decision-making became subject to considerable attention<sup>155</sup>. The term transparency is used in variety of meanings according to the context. In the context of regulatory agency and for the purpose of this principle we have adopted the definition of

<sup>154</sup> Anders Larsena, Lene Holm Pedersenb, Eva Moll Sorensena and Ole Jess Olsenc "Independent Regulatory Authorities in Europe", P:11, published by: AKF, Institute of Local Government Studies – Denmark

<sup>155</sup> a survey analysis of transparency in three Asian regulatory agencies responsible for medical products by Martin Solberg (A Dissertation Presented to the faculty of the USC school of pharmacy university of southern California In Partial Fulfilment of the Requirements for the Degree doctor of regulatory science may 2011)

finkelstein that defines the term "Transparency" by stating,

**"We use transparency to describe those policies that are easily understood, where information about the policy is available, where accountability is clear, and where citizens know what role that they play in the implementation of the policy".**

*(Finkelstein 2000)*

Additionally, the transparency became a subject of international attention, for instance, the US and the EU are developing bilateral activities to improve the transparency and efficiency in the regulatory process. One of the important fundamental principles for the regulatory body is transparency. Transparency results fair market where the interests of all stakeholders are protected including consumer, manufacturer and service providers. The regulatory bodies have to ensure transparency by dealing all the parties in the sector equally without discrimination. Equally dealing of the parties will ensure fairness in the market which will indirectly bring the protection of the investor. The laws, regulations and rules which ensure that the investor is protected also tend to ensure that the market is fair.

Sharing of information with all stakeholders of the sector is substantial part of the transparency of the market. The speed and timing of sharing information to all stakeholders of the market is also includes in the transparency. The information must be conveyed to them in real time<sup>156</sup>.

Transparency in laws and rules dealing with different entities without discrimination or with any other influence from internal or external attributes of the governments is essential in promoting justice. The regulators' each act must be based on transparency; it should be

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<sup>156</sup>ibid

exercising all its functions and duties objectively and stated. The following principle must be existed in regulatory body to be called transparent.

1. They should have clearly and objectively stated responsibilities;
2. The Regulator should have operational independence and accountability in the exercise of its powers and functions;
3. They should adopt clear and consistent regulatory processes and
4. They should observe the highest professional standards including appropriate standards of confidentiality.

For an effective regulatory body it is necessary to be transparent with implementation of policies in term of its procedure as available in statute only then can it stay in today's global market and compete.

### 3. 4 PROMOTION OF INVESTMENT AND ENCOURAGE COMPETITION

Competition is considered to be one of the basic principles of a regulatory body. The regulatory bodies are in fact formed to nourish competitive environment and to eliminate the unfair trade practices/ monopoly in the market. Competition in market refers to a situation in which firms or sellers independently strive for buyers, patronage, to achieve particular objective, e.g. profit, sale or market share. Competition is viewed as an important process by which firms are forced to become efficient and offer greater choices of products and good quality of services at lower price. It gives rise to increase consumer welfare and efficiencies. It includes the concept of dynamic efficiency by which firms engage in innovation and foster

technological change and progress<sup>157</sup>. The aim of regulatory body is to protect public interest and promote competitiveness. Public interest is a broader concept than consumer interest and it goes beyond the concept of emerging entrepreneurship and community constituencies. The promotion of competitiveness creates opportunities in the market (preventing abuse of market dominance by few or one), which will encourages foreign investment, because investors always avoids markets where monopolies flourish<sup>158</sup>.

Competitive markets operate on the basis of a number of assumptions. When these assumptions are dropped - we move into the world of imperfect Competition. The regulatory bodies are to ensure the following assumptions<sup>159</sup> to ensure competitive environment in the market, these assumptions are;

1. Many suppliers each with an insignificant share of the market – this means that each firm is too small in relation to the overall market to affect price by means of a change in its own supply – every individual firm is assumed to be a price taker.
2. The same output produced by each firm – in other words, the market supplies homogeneous or standardized products that are perfect alternate for each other. Consumers perceive the products to be the same.
3. Consumers have perfect knowledge about the prices all sellers in the market charge – so if some firms choose to charge a price higher than the ruling market price, there

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<sup>157</sup> Khemani, R.S. & B.M. Shapiro "Glossary of industrial organization economics and competition law", a joint research paper, published by university of British Columbia, Concordia University, Montreal, P.Q Canada

<sup>158</sup> Nauman, Muhammad Farrukh "Competition law in general",

<sup>159</sup> Article : perfect competition - the economics of competitive markets available on <http://tutor2u.net/economics/content/topics/competition/competition.htm>

<sup>159</sup> "assessment of regulatory effectiveness IAEA", VIENNA, 1999, Printed by the IAEA in Austria



will be a big substitution effect away from this firm<sup>160</sup>.

4. All the industry participants and new entrants must have equal access to resources (technology, other factor inputs) and have equal opportunity to improve in production. Technologies attained by one firm can spill-over to all the other suppliers in the market.
5. The market should be open to new entrant and should face no hurdle for entry or exit, it means that the market is open to Competition from new suppliers – this affects the long run profits made by each firm in the industry. The long run balance for a perfectly competitive market occurs when the marginal firm makes normal profit only in the long term.
6. No externalities in production and consumption so that there is no divergence between private and social costs and benefits<sup>161</sup>.

The surety of Competition in the market can have a very broad range of benefits for the market. It brings direct effects on the consumers as he gets best quality of products and services on low charges, which is a direct relief to consumer.

*Secondly* the entities working in the market such as in telecom sector, power, media, oil and gas is secured with respect to pricing and rights.

*Thirdly* Competition brings new investment in the market. Especially new investors are encouraged to enter into the market. Foreign and domestic investors feel secure which cause growth of the economy. In Telecom and the Media sectors in Pakistan the best examples of

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<sup>160</sup>ibid

<sup>161</sup>"Perfect Competition - The Economics Of Competitive Market" Article available on <http://tutor2u.net/economics/content/topics/competition/competition.htm>

Competition and investments can be found, where huge number of new entrants was recorded in last decade.

### 3.5 EFFECTIVENESS OF THE REGULATORS

The term 'Regulatory Effectiveness' refers to the quality work and the level of performance of a regulatory body<sup>162</sup>. To be effective, a regulatory body needs to have clear policies, objectives and strategies related to implementation of its decisions, maintenance of good quality services, ensuring the protection of consumer rights and removing all barriers in maintaining Competition in the market. In this sense, regulatory effectiveness applies to all activities of regulatory body; aimed to ensure the confidence of all entities of the market, general public and the Government.

Regulatory effectiveness directly cannot be easily measured; there are various characteristics which can be attributed to an effective regulatory body. These characteristics can be used as indicators<sup>163</sup>. They can also provide guidance on the assessment of regulatory effectiveness. They may also indicate possible fields of enhancement of the effectiveness of a regulatory body. The elements that make an effective regulatory body can be considered in two Groups.

