

News Coverage for Website

27 January 2025

CCP Exclusive News

Profit by Pakistan Today

Do big businesses undermine Pakistan's competition laws?

The CCP has more than 500 pending cases languishing in the courts. Is that what makes them inefficient or is there more to the story?

Why do we need a competition commission? The Competition Commission of Pakistan (CCP) in its current form was created by a 2007 Act of Parliament in an effort to meet the requirements of the World Trade Organization, which Pakistan joined in 1995.

Before the CCP, competition law was regulated by an aptly named and quite self-explanatory entity called the Monopoly Control Authority. That, at the crux of it, is the purpose of competition law. Most modern competition law emerged in the middle of the twentieth century, particularly with anti-trust laws in the United States. To cut a very long story short, governments realised the free market was prone to manipulation, and to avoid monopolies forming and resources being concentrated in individual hands, there needed to be laws governing how companies conducted business.

If making money was a game, this was the rulebook on how to play fair.

In developing countries like Pakistan, different autonomous bodies and commissions have come and gone. These bodies are responsible for implementing and regulating a country's competition laws. A good competition commission wears many hats. They are sometimes referees, other times choreographers. The job of the CCP, for example, is making sure they accept complaints, adjudicate between different players, and impose fines.

Of course there is the flipside. What if the CCP rules unfairly? That is where judicial oversight comes in. If you have a complaint against a decision of the CCP, you just go to the courts.

Sounds like a pretty neat system, right? In theory, yes. But there is far more than meets the eye. Profit recently examined internal documents from the CCP. These documents showed that the Competition Commission of Pakistan is currently entangled in over 500 cases across different courts, all filed by companies seeking to challenge its orders or obstruct its investigations. According to sources within the CCP, these companies use high-powered legal teams to exploit procedural loopholes, with powerful cartels and major corporations systematically undermining Pakistan's competition laws.

To hear them speak of it, it is a legal Kamikaze attack. By engaging in relentless legal tactics and procedural roadblocks, these market giants not only delay investigations but also continue to generate unjust profits at the expense of fair market competition and consumer welfare.

Of course, there are other issues. Last year in September, Profit reported on how the CCP awoke from what seemed a deep slumber to deliver its first order in more than 18 months. The CCP normally ends up issuing at least a handful of orders every year. In the years preceding the interlude, the body issued between 8-11 orders annually. So it was strange when the CCP went missing in action from January 2023 to the 31st of July 2024. The month of August, however, has marked a bit of a resurgence. In the span of the month of August, the CCP issued three different orders finally breaking its dry spell.

There are clearly inefficiencies within Pakistan's competition laws and how they are implemented. The CCP claims to have resolved over 70 cases out of the 500-plus pending in various courts, but it is striking how the country's only body mandated to ensure fair competition remains hamstrung. To some extent, their complaint is true. The majority of companies it investigates or issues notices to simply resort to the courts and obtain stay orders, effectively stalling enforcement and evading accountability. But should the companies they regulate have no recourse to their decisions?

To understand this, Profit looks at three prominent and recent examples of legal recourse taken in response to decisions made by the CCP, and the industries these decisions affect.

The confectionary business

One example of a case languishing in the courts are the proceedings against SFML commenced in 2018 accusing the company of trademark infringement, deceptive marketing, and misleading packaging. Without getting into the technical points of what was happening, those filing the complaint included Ismail Industries Limited, Hilal Foods Limited, and English Biscuit Manufacturers (EBM) joined the complaint in 2019. The CCP, after extensive inquiries, issued show-cause notices to SFML in June 2020.

Rather than responding substantively, SFML chose to challenge the Commission's jurisdiction in the Lahore High Court, arguing that, post-18th Amendment, trade and industry fell under provincial purview. The legal battle dragged on, with the Lahore High Court eventually dismissing SFML's jurisdictional challenge in May 2023. However, SFML has since filed

Those filing the complaints in this case are not exactly small businesses.

The largest players in the market are English Biscuit Manufacturers (EBM) and Mondelez Pakistan. EBM is a homegrown company that has been around for the past five decades and has produced household brand names such as Peek Freans and Mondelez is the international company that owns and operates Cadbury among many other brands.

