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Dawn

Cartels and consumers (Article)

IN March this year, the Competition Commission of Pakistan issued an emphatic statement that it would take ‘strict action’ against ‘cartelisation’ in the sugar industry.

This was neither unusual, nor the first against the industry. Since commencing operations in 2007, the CCP has issued several orders punishing cartels in different sectors of the Pakistani economy. In fact, in 2021, it had found a cartel in the sugar industry and had imposed an aggregate penalty of Rs44 billion on the Pakistan Sugar Mills Association and 81 of its member sugar mills.

But what exactly are cartels? For the history buff, the mention of a cartel may evoke recollections of the Organisation of the Petroleum Exporting Countries and its 1973 oil embargo against selling oil to the US.

A cinephile, however, might conjure images of Pablo Escobar running a drug cartel in Colombia and terrifying Colombian citizens and law-enforcement authorities alike. While both these scenarios are versions of cartels, the ones that the CCP goes after are more prosaic, more rampant, and, most importantly, more damaging to the Pakistani economy and the Pakistani consumer.

In simple terms, a cartel is an agreement. It means that sellers of a product, who should ordinarily be competing with each other for our business, instead join hands. For instance, they may agree to charge the same price for their products throughout the market, or they may agree to allocate regions among themselves so that they can all get a share of the market, or agree to only produce specific quantities so that they can charge a higher price for these products. The common factor in all such agreements is that they are designed to profit the sellers rather than the consumer or the economy.

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The harm that we, the consumers, suffer from such agreements is self-evident. For instance, we have no possibility of getting a better price for the product we need. Whether it is a bag of cement or fertiliser that we need, we will be faced by the same higher price wherever we go. This not only limits our choices in the market but also leaves less money in our pockets to buy other things we may require. In economic terms, this means that money from the consumer is transferred to the seller and while his profits have increased, our surplus or welfare has declined.

It is tempting to argue that though cartels may harm consumers, they are good for the economy because they allow sellers to make more money. However, this argument is flawed. Without the pressure to compete, members of cartels have no incentive to innovate to improve their products or their processes. In producing less than they can, they waste already limited economic resources. They also make it difficult for new entrants that are not members of the cartel to enter the market. Worse of all, they undermine trust in the economy. In time, this not only erodes investor confidence, it also stunts economic growth.

It is for these reasons that competition authorities around the world are particularly strict with cartels. For instance, the European competition regime, on which the Pakistani regime is based, declares that once the competition authority has discovered the existence of an agreement — whether or not it has been formally executed — which fixes prices, allocates markets, fixes quotas, etc, it will declare it illegal and punish all those who participated in it. It does not require any proof of the actual effect of the agreement on competition in the market and does not accept any defences that cartel members may raise.

However, the difficulty is that cartels are notoriously difficult to detect. People or companies seeking to enter an illegal and economically damaging arrangement are not likely to write these down or leave an evidence trail. Detection becomes nearly impossible in the digital economy, which can achieve consensus through algorithms.

Competition authorities have, therefore, introduced leniency regimes. These encourage whistleblowers to come forward on the promise that if they provide relevant information, they may reduce, if not entirely avoid, heavy cartel penalties.

Cartel investigations in Pakistan have often centred around trade associations, including associations representing newspapers, cement manufacturers, LPG importers, travel agents, poultry growers, jute, vanaspati, flour and sugar mill owners, ship's agents, and authorised dealers of automobile manufacturers. Although associations have historically been formed to address legitimate industry-wide concerns or share best practices, the CCP has often found that companies have used the readymade association platform to engage in cartel activities.

Under the Competition Act, the CCP has the power to fine cartels in the sum of Rs75 million, or 10 per cent of the company's annual turnover, as it deems fit. While the CCP has certainly exercised this power to impose necessary fines on cartels, it has had much less luck in recovering them.

Aggrieved companies have not only challenged CCP's orders, but also its constitutionality and power to ask for information. The CCP has also suffered due to the delay in establishing the Competition Appellate Tribunal, which is required by law to hear appeals on CCP's orders before they can be heard by the Supreme Court.

However, a light emerged in CCP's otherwise gloomy skies in October 2020, when Justice Ayesha Malik, then still at the Lahore High Court, upheld the constitutionality of the Competition Act. This light became brighter with Justice Jawad Hassan's November 2024 order clarifying that CCP's showcause notices cannot be challenged before the courts, and the Competition Appellate Tribunal's April 2025 order confirming the CCP order fining the vanaspati association for anti-competitive activities.

We, as consumers, can only hope that the government and the courts continue to play their part in ensuring that the CCP's efforts to deliver for us and the economy, remain on track.

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https://www.dawn.com/news/1908144/cartels-and-consumers