#### 3.51 ELEMENTS PROVIDED BY GOVERNMENT/LEGISLATOR

Elements provided by the lawmakers and the government are attached to the national legal system. The Government is to provide legal framework to all the regulatory bodies

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<sup>162</sup> "Assessment Of Regulatory Effectiveness IAEA", VIENNA, Sep.1999, Published by the IAEA in Austria

<sup>163</sup> "Assessment Of Regulatory Effectiveness IAEA" page.3, VIENNA, Sep.1999, Published by the IAEA in Austria available at: [http://www.pub.iaea.org/MTCD/publications/PDF/pdrp\\_004\\_prn.pdf](http://www.pub.iaea.org/MTCD/publications/PDF/pdrp_004_prn.pdf)

working in different sectors e.g. telecommunication, media, and power etc. with overall duties and responsibilities.\* Regulatory agency must provide a legal justification with authority to set standards, and the authority to perform licensing, inspection, review and assessment, and enforcement of functions as well as to regulate all related processes. Effectiveness of regulatory bodies depends on its institutional independence. Government needs to provide sufficient funds, set out its regulatory policy and agree on the division of responsibilities between the regulatory body and other regulatory or governmental agencies<sup>164</sup>.

### 3.5.2 ELEMENTS PROVIDED BY REGULATORS

To be an effective organization a regulatory body needs to have clear policies; objectives and strategies related to implementation of its decisions, maintenance of good quality of services, ensuring the protection of consumer rights and removing all barriers in maintaining competition in the market. A regulatory body needs to have an organization and processes to deliver licensing, inspection, complaints, consumer redressal, review and assessment, and enforcement functions. The organizational structure of regulatory body will specify roles, responsibilities and accountabilities of staff members, allocate staffing levels and provide a bendable approach in which adjustment of resources are made in accordance with priorities. The processes will allow for a timely response by the regulatory body to operating organizations activities, events and incidents, an assessment function that is independent of the operate organizations and an inspection function which provides a capability for both proactive and reactive inspections. It is important that a regulatory body

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<sup>164</sup> *ibid*

have the ability to follow up its regulatory decisions and requirements to ensure that these are met in a timely and correct manner<sup>165</sup>.

### 3.6 REGULATORY STANDARDS FOR REGULATORY BODIES

A regulatory body also needs to have regulatory standards, an internal highly quality standard system, enough staff that are highly competent with sufficient knowledge, experience, training and motivation to perform the work of the regulatory body and to make independent regulatory decisions. Also should have some standards of internal guidance to be used by the regulatory staff and international contact with other regulatory bodies in order to assist in standard making, to facilitate benchmarking of national practices and to exchange information on operating experience and safety issues. International contact in respect of experience feedback is very important. It is also helpful to exchange personnel between countries to enhance training and to give and receive technical support from other countries. The regulatory bodies should have an effective dispute resolution mechanism to resolve the dispute among the entities in the market or between the consumers and service providers which reflects the effectiveness of regulatory bodies<sup>166</sup>.

### 3.7. CONSUMER PROTECTION

The services that utility industries supply is essential to a healthy and civilized standard of living, it is vital that they are available to consumers on fair terms. It means ensuring a secure supply of the right quality services at reasonable prices. Regulation can help to achieve this by promoting Competition; by protecting consumers where Competition

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<sup>165</sup> Page.4, Ibid

<sup>166</sup> "Assessment Of Regulatory Effectiveness IAEA" P.5, VIENNA, Sep.1999, Published by the IAEA in Austria

is not possible or has not developed fully; and by ensuring that incentives are in place for managers to innovate and improve efficiency, to the benefit of all. In the earlier legislation there is no evidence of any express consumer welfare thinking. For example, statutes that deal with pricing issues are, arguably, concerned with consumer-related issues. But there is no provision for consumer participation. This is largely due to the fact that at the time the legislation was enacted there was very little consumer awareness. Consequently, the matter of pricing is dealt with from the standpoint of the government (representing the consumer) and the retailer or manufacturer. The consumer as an independent and interested party is simply excluded from participating in the pricing process. An example of such legislation is the **Price Control and Prevention of Profiteering and Hoarding Act, 1977** of Pakistan (the "PCPPHA"), wherein the Federal Government, acting through a Controller-General of Prices and Supplies, may by order 'provide for regulating the prices, production, movement, transport, supply, distribution, disposal and sale of the essential commodity and for the price to be charged or paid for it at any stage of the transaction therein. There is no statutory provision to involve the consumer in the matter of prices and supplies.

The regulators should put the needs of consumers first. Consumers of these industries include industrial and business users as well as domestic users. In exercising their functions, the regulators are governed by a hierarchy of general duties designed to give them a framework within which to resolve potentially conflicting regulatory objectives. Under current legislation the utility regulators have a secondary duty to exercise their functions in the manner they consider best calculated to protect or promote the interests of consumers. This, and other secondary duties, are subject to the regulators' primary duties to ensure that reasonable demand is met (or, in the case of water, that water and sewerage companies

properly carry out their functions), to ensure that companies can finance their licensed activities, and (for some sectors) to encourage Competition.

In case of any conflict the primary duties takes precedence over the consumer protection. The Government is concerned however that under this framework the interests of consumers have been subordinated to those of shareholders. For example, regulators, under a primary duty to ensure companies can finance their licensed activities, may have inclined to err on the side of caution in setting price controls.

The duty should make clear that wherever possible and appropriate, this should be achieved through promoting effective Competition. Given the essential nature of the goods and services supplied by these industries, it is important that the effect of the new consumer duty should not be to lead regulators to tighten price controls to the point that investment and the continuity of supply by the industry is put at risk. The duty should therefore make clear that the interests of consumers should include their interests in quality, range of services, continuity and availability of supply as well as price, and their medium and longer term interests as well as their immediate or short term interests. In particular, we propose that the duty should make explicit the need to ensure that the regulated companies have sufficient finance to carry out their functions.

To safeguard the consumer interests an effective regulatory body must have to take the following listed measures.

## REGULATING PRICES

Price regulation is designed to control the abuse of market power. The aim is to ensure that prices are no higher than would be charged by an efficient company in a competitive market. The present statutory framework does not prescribe what form price

regulation should take, but in practice all the regulators have chosen to use the CPI-X system. Under this system, price caps are set by the regulator for the period of a price review (typically five years) on the basis of detailed forecasts provided by the regulated firms of costs and revenue. We see strong merit in this.

## ENSURING QUALITY THROUGH SERVICE STANDARDS AND INVESTMENT

Quality of service is just as important to consumers as prices. If standards of service fall but prices remain the same, consumers are effectively suffering an increase in prices. In competitive markets, the market provides efficient outcomes on service standards - if customers are dissatisfied with the service they receive, they can switch supplier. This is increasingly the case in telecommunications, for example. Equally, if investors believe companies are investing too much or too little in service standards, this will affect their willingness to invest.

