

Date: 28 October, 2020

## **News Summary**

**(CCP EXPRESSES GRATITUDE TO FEDERAL GOVT, OFFICE OF ATTORNEY GENERAL FOR  
EXTENDING HELP IN RESOLVING PENDING COURT CASES)**

## LHC dismisses industries' pleas challenging CCP formation

### Rejects objections to parliament's competence to enact laws on subject of competition, monopolies

#### Our correspondent

LAHORE: The Lahore High Court (LHC) Monday dismissed a long pending set of petitions by almost all industries, challenging establishment of the Competition Commission of Pakistan (CCP) and the competence of the parliament to enact a law on the subject of competition.

The industries including cement, oil & gas, energy, fertilisers, healthcare, education, telecom and real estate also moved the high court on the same grounds and got stay against the commission's actions.

A full bench comprising Justice Ayesha A Malik, Justice Shahid Jamil Khan and Justice Sajid Mahmood Sethi held the hearing on the petitions in June this year and reserved its judgment on July 16.

The petitioners' case was that there was no entry in the Federal Legislative List (FLL) which allowed the parliament to enact a law on the subject of competition. They argued that parliament did not have the power to

make laws on matters which were not enumerated in the FLL as all residue power was vested with the provinces after the 18th Amendment to the Constitution. They said the FLL did not contain any entry on the subject of competition or monopolies or in any manner with reference to anti-trust restrictions.

The attorney general had argued that competition was a federal subject and fell within parliament's legislative authority under the provisions of the Constitution.

The bench, in its judgment, authored by Justice Malik, did not agree with the petitioners and observed that the parliament could legislate on the subject of trade, commerce, industry and intercourse so as to keep it 'free' throughout the country and in the interest of free competition.

On the question of parallel judicial system in terms of Competition Appellate Tribunal (CAT), the bench observed that establishment of administrative courts and tribunals for federal subjects was provided for in the FLL

of the Constitution, which authorised the parliament to establish administrative courts and tribunals in relation to federal subjects.

"We do not agree with the petitioners' contentions that a parallel judicial system has been created or that administrative tribunals cannot be established for any other purpose other than Article 212 of the Constitution or that CAT is a 'court' under Article 175 of the Constitution," it added.

About the appellate jurisdiction of the apex court, the bench remarked that the subject of enlargement of jurisdiction of the Supreme Court under the FLL was a subject which exclusively fell within the parliament's domain, so the parliament could confer jurisdiction on the SC, by law, if the Constitution permits it.

The bench also observed that the show-cause notices and the proceedings by the CCP would remain intact as legal cover had been given to them under Section 62 of the Act.

Justice Khan, in additional note, said the question

whether the parliament had powers to legislate on the competition law was answered in affirmative. He said the parliament though had power to legislate for ensuring "free competition" through Competition Act 2010 but only to the extent of inter-provincial trade and commerce. On the point of parallel judicial system, Justice Khan agreed with the finding in the main judgment that the CCP and the appellate authority were performing administrative functions, therefore, were not covered under Article 175(3), but he did not agree with the conclusion that CAT was an administrative tribunal.

In a short note, Justice Sethi expressed his agreement with the conclusions drawn by Justice Ayesha A Malik on issues of "appellate jurisdiction of Supreme Court" and "validation clause in the Competition Act of 2010" and concur with the opinion and decision on the issues of "federal and provincial legislative competence" and "parallel judicial System", rendered by Justice Khan.

## CCP expresses gratitude to Federal Govt, office of Attorney General for extending help in resolving pending court cases

ISLAMABAD, October 27: In a major constitutional law development, a three-member Full Bench of the Honorable Lahore High Court, Lahore has upheld the Competition Act 2010 as being constitutionally valid and has dismissed challenges assailing the legislative competence of the Federation to enact a law on competition. The Competition Commission of Pakistan (CCP) acknowledges the support extended by the Federal Government and the office of the Attorney General in resolving the decade-long issue of pending court cases.