Together, EBM and Mondelez rule over the market for chocolates, confectionery, biscuits, and sugary sweets in Pakistan, which is worth just over Rs 250 billion. Since the share of the biscuits market is the largest out of all the categories EBM is also the biggest company in this business, controlling over Rs 80 billion in total retail sales. Mondelez is fast on its heels with total retail sales worth just over Rs 70 billion. Together the two control nearly two-thirds of the total pie with net retail sales of Rs 150 billion. And while Mondelez and EBM have created brands that have brought them this success over the course of decades, there is one other competitor that is not far behind.

Founded in 1988, Ismail Industries is another local player in the sugar snacks, chocolates, biscuits and confectioneries market that has made a name for itself. Under this Candyland brand name, Ismail Industries have produced some of the most popular snacks in Pakistan including Cocomo and Chilli Milli – both of which are market leaders in their respective categories.

While they are behind EBM and Mondelez it is not by much. Ismail Industries in 2022 recorded gross retail sales of nearly Rs 60 billion, indicating they have a market share of nearly one quarter. What is perhaps even more surprising is the rapid pace at which Ismail Industries has grown and the diversification they have shown in their business.

The case of SFML is an example where most of the industry has banded together against a player, possibly because of their overall practices. It creates a situation that can be difficult. One can see the frustration of the CCP with constant appeals, but that does fall within the rights of the appellant.

Carbonated drinks

A similar pattern of obstruction is evident in the case against Mezan Beverages (Private) Limited. The dispute began in 2018 when PepsiCo Pakistan filed a complaint against Mezan, accusing it of deceptive marketing by closely mimicking PepsiCo's energy drink packaging.

The CCP initiated an inquiry and issued a notice to Mezan in September 2018. Instead of cooperating, Mezan challenged the CCP's jurisdiction in the Lahore High Court in October 2018 and obtained a stay order. Even after the court dismissed Mezan's petition in October 2020, the company continued to delay proceedings through appeals. To date, six years since the initial complaint, the matter remains unresolved, demonstrating how companies leverage legal avenues to stall enforcement.

Once again, this is a case very similar to that of SFML in the confectionery business. It is a small player with copyright issues against larger players. Remember, this is a situation where a large player is complaining about a much smaller player.

According to the latest market data analysis by Euromonitor, there were 1.329 billion litres of carbonated drinks sold in Pakistan in 2023. This includes all products by Coke Pakistan and Pepsico as well as local competitors such as Gourmet Cola, Cola Next, Sufi, and others.

This is actually a rare year in which the overall sales volumes of carbonated drinks have fallen. In 2022, the total sales volume of carbonated drinks was 1.38 billion litres, which indicates a 4% decrease. What is interesting is that carbonated drinks have seen consistently increasing sales volumes (around 18% annually) in at least the last 15 years for which accurate data is available.

The leading company in this entire mix was Coke Pakistan, which sold nearly 567.5 million litres of carbonated drinks. The biggest component of this was 451 million litres of Coca Cola, which makes up around 80% of the overall sales that Coke Pakistan made in 2023. Of the remaining 20%, over 11% (around 68 million litres) was made up by sales of Sprite, and the remaining 9% was made up of their other products including Mirinda, Coca Cola Light, and Sprite Zero. Pepsico sold just over 528 million litres of carbonated drink, giving them a total market share of 39.2% compared to Coke's 42.7%. The breakup of their sales shows that Pepsi was their hottest seller at around 70% of their total sales. Their second biggest seller was 7Up, which sold over 86 million litres making up 16% of their total sales. The remainder of the 14% of sales were made up by Fanta, Mountain Dew, Pepsi Black, and 7Up Sugar Free.

Honda Atlas Cars: Exploiting non-cooperation and court orders

Another example is Honda Atlas Cars (Pakistan) Limited, which has similarly exploited legal delays to evade accountability. The CCP launched an inquiry into Honda Atlas in 2018 over allegations of consumer exploitation and unfair business practices. Initially, Honda Atlas cooperated, but later, in June 2023, it filed multiple petitions in the Lahore High Court, questioning the CCP's jurisdiction and securing a stay order. Despite over 15 court hearings, progress has been repeatedly stalled due to the company's legal maneuvers.