But in monopoly markets and those in which effective Competition has not yet developed, these signals are, by definition, less developed. Regulatory action may therefore be needed to ensure fair and efficient service standards. At present the general approach is for the utility regulators to negotiate service standards with regulated companies, or for these to be imposed where necessary. Most service standards imposed on utility companies relate to basic quantitative measures and cover issues such as the time taken to deal with customer complaints.

To be effective, it is important that standards of service can be enforced. At present

where a company fails to meet overall service standards the regulator can impose an order, requiring them to do so. The gas regulator also has the power to impose monetary penalties on companies to secure compliance with overall service standards where these are being breached or are likely to be breached in future. The regulators all have powers to require companies to pay compensation to customers for breach of individual service standards in relation to the supply of particular services.

Ultimately, if price regulated companies fail to meet agreed standards, this will be taken into account in the next price control. But failures to meet service standards in the period between price reviews should be capable of rapid correction.

## FAIR USE OF CUSTOMER DATA BY THE UTILITY COMPANIES

The utility companies are undergoing a period of radical change as they position themselves for the liberalization of the utility markets. The pressure to gain new customers and retain existing ones is strong, and will grow. As the opportunities for Competition increase, several utility companies have begun to explore ways in which they can exploit the commercial value of their databases.

The Data Protection Registrar (DPR) takes the view that companies should only use customer data in line with the expectations of individuals when they become customers. For utility companies, the data protection issues are complex because of their history and nature and the range of data they hold. Where a utility company wishes to use customer data for purposes other than those directly concerned with supply, then if individuals would not have anticipated such uses when they became customers, the utility company should obtain an



indication of consent to those uses. This view is disputed by some utility companies, and is currently being tested through an appeal to the Data Protection Tribunal. Some utility companies have promoted particular charities by including leaflets in customer bills. Others may wish to do so in the future. However, the DPR has disputed the legality of this practice even though there is no direct disclosure of data to third parties. The lack of clarity is a matter of particular concern to the charities which have benefited from the inclusion of leaflets in bills.

## REGULATION ON MONOPOLIES

The question of regulation of private monopolies is one of the major concerns of consumers. This is because if a utility is supplied or controlled or managed by a single supplier, or in other words, if the private monopoly is established in a sector, the consumers become more vulnerable to the whims of the private concern. As a result, the consumers may become subject to price hikes or policies of the private company or firm which may be detrimental to consumer interests. It is argued that in case of privatization of public services, particularly in the developing countries, there are not enough suppliers to permit a healthy competition, and thus, the state monopolies are being replaced by private monopolies or oligopolies. Moreover, when privatization transfers a government monopoly to a single private company, as in case of public utilities privatization, instead of reducing the cost, it may result in increasing them. Therefore, the regulation of public sector utilities, most of which constitute natural monopolies. The government must keep the rights of consumers in front before going into the process of privatization. On the other hand the regulatory bodies must have strict control on the private sector to control the monopoly to protect the

consumers.

## CONSUMER'S REDRESSAL MECHANISM

The regulatory bodies are not only to take preventive actions but also have to take some direct action in regard to the consumer rights. Clear and transparent mechanisms to redress the consumers' grievance are in the basics of regulatory body. The grievances are more than severe as consumer is to confront with a very strong opposition. The consumers has to contest for his rights again a very strong opponent like service providing company like in telecom Mobile companies, and in power sector, which is very strong as compare to an individual consumer. The regulatory authority must secure consumer's right against such a strong party by providing them a clear and transparent complaint and redressal mechanism. This mechanism must ensure to take cognizance of the issues addressed to them, to make the parties accountable for such breach of the consumer's rights by adequate remedies along with other compensation.

## 3.8 SECONDARY PRINCIPALS FOR REGULATORY BODIES

Besides the above mentioned primary Fundamental Principals there are some secondary principals should be adopt by an effective regulatory body to achieve the goal set by the fundamental principles and to meet the challenges of new economic market. Secondary principals<sup>167</sup> are actually means or ways through which a regulatory body can achieve goals of fundamental principles. In fact these secondary rules are not, hard and fast

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<sup>167</sup>OECD guiding principles for regulatory quality and performance, This set of principles was discussed by the Competition and Trade Committees and the Working Party on Regulatory Management and Reform in the context of stocktaking exercises to identify lessons about implementation drawn out of the 20 country reviews completed through 2003, and summarized in the synthesis report "Taking Stock of Regulatory Reform". The Special Group on Regulatory Policy approved the Principles at its 4th meeting on 15 March 2005, and the Council of the OECD endorsed them on 28 April 2005.

and binding rules on all regulators but countries and sectors may possibly adopt them according to their own socio-economic environment. These rules are;

- I. To introduce a broad program of regulatory reform at political level that establishes plain objectives and frameworks for operation and to design new goals and strategies beneficial for the public at large.
- II. To adopt strong and systematic Assessment and review mechanism to re-examine the existing regulations and to ensure that they meet their intended objectives efficiently and effectively in a changing global, complex economic and social environment.
- III. Ensure that regulations, regulatory bodies equipped with implementation, and regulatory processes are clear as crystal and free of discrimination. And to confirm that consumer interest/rights are not subordinated to regulated entities and stakeholders.
- IV. Review and strengthen where necessary the scope, effectiveness and efficiency of the Competition policy and to eradicate the sectorial gap in the coverage of Competition law. To serve the public interests in the better way.
- V. Design economic regulations in all sectors to energize Competition and efficiency, and curb them except where clear evidence exhibits that they are the best way to serve broad public interests.

- VI. Eradicate preventable regulatory barriers<sup>168</sup> to trade and investment through continued liberalization and increase the consideration and better incorporation of market openness throughout the regulatory process, thus strengthening economic efficiency and competitiveness.
- VII. Discover important linkages with other policy<sup>169</sup> objectives and draft policies to gain those objectives and goals in ways that support reform<sup>170</sup>.

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<sup>168</sup> *Model Law on Competition (2010) – Chapter VII of united nation conference to review all aspect of the set of multilaterally agreed equitable principals and rules for the control of restrictive trade practices, Geneva, 8-12 November 2010*

<sup>169</sup> “Such as reliability, safety, health, consumer protection, and energy security so that they remain effective, and as efficient as possible within competitive market environments”

<sup>170</sup> *OECD guiding principles for regulatory quality and performance, This set of principles* was discussed by the Competition and Trade Committees and the Working Party on Regulatory Management and Reform in the context of stocktaking exercises to identify lessons about implementation drawn out of the 20 country reviews completed through 2003, and summarized in the synthesis report “Taking Stock of Regulatory Reform”. The Special Group on Regulatory Policy approved the Principles at its 4th meeting on 15 March 2005, and the Council of the OECD endorsed them on 28 April 2005.