All three judges of LHC found that Parliament has the legislative competence to enact a law on competition. In minority, Justice Ayesha Malik held that Parliament's legislative competence, and therefore CCP's jurisdiction to regulate competition, extends to all inter-provincial as well as intra-provincial matters. Two judges in majority, however, held that while Parliament's legislative competence extends to inter-provincial trade and commerce, if CCP wants to take cognizance of a matter it shall have to establish that the activity in question has an effect on trade

and commerce beyond the boundaries of a province.

Focusing on Parliament's intention, the Full Bench the Honorable Lahore High Court also upheld section 62 of the Act which validated and granted continuity to all actions, orders, proceedings etc. of the CCP since the date of the promulgation of Competition Ordinance 2007. This means that all actions, proceedings, orders of the Commission issued under and since the 2007 Ordinance, and all subsequent ordinances as well as the Competition Act, 2010 stand validated. -PR

## CCP thanks govt, AGP for help as LHC upholds Competition Act 2010

ISLAMABAD  
STAFF REPORT

In a major constitutional development, a three-member bench of Lahore High Court has upheld the Competition Act 2010 as being "constitutionally valid" and has dismissed challenges assailing the legislative competence of the federation to enact a law on competition.

In a statement issued on Tuesday, the Competition Commission of Pakistan (CCP) acknowledged the support extended by the federal government and the office of the Attorney General of Pakistan in resolving the decade-long issue of pending court cases.

According to CCP, "All three judges of LHC found that the parliament has the legislative competence to enact a law on competition. In minority, Justice Ayesha Malik held that the parliament's legislative competence - and therefore CCP's jurisdiction to regulate competition -- extends to all inter-provincial as well as intra-provincial matters.

"Two judges in majority, however, held that while the parliament's legislative competence extends to inter-provincial trade and commerce, if CCP wants to take cognizance of a matter, it shall have to establish that the activity in question has an effect on trade and commerce beyond the boundaries of a province."

Focusing on the parliament's intention,

the bench also upheld section 62 of the Act which validated and granted continuity to all actions, orders, proceedings etc. of the CCP since the date of the promulgation of Competition Ordinance 2007.

This means that all actions, proceedings, orders of the commission issued under and since the 2007 Ordinance, and all subsequent ordinances as well as the Competition Act, 2010, stand validated.

The petitioners had also assailed the exercise of certain regulatory powers of CCP as judicial powers. The LHC held that exercise of powers of adjudication and enforcement by CCP are part of its administrative law and regulatory powers.

These are exercised in a regulatory capacity, and are incidental rather than being core judicial powers. As far as Competition Appellate Tribunal is concerned, the court found in a 2-1 split that the appellate tribunal does exercise 'judicial powers' and appointment of its members should be under the control and supervision of the Supreme Court in line with the apex court's ruling in the Sheikh Riazul Haq case in 2013.

The federal government has been given 60 days to ensure that

the ratio of the Sheikh Riaz case is complied with.

"The judgment represents an enormous moment for constitutional law in Pakistan in general and for the CCP in particular. It is also a significant constitutional moment for the determination of powers of federation and provinces over the regulation of economic activity," the statement read.

## CCP expresses gratitude to AG Office for resolving pending court cases

■ LHC judges say parliament has legislative competence to enact law on competition

### Staff Report

**T**he Competition Commission of Pakistan (CCP) on Tuesday acknowledged the support of Attorney General (AG) Office and federal government in resolving the decade-long issue of pending court cases. All three judges of LHC found that Parliament has the legislative competence to enact a law on competition.

According to the CCP, a three-member full Bench of Lahore High Court (LHC) has upheld the Competition Act 2010 as being constitutionally valid and has dismissed challenges assailing the legislative competence of the Federation to enact a law on competition.

The CCP said that in minority, Justice Ayesha Malik held that Parliament's legislative competence, and therefore CCP's jurisdiction to regulate competition, extends to all inter-provincial as well as intra-provincial matters. Two judges in majority, however, held that while Parliament's legislative competence

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"This means that all actions, proceedings, orders of the Commission issued under and since the 2007 Ordinance, and all subsequent ordinances as well as the Competition Act, 2010 stand validated. Petitioners had also assailed the exercise of certain regulatory powers of CCP as judicial powers. The LHC held that exercise of powers of adjudication and enforcement by CCP are part of its administrative law and regulatory powers," it said.