This is another example of a big player going to the courts against the CCP. In fact, in the auto sector of Pakistan, there was until very recently a very clear oligopoly.

In 1980, the government decided to start a partial privatization of PACO. Suzuki was the first company to jump into this market, leading to the creation of Pak Suzuki Motor Company, which initially had just a 12.5% stake from Suzuki, with the rest owned by the government. The company started off with the capacity to manufacture 45,000 cars a year by taking some of the plants owned by PACO. By 1990, PSMC built a new plant at Port Qasim, an industrial suburb of Karachi, which took production capacity up to 50,000 cars a year.

In 1992, the government decided to allow private sector companies to outright own auto companies in the country, and placed minimal localization requirements on them. As a result, Suzuki bought out a majority of PSMC, taking its eventual share up to 74%, which is where it stands today. That same year, Honda extended its partnership with Atlas Group, which had been its partner in motorcycles since 1962, to passenger cars and created Honda Atlas Cars.

And in 1993, Toyota partnered with the Habib family to create Indus Motor Company.

There were a cast of other companies that came and went. Ghandhara Industries partnered with Isuzu to make trucks, and with Nissan to make cars. Dewan Farooque Motors worked with Hyundai and Kia to make hatchbacks and sedans. None of them ended up mattering, at least through the late 2010s.

From the early 1990s, the Big Three – as they soon became – came to a tacit agreement. Suzuki kept its monopoly on the hatchback category and Honda and Toyota slugged it out for the sedans. If any new entrants came onto the market (and many tried), they were quickly sullied and sent packing.

In this way, for nearly three decades there were essentially only six options for locally assembled ‘family cars’ in Pakistan. Suzuki at any given time was assembling three to four hatchbacks, with mainstays including the Mehran, the Alto, and the Cultus. Meanwhile Honda produced its cheaper sedan the Honda City, and its more expensive competitor to the Toyota Corolla the Honda Civic. Toyota focused on making just one car, albeit in different variants with different engine sizes.

Car production and domestic sales kept limping along at levels below 50,000 vehicles sold in the entire country per year until about the mid-2000s, when the Musharraf Administration’s privatization of banks resulting in the rapid expansion of consumer credit, and car loans became available en masse for the first time in Pakistani history. Car sales took off from under 70,000 in 2003 to nearly 185,000 in 2007, an astonishing pace of growth.

The 2008 financial crisis brought that lending to a halt, and with it came crashing down car sales to a mere 85,000 units in fiscal 2009. Sales slowly crawled back up as both the economy and lending recovered, but were then supercharged during the latter half of the Imran Khan Administration, which encouraged the central bank to loosen regulatory requirements for auto lending, which led to a record-breaking pace of sales.

Judicial guidance on regulatory proceedings

The Supreme Court and various High Courts have consistently ruled that companies should not seek judicial intervention until a regulatory body has concluded its proceedings and issued a final order. In *CCP v. Dalda Foods*, the Supreme Court of Pakistan upheld the Competition Commission’s authority, reaffirming that it is fully empowered to monitor markets, collect information, and conduct inquiries. Similarly, in *Sadiq Poultry (Private) Limited v. CCP*, the Lahore High Court ruled that show-cause notices are not adverse findings but opportunities for companies to respond. However, despite these legal precedents, there seems to be no real mechanism to avoid long drawn out legal battles. What the CCP really needs is an appellate system of their own. Of course, this does already exist. It is just defunct.

Competition Appellate Tribunal (CAT)

The dysfunction of the Competition Appellate Tribunal (CAT) further exacerbates the problem. Established under Section 43 of the Competition Act, 2010, the CAT is supposed to serve as the primary forum for appeals against CCP decisions. However, for 7.5 out of the past 10 years, the Tribunal has been largely non-functional, creating significant legal and procedural hurdles. With the CAT unable to hear cases, companies exploit this vacuum by filing challenges directly in High Courts, further stalling enforcement. Currently, 212 cases are pending before the Tribunal, while 140 petitions are pending in various High Courts. The federal government’s appointment of Justice (Retd) Mazhar Alam Miankhel as Chairman in November 2023 was a step toward restoring CAT’s functionality. However, his subsequent elevation to the Supreme Court in June 2024 rendered the Tribunal ineffective once again.