## Chapter4

# Analysis of the Consumer Courts, Competition Commission and Regulatory Bodies

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### CONSUMER:

The expression “consumer” is derived from consumption and consumer is the one who consumes. Individuals who purchases, uses, maintain, and dispose of products and services, Users of the final product. A member of that broad class of people who are affected by pricing policies, financing practices, quality of goods and services, credit<sup>171</sup> reporting, debt collection, and other trade practices for which state and federal consumer Protection laws are enacted.

We all are consumers. We purchase bread from the Tandoor or motorcycle from the company showroom, whether we pay for Electricity or a bus ticket from Islamabad to Lahore. And we are consumers, too, of those goods and services that we do not pay for directly, such as pure drinking water from the tap, or decent sidewalks or good administration from civil servants. We also consume goods and services that are not priced in the marketplace at all, such as clean air or publicly displayed works of art. Indeed consumers from the center-piece of any functioning economy and society. In the broadest sense, consumers are citizens.<sup>172</sup>

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<sup>171</sup> Consumer credit means Short term loans to individuals for purchase of consumer goods and services.

<sup>172</sup> Arshad, Muhammad “*Consumer protection, an introduction to the rights and responsibilities of consumers*” Published by the Network Pakistan, 2007.

Yet, consumers are the least acknowledged section of many societies, particularly in developing countries including Pakistan. Their basic rights as players in the economy and society are not recognized or protected. They suffer from exposure to impure water, dangerous drugs, poor hospital care, lack of access to justice, absence of information about their environment in this respect, consumer rights are human rights<sup>173</sup>.

## WHY TO PROTECT CONSUMER?

Citizen is the unit of a society. Every citizen is consumer in one way or the other. Thus consumer rights are the right of a citizen. For a society to be recognized a welfare society must be providing with fundamental rights to the citizen. No society can survive effectively without protecting their consumers. We cannot deny the significance of Consumer protection but the question remains why we need to protect consumer?

- I. A competitive and good market environment can attract the investors. It is possible only to have a good and independent Competition policy in the state. Competition policy need to keep the environment as trade friendly in which both the rights of investor and consumer are protected. The consumer is more secured in a competitive environment as he pays less for quality product/services. Example of Telecom sector investment was encouraged which results in the best interest of the consumers as they enjoy quality services in a very low price and eradicate the monopoly.

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<sup>173</sup> From the comparison of UN (1985) 'guidelines for consumer protection' and the UDHR (1948), both documents establishes the basic rights for Human beings like Article 25 of UDHR "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services" same as the consumer rights established in the UN (1985) "guidelines for consumer protection" also established right to have adequate food, clothing, shelter, health care etc.

- II. By the protection of the consumer's rights over all standard and quality of the production enhance. With better consumer protection law compel the manufacture and service provider to produce best and standard production. It will ensure the international standard of the industrial product and services offered or available in the domestic market and that our exports are not affected adversely.
- III. Protecting the consumer against fraud, misrepresentation, misleading advertisement and unfair practices of sellers and manufactures.
- IV. Consumer protection laws can remove the chances of conflict between the government and the manufactures which cause the violation of the consumer's rights. A recent example of such conflict was the cement case<sup>174</sup> that came before Monopoly Control Authority<sup>175</sup> (the MCA).
- V. A United Nations declaration guides the member states to have laws for the consumer interest<sup>176</sup>. Pakistan, as a signatory to the United Nation it is the obligation of Pakistan to enact such laws protecting consumer.

## 4.1 ANALYSIS OF THE CONSUMER COURTS

Consumer courts are a court of special purpose established in countries like Pakistan. Consumer courts deals with various consumer grievances and disputes. Consumer court is a judiciary set up provided by the government to protect the rights of consumer. The primary function of the consumer court is to help maintain fair prices of retailers toward customers.

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<sup>174</sup> MCA judgment in the matter of D.G Khan Cement & 15 Others, F.N,o.2 (274 (ENQ(CAOR& I) 96 98, 20th February, 1999.

<sup>175</sup> Monopolies and Restrictive Trade Practices (Control and Prevention) Ordinance, 1970.

<sup>176</sup> United Nation declaration on consumer rights.

Redressal is an available for consumer as a venue to seek justice when they are cheated by retailers.

The consumer acts are social welfare legislation which was enacted as result of widespread consumer protection movement. The main object of the legislature in the enactment of this acts are to provide for the better protection of interests of the consumer and to make the provisions for the establishments of consumer courts and councils.

All enacted provincial acts with the exception IPCA provide provisions for the establishment of separate consumer courts<sup>177</sup>. IPCA confer the powers of consumer courts to the Court of Session.

The reason for separate enacts and separate courts in our country are the lack of constitutional Jurisdiction for the enactment of consumer protections law at the Federal level.<sup>178</sup> Therefore, it is said, this area falls in the Provincial Jurisdiction.

Pakistan need to have a federal legislation for the consumer protection which serves the purpose in it true spirit, with this all the consumer will be protected under a unified law. The territorial ambiguity both in the mind of consumer and courts itself will cleared<sup>179</sup>. Territories and areas falling under the Federal or provincial administration with or without a constitutional status (such as FATA and PATA, and so called Northern Areas)<sup>180</sup> have no consumer protection laws. If the federal law for the consumer protection, is enacted will automatically cover the consumers belonging to such unprotected areas. As in neighboring country India the subject of consumer protection has been taken as a federal subject. As

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<sup>177</sup>Sec. 12 of BCPA 2003, sec.26 of PCPA 2005, section 11-A of NCPA1997-2003

<sup>178</sup>It is argued that the Federal Government does not have the jurisdiction to frame consumer protection law as it falls neither in the Concurrent Legislative list nor in the Federal Legislative List given the 1973 constitution

<sup>179</sup>Model Consumer Protection Act 2000, published by CRCP.

<sup>180</sup>Gilgit Baltistan



Federal statute protect the consumer under Consumer Protection Act “COPRA” 1986.

Both provincial and Islamabad Act provides provisions for the jurisdiction of the courts, to be exercise by the district or additional district judge in the provinces while session judge at Islamabad. Jurisdiction of the court is determined by residence of partner or place of business. The concept for the determination of the jurisdiction is very narrow, rather it should be determined on the value of the cases after establishing District, Provincial and National Courts. This concept is introduced in India where they established three types of courts, the District Forum, state Consumer disputes redressal commission and National Consumer redressal commission<sup>181</sup>. The court exercises their jurisdiction on the value of the case. Where the case is of the value more than 10 million is the jurisdiction of the National Court, of the value of more than 20 lacks to less 10 million is the jurisdiction of the state court while up to 20 lacks comes under district court.<sup>182</sup>

There is a problem of defining the exact perimeters of the word “consumer”. The Act already transgresses and overlaps with other fields of law and it is important to determine the confines of this Act. Is a tenant a consumer? Or a hospital patient in a free medical facility? Or a student whose education is government subsidized? Is a pedestrian who inhales the polluted air a consumer? This problem is further complicated because the Act seeks to cover both products and services.