The commission stated that these are exercised in a regulatory capacity, and are incidental rather than being core judicial powers. As far as Competition Appellate Tribunal is concerned, the court found in a 2-1 split that the Appellate Tribunal does exercise 'judicial powers' and appointment of its members should be under the control and supervision of the Honorable Supreme Court in line with the

apex court's ruling in the Sheikh Riaz ul Haq case in 2013. The Federal Government has been given sixty (60) days to ensure that the ratio of the Sheikh Riaz case is complied with. The judgment represents an enormous moment for constitutional law in Pakistan in general and for Competition Commission in particular. It is also a significant constitutional moment for the determination of powers of federation and provinces over the regulation of economic activity.

It is worth mentioning that since 2008, CCP's enforcement powers had been severely hampered as a result of stay orders obtained by petitioners which included major entities, among others, from the banking, telecom, cement, fertilizer, sugar industries. The historical judgment is the second significant milestone for the Commission as the first one was the transition of Competition law from an Ordinance in 2007 into an Act in October 2010. This was also achieved during the current Chairperson Ms. Rahat Kaunain Hassan's previous tenure who assumed charge in July 16, 2020. It is noteworthy that in the first three years when she was a Member i.e. 2007-2010 Commission imposed penalty of PKR.7.2 billion which during her previous term as Chairperson i.e. 2010-2013 was taken to PKR.21.63 billion (a total of over PKR 28 billion).

## Competition Act 2010 constitutionally valid

**OUR STAFF REPORTER**  
**ISLAMABAD**

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## مسابقتی ایکٹ 2010 کو درست قرار دینا تاریخی فیصلہ، سی سی پی

زیر التواء عدالتی مقدمات کے حل میں معاونت پر وفاقی حکومت اور انارنی جنرل آفس کا شکریہ  
 اسلام آباد ( کامرس رپورٹر ) مسابقتی کمیشن  
 آف پاکستان نے زیر التواء عدالتی مقدمات کے حل  
 میں معاونت پر وفاقی حکومت اور انارنی جنرل آفس  
 کا شکریہ ادا کرتے ہوئے کہا کہ لاہور ہائیکورٹ  
 کے تین رکنی فل بینچ نے اپنے ایک تاریخی فیصلے میں  
 باقی صفحہ 5 نمبر 47

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سی سی پی

مسابقتی ایکٹ 2010 کو آئینی طور پر درست قرار  
 دیا ہے اور فیڈریشن کی مسابقتی کے حوالے سے قانون  
 سازی کے اختیار کو چیلنج کرنے والی تمام درخواستوں کو  
 مسترد کر دیا ہے، 2008 سے مسابقتی کمیشن کو حکم  
 اقتناع کے باعث فیصلوں پر عملدرآمد میں سخت رکاوٹوں  
 کا سامنا تھا اس فیصلے کے بعد مسابقتی کمیشن جرمانے کی  
 وصولی اور اپنے احکامات پر عملدرآمد کرا سکے گا، سی سی پی  
 کے مطابق ہائی کورٹ فیصلہ کے مطابق تاریخی  
 مسابقت سے متعلق قانون سازی کا اختیار تھتی ہے  
 درخواست گزاروں نے کمیشن کمیشن کے ریگولیشنز  
 اور عدالتی اختیارات کی حیثیت کو بھی چیلنج کیا تھا۔ جہاں  
 تک کمیشن اپیلٹ ٹریبونل کا تعلق ہے تو عدالت نے  
 12 کی فیصلے میں کہا ہے کہ کمیشن اپیلٹ ٹریبونل عدالتی  
 اختیارات استعمال کرتا ہے اور اس کے ممبروں کی تقرری  
 کو عدالت عظمیٰ کے زیر نگرانی 2013 میں شیخ ریاض  
 الحق کیس کی روشنی میں ہونا چاہئے۔ وفاقی حکومت کو اس  
 بات کو یقینی بنانے کے لئے ساٹھ روز کی مہلت دی گئی  
 ہے کہ شیخ ریاض کیس کے تناسب کی تعمیل کی جائے۔ یہ  
 بات قابل ذکر ہے کہ یہ تاریخی فیصلہ کمیشن کے لئے دوہرا  
 اہم سنگ میل ہے کیونکہ پہلا کمیشن لاء کا 2007  
 میں آرڈیننس سے اکتوبر 2010 میں ایکٹ میں  
 تبدیل ہونا تھا اور یہ موجودہ چیئر پرسن راحت کونین حسن  
 کے سابقہ دور میں ہوا تھا۔ 2007 اور 2010 کے  
 درمیان جیب راحت کونین حسن بطور ممبر خدمات سرانجام  
 دے رہی تھی، سی سی پی نے 7.2 ارب کے جرمانے  
 عائد کیے، جو ان کی 2010 میں بطور چیئر پرسن تعیناتی  
 کے بعد 21 ارب 63 کروڑ روپے کے اضافے کے  
 ساتھ 28 ارب تک پہنچ گئے۔