Despite these obstacles, the CCP claims that it has made notable progress in recent years. In 2024 alone, the Commission imposed Rs 27.5crores in penalties for cartelization, collusion, and deceptive marketing in key sectors, including paint manufacturing, pharmaceuticals, dairy products, and FMCG. It issued 32 show-cause notices for potential competition law violations in fertilizer, real estate, education, public procurement, pharmaceuticals, and FMCG. Additionally, it launched seven new inquiries into transportation, telecommunication, construction, and FMCG sectors, approved 64 merger applications, and granted 56 exemptions across various industries. The CCP’s Market Intelligence Unit identified over 125 instances of potential market manipulation, further underscoring the Commission’s commitment to enforcement despite legal roadblocks.

Chairman CCP, Dr. Kabir Ahmed Sindhu, acknowledged the challenges faced by the Commission. He noted that the restructuring of CCP's legal team had led to the resolution of 73 cases, including 11 in the Supreme Court, 31 in the CAT, and others in various High Courts. However, he emphasized that a significant portion of the litigation backlog—567 cases involving Rs 74 billion in penalties—remains a pressing issue. With 200 cases pending in the Supreme Court, 179 in the CAT, 46 in the Sindh High Court, 43 in the Lahore High Court, and six in the Islamabad High Court, the volume of litigation continues to pose a major hurdle to effective enforcement.

A critical impediment remains the constitutional legitimacy of the Competition Act. Several companies have challenged the federal government's authority to enforce competition laws across provinces, leading to a legal deadlock. The Lahore High Court has reserved its judgment on this matter since 2017, and successive hearings have yet to yield a definitive ruling. As a result, all companies penalized by the CCP have successfully obtained injunctions against its orders, further obstructing its enforcement powers.

Without an operational Competition Appellate Tribunal and more efficient court processes, companies could possibly continue to exploit the system, undermining the CCP's authority and weakening fair competition.

The need for reform is evident. Strengthening the CCP's legal standing, ensuring the CAT's functionality, and streamlining judicial procedures are crucial steps to uphold competition laws. Without these reforms, the persistent abuse of legal maneuvers will continue to shield corporations from accountability, harming consumers and distorting market competition in Pakistan.

<https://profit.pakistantoday.com.pk/2025/01/27/do-big-businesses-undermine-pakistans-competition-laws/>

CCP News

The Nation

CCP approves asset acquisition of Crescent Cotton Mills

The Competition Commission of Pakistan (CCP) has granted approval for the acquisition of certain assets, including land, equipment and machinery of Crescent Cotton Mills Limited (CCML) by Sultan Spinning Industries (Private) Limited (SSIL). The CCP defined the relevant product market as 'yarn,' segmented into cotton, synthetic, and blended yarn, based on differences in production, consumer preferences and pricing, said a press release issued here. The assessment determined that CCML holds a minimal market share, which will diminish further post-transaction as the assets will no longer contribute to its operations. In contrast, SSIL's market entry is anticipated to invigorate competition by introducing a new participant in the yarn industry. This is expected to stimulate competitive pricing, innovation and increased product availability, benefiting consumers and the broader market. The CCP's Phase I assessment concluded that the transaction poses no risk of lessening of competition. Instead, it paves the way for enhanced consumer choice and encourages fair competition. Additionally, the transaction involves the transfer of existing assets rather than the consolidation of market share, ensuring no additional barriers to entry for potential new competitors. SSIL, a private limited company incorporated under the laws of Pakistan, has not yet commenced operations but intends to engage in the manufacturing and sale of yarn once operational. Meanwhile, CCML, a publicly listed company, remains engaged in the manufacturing and sale of yarn.

<https://www.nation.com.pk/26-Jan-2025/ccp-approves-asset-acquisition-of-crescent-cotton-mills>