The main object of consumer courts is to provide speedy and simple redressal to consumer disputes means summary trial. As most of the disputes related to consumer need prompt action as delay in that, is as they are denied. It is one of the benevolent pieces of

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<sup>181</sup> Agarwal, V.K., Bharat's Consumer Protection (Law & Practice), B.L.H. Publishers: New Delhi, third edition, 1997.

<sup>182</sup> Consumer Protection and national consumer dispute redressal commission of India. Consumer Protection act of India 1986.

legislation intended to protect the consumers at large from exploitation. In Pakistan this ingredient of summary trial is missing. All the enactments including Islamabad are silent about the summary trial. Speedy justice is rather needed in consumer courts.

Consumer protection laws in Pakistan provides provisions for different punishments (Sections 32 of PCPA, section 16 NCPA). The enacted laws suggest up to two years imprisonment and up to 1 lack rupees fine or both. Law covers the area of remedy and compensation but is remain silent on the preventive measures which may serve the consumer rights in advance. With standard preventive measures which also includes consumer awareness and education about their rights. The rights of consumers will be no more available to violation if the consumer is aware of his rights. Unfortunately, there is no such provision which say anything about these preventive measures, in consumer protection law in Pakistan which a big setback. An awareness campaign is therefore necessary to recap the fruits of the Act in letters and spirits.<sup>183</sup> Protection against harassment of women at work place act, of Pakistan provides provision for the awareness of masses. Higher education commission of Pakistan started a project to educate both employs and students of universities on the subject of harassment.

The consumer court has been given the same powers as are vested in civil court under the Code of Civil Procedure 1908.<sup>184</sup> Furthermore it is stated that proceedings before the court shall be considered proceedings within the meaning of sections 193 and 228 of Pakistan Penal Code 1860 as well as section 195 and chapter XXXV of the Code of Criminal

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<sup>183</sup> Zilli Atif, Prof. *Consumer Protection Law in Pakistan Article* published in PLJ, July 2008

<sup>184</sup> Especially in matters relating to summons, examination of defendants and witnesses; discovery and production of documents or other evidence Section 30 (3).

Procedure, 1898.<sup>185</sup> Under section 30 a maximum period of six months has been ordered for the decision of the claim in the consumer court. Whether the jurisdiction of the court Civil or Criminal? The term used are "Claimant" and "defendant"; the procedure to be borrowed from civil procedure code. Yet there are penal clauses and sections borrowed from P.P.C. and Cr. P. C. has been incorporated. This would leave room for misuse of power by the court.

After analyzing the courts for consumer protection there is a great need for a federal independent consumer policy and law in Pakistan. The law, to cover every aspect of consumer and other market stakeholders. The law can be more effective if the government observe the role of expertise, like lawyers and academia as so to permit and facilitate the role of consumer which is the most important. International standard consumer protection practices and UNO guidelines may also help in setting up a model law in Pakistan.

## 4.2 ANALYSIS OF COMPETITION COMMISSION

Poverty alleviation and rapid sustained economic growth should be the principal economic objectives of least developed countries. A powerful and recognized weapon for LDCs in this battle is Competition policy and law. Their effectiveness is derived from the positive linkages between the extent of Competition on the one hand and economic growth and poverty alleviation on the other. Competition among firms causes reduction in costs through innovation or increase in efficiency. Higher economic growth therefore enhanced employment result which helps to alleviate poverty, at the same, more reasonable prices help

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<sup>185</sup> Section 193 of P.P.C. allows punishment for fabrication and giving of false evidence. Section 228 stipulates punishment for intentional insult to a judicial personal or causing interruption in his work. Section 195 of Cr. P.C. provides procedure for prosecution for contempt of public functionary or for giving false or fabricated evidence.

the poor swell their consumption and rise above the poverty line.

High incidence of cartelization and other anti-competitive practices, abuse of monopoly and dominance in least developed countries felt the need of Competition policy and law. Start the concern for the establishment of Competition agencies to implement Competition laws.

The Competition Bill 2010, passed in May 2010, received assent by President of Pakistan on October 06, 2010. The Act empowers Competition commission established under section 28<sup>186</sup> to prohibit commercial enterprises from unfairly using dominant position in market through such unethical practices as limiting production and price discrimination etc. the commission is a statutory and corporate body, it can sue and can be sued, can enter into contract and can keep moveable or immoveable property for the purpose of this Act.

The Competition commission of India established under the provision of Competition Act, 2002<sup>187</sup> to achieve the objectives of Competition law.

The main objective of Competition law is to promote economic efficiency using Competition as one of the means of assisting the creation of market responsive to consumer preferences. The advantages of perfect Competition are three-fold: a locative efficiency, which ensures the effective allocation of resources, productive efficiency, which ensures that costs of production are kept at a minimum and dynamic efficiency, which promotes innovative practices.<sup>188</sup>

Competition Act, 2010 covers all aspects of the Competition commission including establishment, power, function, orders, enquiry, studies, penalties and appeals. The federal

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<sup>186</sup> The Competition Act, 2010

<sup>187</sup> Section 7(1) The Competition Act, 2002 of India.

<sup>188</sup> Hon'ble Supreme Court (Judgment in Civil Appeal No. 7999 of 2010 pronounced on 9th September, 2010)

government is under the obligation to its best efforts to promote and facilitate the commission to maintain its independence. The federal government is further bounded under section 20. (2)-A to allocate funds & grants to the commission. The federal government contribution is the major part of CCP fund.

The Competition Act, grant gigantic variety of powers and functions to the commission,<sup>189</sup> are;

- I. To initiate proceeding and make orders in case of contravention of the Act;
- II. To conduct studies and research for the promotion of Competition in all economic activity and economic growth;
- III. To conduct enquiries into the affairs of undertaking and to give advices for the purpose of this act; and
- IV. To engage into Competition advocacy and to perform all other acts which is necessary for the purpose of this Act.

Creating awareness and imparting trainings, reviewing the policy, holding open hearing on the issues and posting decisions and enquiries on the websites are the means and modes of Competition advocacy available to the commission under Section 29.

The commission is competent to issue an interim order<sup>190</sup>. The commission is itself restricted to follow procedure set by the act. Commission is considered as civil court under sec.195 and chapter xxxv of the code of criminal procedure of 1898. And any proceeding before the commission is judicial proceeding within the meaning of sec.193 and 228 of PPC, 1860<sup>191</sup>.

The commission is also empowered to search and enter into the premises of an

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<sup>189</sup>Section.28 Competition Act,2010

<sup>190</sup> Section 32, competition Act, 2010

<sup>191</sup> Section 33, competition Act, 2010

undertaking for the purposing of any function of the Act. Can take in its control all the necessary data, documents in any shape (soft, hard) and can retain it as much time as it necessary for the purpose of this act. The occupier of the premises is under obligation to facilitate the officers of the commission for such purpose. The officers of the commission do hold the right to enter to such premises by force if the occupiers of premises refuse to allow them.

#### 4.2.1 PENALTIES AND APPEAL

Chapter 5 section 38 deals with the penalties which the commission can award in case of any contraventions of the Act. Sub section 1 of the above section provides grounds for the penalties while subsection 2 of the same section provides a detail rates and its limit to commission about the pecuniary punishments. Which are..

- I. An amount of not exceeding 7.5 million or an amount not exceeding 10 % of the annual turnover of the undertaking in case of contravention of any provision of chapter ii.
- II. An amount not exceeding one million rupees in case of non-compliance to any order of the commission.
- III. The commission may also ask an undertaking to pay a sum per day which may extend to one million rupees on such violation the nature of which is continuous.
- IV. Any amount imposed under this Act can be recovered as mentioned under sec.40 of the Act.

- V. Failure to comply an order of the commission shall constitute a criminal offence is punishable with Imprisonment for term which may extend to one year or with fine which may extend to twenty five million rupees.

Any person aggrieved by the order of the commission can appeal to the appellate bench<sup>192</sup> of the commission within 30 day after the passing of the order. The appeal lies against the order passed by the appellate bench to the supreme court of Pakistan within sixty days<sup>193</sup>.

## 4.3 ANALYSIS OF THE REGULATORY BODIES

### INTRODUCTION AND DEVELOPMENT

The markets in the early ages had very limited commercial activities. Trade was very limited to a few individual representing their community/ tribes. With passage of time when population increased the trade developed and commercial activity swelled. The trade extended to national and international level from individuals because of industrialization. Huge industries emerged and established their control over the market only for profit maximization. In this run of profit maximization the rights of consumers were violated rather there was no concept of trading norms and consumer rights. After establish monopoly, the role of consumer were recognized as an important element of market and overall commercial activates. For a competitive market the rights of consumer were recognized.

To depress the anti-competitive activates unfair trade practice and abuse of consumer rights the government started working on rules and regulation. Regulatory Bodies were created with the mandate to protect consumer rights, to provide competitive market and regularize the trade according to local and international demands.

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<sup>192</sup> Consist of members not less than two. Sec41 CA 2010

<sup>193</sup> Section.44 competition ACT,2010

The response towards establishing Regulatory Bodies in developed countries were early than least developed countries.

This movement of framing Regulatory Bodies for a competitive market environment comes to Pakistan in late 90s.

Pakistan telecommunication Authority (PTA) was established under the Pakistan telecommunication (Re-Organization) Act, 1996 followed by National Electric Power Regulatory Authority established in December 16, 1997 and Establishment of OGRA in 2000<sup>194</sup>.

A country's economic policy, often conflicting interests of various stockholders due to the dynamic nature of economies. To minimize the Inefficiencies created by anti-competitive behaviour are the core aim of the Competition law and policy.

In a democracy where pluralism of interests is the rule, tensions and frictions will necessarily arise between different economic policies and related norms, which will also influence the relationship between the respective enforcement bodies. Against this background, conflict of interest the presence of regulatory bodies in a country is essential. And relationship between a country's Competition authority and regulatory bodies, are more crucial<sup>195</sup>.

#### 4.3.1 REGULATORY BODIES AND CONSUMER PROTECTION

The services that utility industries supply is essential to a healthy and civilized

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<sup>194</sup> Initially OGRA was established in 2000 for regulating only the downstream natural gas sector.

<sup>195</sup> Chapter VII of the UNCTAD Model Law on Competition



standard of living, it is vital that they are available to consumers on fair terms. This means ensuring a secure supply of the right quality services at reasonable prices. Regulation can help to achieve this by promoting Competition; by protecting consumers where Competition is not possible or has not developed fully; and by ensuring that incentives are in place for managers to innovate and improve efficiency, to the benefit of all. The purpose of this section is to set out proposals for ensuring that consumers receive a fair deal from these authorities working in different sectors. In developing these proposals, and in line with the overall approach to Competition and regulation, the Government has recognized the differences which exist between the four sectors in terms of the development of Competition.

This range from water, where there is little or no Competition, to energy supply where Competition is currently emerging, Media, telecommunications and oil and gas, where Competition is developing rapidly. The precise regulatory mechanisms best designed to secure consistent and fair outcomes for consumers may therefore vary between these four sectors. In particular, in view of the development of Competition in telecommunications, alternatives to those discussed for the water and energy sectors are considered, where appropriate.

#### 4.3.2. CONSUMER PROTECTION

The Government and policy makers believe that when making decisions and exercising their functions under the relevant legislation, the regulators should put the needs of consumers first. Consumers of these industries include industrial and business users as well as domestic users. In exercising their functions, the regulators are governed by a hierarchy of general duties designed to give them a framework within which to resolve

potentially conflicting regulatory objectives. Under current legislation the utility regulators have a secondary duty to exercise their functions in the manner they consider best calculated to protect or promote the interests of consumers. This, and other secondary duties, are subject to the regulators' primary duties to ensure that reasonable demand is met to ensure that companies can finance their licensed activities, and (for some sectors) to encourage Competition.

Where a conflict arises, these primary duties take precedence over the duty to protect consumers. The Government is concerned however that under this framework the interests of consumers have been subordinated to those of shareholders. For example, regulators, under a primary duty to ensure companies can finance their licensed activities, may have inclined to err on the side of caution in setting price controls.

The duty should make clear that wherever possible and appropriate, this should be achieved through promoting effective Competition. Given the essential nature of the goods and services supplied by these industries, it is important that the effect of the new consumer duty should not be to lead regulators to tighten price controls to the point that investment and the continuity of supply by the industry is put at risk. The duty should therefore make clear that the interests of consumers should include their interests in quality, range of services, continuity and availability of supply as well as price, and their medium and longer term interests as well as their immediate or short term interests. In particular, we propose that the duty should make explicit the need to ensure that the regulated companies have sufficient finance to carry out their functions.

There has been concern that the present duty in each utility act in respect of finance may give too much protection to inefficient companies. The Government is considering

amending these duties to make it clear that, in exercising his statutory functions, a regulator's duty is to ensure that a regulated company has sufficient finance to carry out its functions acting efficiently, provided always that availability and continuity of supply to consumers of the service is assured. The latter point will of course be particularly important in relation to monopoly areas.

### 4.3.3 REGULATING PRICES

Price regulation is designed to control the abuse of market power. The aim is to ensure that prices are no higher than would be charged by an efficient company in a competitive market. The present statutory framework does not prescribe what form price regulation should take, but in practice all the regulators have chosen to use the CPI-X system. Under this system, price caps are set by the regulator for the period of a price review (typically five years) on the basis of detailed forecasts provided by the regulated firms of costs and revenue. We see strong merit in this.

In the immediate post-privatization period, there were persistent concerns over the level of profits made by some of the privatized utility companies in spite of the price caps put in place upon flotation. That is why we levied a Windfall Tax immediately upon coming to Government. The Windfall Tax has dealt with the excess profits that followed the original privatization settlements under the last Government. The regulators have progressively tightened and set more effective price controls since then. These give the right incentives to deliver efficiencies and should continue to bear down on prices. We welcome the regulators' efforts to do so. However, inherent problems of regulation plus the projected growth of multi-utilities mean that setting the right price cap is likely to continue to be challenging in

the future. We now need to establish clear long-term principles for price regulation which will ensure that consumers get a fair deal, and that the legitimacy and stability of the regulatory system are maintained. We need to ensure that the framework delivers these. It is the Government's responsibility to make clear the principles under which it expects the regulators to work and for the regulators to develop clear and transparent systems in order to operate within those principles.

Consistent with the regulators' new primary duty to safeguard the interests of consumers, it is believed that the key principle should be the need to distinguish between the income that companies earn through their own efforts, and that which results from other factors. The second principle should be that companies are able to keep the profits they have rightly earned during the price control period, thereby providing incentives for them to make efficiency savings. However, the third principle should be that, where a practical mechanism can be developed, benefits should flow to consumers promptly when companies benefit from specific factors outside their control (and where there is a clear and stable relationship between these factors and their income), or when companies have deliberately misled the regulator by providing incomplete or inaccurate information to the regulator when the price cap was set.

These principles are both simple and fair. But putting them into practice is more difficult. Consideration needs to be given to whether and how these principles should apply to the different regulated sectors in developing best practice in this area. Some people argue that we should rely exclusively on CPI-X. Certainly no one disputes that CPI-X should remain as the foundation of price regulation provided regulators judge that this provides the best deal for consumers. Under the overall framework proposed in Chapter 2, it is right that

the regulators should exercise their independent judgment over how to set price controls at each review, within the legislative framework set by Government. Moreover, CPI-X price regulation provides strong incentives to efficiency. We do not therefore see a case for moving away from CPI-X as the basic system of regulating prices, if this is the system regulators choose in future. This approach also ensures continuity of approach and maintains stability in the regulatory system, which is in the long term interests of consumers and investors alike.

An alternative view is that a further development of the price regulation mechanism is needed to meet the principles set out above. The inherent uncertainties which surround price regulation decisions mean that the sharing of benefits between consumers and shareholders may in practice differ considerably from that envisaged when the price cap was set. This potentially threatens the legitimacy of the price regulation system in the eyes of consumers, and hence its long term stability. These risks may become more pronounced as multi-utilities develop, creating more difficult issues for regulatory surveillance and price control. Some regulators have begun to introduce "Error Correction Mechanisms" (ECMs) to supplement CPI-X. Others are increasingly bringing these principles to bear when setting price caps. Such mechanisms might be further developed in future from the next price cap period. Such an approach may be most appropriate in the monopoly network businesses, such as water and gas and electricity transmission.

In any event, we propose that the regulators would in future need to explain their periodic price reviews against the three principles set out above. We believe that transparency about mechanisms will help to spread best practice throughout the various regulated sectors.

#### 4.3.4. ENSURING QUALITY THROUGH SERVICE STANDARDS AND INVESTMENT

Quality of service is just as important to consumers as prices. If standards of service fall but prices remain the same, consumers are effectively suffering an increase in prices. In competitive markets, the market provides efficient outcomes on service standards - if customers are dissatisfied with the service they receive, they can switch supplier. This is increasingly the case in telecommunications, for example. Equally, if investors believe companies are investing too much or too little in service standards, this will affect their willingness to invest.

But in monopoly markets and those in which effective Competition has not yet developed, these signals are, by definition, less developed. Regulatory action may therefore be needed to ensure fair and efficient service standards. At present the general approach is for the utility regulators to negotiate service standards with regulated companies, or for these to be imposed where necessary. Most service standards imposed on utility companies relate to basic quantitative measures and cover issues such as the time taken to deal with customer complaints.

To be effective, it is important that standards of service can be enforced. At present where a company fails to meet overall service standards the regulator can impose an order, requiring them to do so. The gas regulator also has the power to impose monetary penalties on companies to secure compliance with overall service standards where these are being breached or are likely to be breached in future. The regulators all have powers to require companies to pay compensation to customers for breach of individual service standards in

relation to the supply of particular services.

Ultimately, if price regulated companies fail to meet agreed standards, this will be taken into account in the next price control. But failures to meet service standards in the period between price reviews should be capable of rapid correction.

#### 4.3.5. FAIR USE OF CUSTOMER DATA BY THE UTILITY COMPANIES

The utility companies are undergoing a period of radical change as they position themselves for the liberalization of the utility markets. The pressure to gain new customers and retain existing ones is strong, and will grow. As the opportunities for Competition increase, several utility companies have begun to explore ways in which they can exploit the commercial value of their databases.

The Data Protection Registrar (DPR) takes the view that companies should only use customer data in line with the expectations of individuals when they become customers. For utility companies, the data protection issues are complex because of their history and nature and the range of data they hold. Where a utility company wishes to use customer data for purposes other than those directly concerned with supply, then if individuals would not have anticipated such uses when they became customers, the utility company should obtain an indication of consent to those uses. This view is disputed by some utility companies, and is currently being tested through an appeal to the Data Protection Tribunal. Some utility companies have promoted particular charities by including leaflets in customer bills. Others may wish to do so in the future. However, the DPR has disputed the legality of this practice even though there is no direct disclosure of data to third parties. The lack of clarity is a matter of particular concern to the charities which have benefited from the inclusion of

leaflets in bills.

To conclude with the analyses it's been advent that these elements are interconnected. The presence of consumer protection courts, Competition commission and regulatory bodies are important for economic growth and competitive market, but achieving these objectives the consumer rights must set forth. These bodies can bitterly serve the aim and purpose when they are independent from Government interference. The laws are their but with the complication in it must be removed and made effortless for the consumers to access.



# Conclusion and Recommendations

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Based upon the discussion made in preceding chapters, it is concluded that in Pakistan's various regulatory bodies have been established with a special mandate to protect the interest of consumers viz a viz to maintain healthy Competition in the relevant market of the concerned sector or industry respectively like PTA in telecommunication sector, PEMRA in media, NEPRA in power and OGRA in oil and gas. These regulatory bodies are regulating their sectors having fundamental principles as acceptable in general around the globe for regulatory agency /body. These regulatory bodies are established for the promotion of the specific sector, establishment of competitive market environment and protection of consumer rights.

As far as Competition is concerns, in Pakistan the Competition Commission of Pakistan under CCP 2007 has been given a supervisory role in the country. In this dissertation, the Regulatory Bodies and its Framework especially in Oil and Gas, Media, Telecommunication, and Power Sector, with respect to Consumer protection and Competition in Pakistan has been discussed in detail. It is apparent that these sectors are moving towards development and improvement. Laws are been enacted to make the regulatory bodies, but still these bodies are ineffective with true spirit in the Pakistan. Regulatory bodies are mainly under immense pressure from the governments, industries, which don't allow them to work freely. Consumer protections are also hugely effected by these pressures. One of the results which directly affect the consumer is the price fixing issue, is settled after the bargaining between the Government and the industries while consumers are sidelined.

This thesis presents some Fundamental principles<sup>196</sup> for the regulatory bodies. Those principles are the basics of regulatory bodies. Regulatory bodies can work only when it is free from the internal or external attributes, likewise political influence, from the industries sides and so they must be made free to take independent decisions.

PTA, NEPRA, OGRA and PEMRA legislations contain provisions related to consumer protections. By virtue of the powers conferred upon these authorities under their respective legislations, these institutions have promulgated consumer regulation in terms of redressing their grievances. These regulations are good steps towards development in this subject but need again some modifications and improvement. The role of regulatory bodies is not only restricted to the issues of the promotion of the sector and consumer protection but are mandated for competitive environment by encouraging investment in the sectors. In Pakistan the regulatory bodies are rather creating barriers for new entrants with its influenced and strict procedure, which ultimately creates path to the monopoly in the market.

Overall the consumer laws in Pakistan are not up to the task. Chapter 2 of the thesis presents the international scenario of the consumer protection. A case study of the US, UK, Australia and Indian consumer protection framework is given. With comparison to Pakistan consumer protection law which possess some inherited flaws. Firstly a Unified consumer protection Law is lacking in Pakistan, there is no federal legislation for the consumer protection each province and the Capital has its own law for the subject with the exception of Sind province which has not been approved by the respective provincial assembly yet. In almost, all the present consumer protection statutes in the country there are some deficiencies as the relevant rules of procedures of consumer protection councils have yet to be

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<sup>196</sup>Chapter.4 of this thesis

established. Disappointingly the natures of the existing consumer protection laws are not uniform and consistent. Each law in the country deals the consumer differently because of their different definition of the consumer, different redressal mechanism and designed remedies.

Similarly the consumer courts in Pakistan are not adequate in number to the increasing flow of the consumer related cases and population. The number of courts established under the respective provincial laws does not meet the demand. In the capital of Pakistan where the awareness of consumer rights is more as compare to other parts of country but the jurisdiction of the consumer court is vested upon the only Court of Session. This is a further burden for the court. Chapter 3 of the thesis presents the current consumer courts and its jurisdiction in Pakistan.

Consumer courts, Competition commission of Pakistan and sectorial regulatory bodies play a very vital role in the overall market economy of a country. Especially their combine role cannot be denied for the establishment and promotion of a competitive environment, consumer protection, encouraging investment and removal of unfair trade practices. There is a need to have harmonized policy for all these bodies in Pakistan. Even then can competitive market, consumer protection and investment in the market are possible. These issues are interconnected if there is competitiveness in the market the consumer will be protected and the investor will feel no hesitation to invest. With a coordinated work of all these bodies can bring up positive changes in the economy of Pakistan. An analytical study of consumer courts, Competition Commission and the regulatory bodies are covered in Chapter 5 of thesis.

## RECOMMENDATIONS

### 1. FORMULATION OF NEW POLICY IN PAKISTAN

There is a need of new policy in Pakistan to activate and streamline all aspect of consumer protection, regulatory bodies and Competition. The policy must have the attribute of compatibility to overall market actor in the country like it should present the Government economic agenda, work as a gate way for innovations in the regulatory bodies, and protect consumer interests who are an important part in the market economy, at the same time. Should also have much flexibility to accept the global market changes and developed country practices. It seeks to ensure that basic human rights are recognized, enforce and promote understanding of citizen rights and responsibilities as consumers<sup>197</sup>. The proposed policy is to accomplish long term objectives set by the Government together with welfare of the society and citizen through economic policy of the Government in terms of liberalization, Deregulation and Privatization it has to protect the citizen as consumer from the harmful effect of the market.

THESE FOLLOWING SOURCES MUST BE KEPT FORTH AND OBSERVED TO DESIGN THE PROPOSED POLICY

- a. The Fundamental Rights: available in constitution of Pakistan 1973 must be observed. For consumer protection as it spell out numerous scattered provisions on citizen-consumer protection.

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<sup>197</sup> The Network for consumer protection "POLICY VISION" The Network Publication:1995, 8,9

- b. Global experience: the global experience of developed countries toward consumer protection can be taken as a source for the formation of new policy.
  - c. UN Guidelines: for consumer protection, and international agenda for governments to use for the strengthen consumer protection policy and legislation, can be a sound sources for the possible policy document in Pakistan.
2. A public educational campaign is required to promote awareness in society with respect to consumer rights and the role of regulatory bodies. The following task may be perused for in effective educational campaign.
- a. Both electronic and print media can play a positive role in awareness creation
  - b. There is a need to introduce a new subject of consumer rights at school, college and University level.
  - c. The penalties imposed by court or regulatory bodies should be publicized that will not only deter others from indulging in similar practices but will also become source of education and awareness for public.
  - d. The issue of consumer rights must be highlight through public seminar, presentation and lectures, bar rooms, Colleges and Universities can be more than best option for such kind of activities.
3. For any Consumer Protection Law and regulatory authority to be effective it is essential to secure speedy and accessible consumer redressal and complaint mechanism.

4. Appointment of Experts, Learned and Experienced Judges/Officers in Consumer Courts, Commissions and the appellate benches of the regulatory bodies for the best interest of the consumer rights.
5. A Unified and Federal Consumer Protection Law is the need of the country to remove the confusion of the consumer, as consumer is treated in Pakistan under different legislation differently. Because of variation in the definition of consumer, redress machinery and designated remedies provided in law.
6. Regulation of the utility industries should contribute to its social and environmental objectives. It is therefore recommended that the Government should, following full consultation, including with Parliament, issue statutory guidance for each sector on the social and environmental objectives and that regulators should be placed under a duty to have regard to this guidance.
7. The primary duty on the regulators to protect the interests of consumers both in the short and longer term will help to ensure lower prices and better standards of service and Competition in the market. We therefore propose to amend the regulators' statutory duties so that the interests of consumers are fully safeguarded. In order to secure the long-term interests of consumers in continuity of supply, this duty should make explicit the need to ensure that the regulated companies have sufficient finance.

8. The regulators should ensure high qualitative and quantitative standards of service for the utilities. They should also encourage best practice on investment to ensure appropriate long-term levels of quality of service and have adequate sanctions to ensure compliance where that is required.
9. Pakistan Electronic Media Regulatory Authority is mandated to regulate and improve the standards of information, education and entertainment as well as enlarging the choice of programs available to people. It need to extend its frame work of inspection to tehseel and district level by establishing inspections teams to ensure compliance of the Media Code of Ethics and Advertisement Ethics.
10. The regulatory bodies must have potential to finance and manage or to perform research activities in support of its work. It also needs to be able to fund and manage work which it is unable to accomplish itself because it does not have the expertise. In all cases the regulatory to be able to judge whether the outcome of the contracted work is satisfactory and whether it can be adopted by the regulatory body.

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