## مسابقتی کمیشن کالاہور ہائیکورٹ کے فیصلے کا خیر مقدم

تاریخی فیصلہ اہم سنگ میل ہے، حکم امتناع سے سخت رکاوٹوں کا سامنا تھا: علامیہ

اسلام آباد (ارشاد انصاری سے) مسابقتی کمیشن آف پاکستان نے لاہور ہائیکورٹ کے تین آفس کی طرف سے زیر التواء عدالتی مقدمات کے کئی فلنچ کے فیصلے کا خیر مقدم کرتے ہوئے کہا ہے ایک دہائی پرانے مسئلے کو (باقی صفحہ 5 نمبر 43)

### مسابقتی کمیشن (43)

حل کرنے میں معاونت کا معترف ہے، مسابقتی کمیشن کے جاری کردہ اعلامیہ کے مطابق فیصلے سے 2007 کے آرڈیننس اور اس کے ساتھ ساتھ کمپنیشن ایکٹ 2010 کے تحت اور اس کے بعد سے جاری کردہ کمیشن کے تمام اقدامات، کارروائیوں اور احکامات کی بھی توثیق ہوگئی، یہ بات قابل ذکر ہے کہ 2008 کے بعد سے حکم امتناعی کے نتیجے میں سی پی کے انفورسمنٹ کے اختیارات کو سخت رکاوٹوں کا سامنا تھا تاہم یہ فیصلہ خاص طور پر کمپنیشن کمیشن اور پاکستان کے آئین کیلئے ایک بہت بڑا لمحہ ہے۔



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It is also a significant constitutional moment for the determination of powers of federation and provinces over the regulation of economic activity. It is worth mentioning that since 2008, CCP's enforcement powers had been severely hampered as a result of stay orders obtained by petitioners which included major entities, among others, from the banking, telecom, cement, fertilizer, sugar industries. The historical judgment is the second significant milestone for the Commission as the first one was the transition of Competition law from an Ordinance in 2007 into an Act in October 2010. This was also achieved during the current Chairperson Ms. Rahat Kaunain Hassan's previous tenure who assumed charge in July 16, 2020. It is noteworthy that in the first three years when she was a Member i.e. 2007-2010 Commission imposed penalty of PKR.7.2 billion which during her previous term as Chairperson i.e. 2010-2013 was taken to PKR.21.63 billion (a total of over PKR 28 billion). In the last seven years, the Commission only witnessed enforcement and imposition of penalty which was less than PKR. 1 billion. The Commission believes that this validation of laws and actions will pave way for effective enforcement and implementation of competition regime. The Attorney General himself appeared on behalf of the Federal Government and the Commission was represented by team of lawyers led by Azid Nafees, Barrister Waqqas Ahmad Mir, Muqtedir Akhtar Shabir and Dr. Azeem Raja, Muhammad Ahmad Qayyum, Rizwan Mushtaq, Ashfaq Qayyum Cheema and Morris Nadeem, Salman Mansoor, Ahmad Hassan Anwari, Babur Suhail, Imran Muhammad Sarwar, Ahmed Hassan Khan, Mehr Muhammad Iqbal and Imran Khan Klair, Nasir Mahmood Qureshi, Amjed Hameed Ghauri, Sultan Qamar Afzal.

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# Treasure Magazine

28 October 2020 | Online

## CCP hails LHC decision to uphold ‘Competition Act 2010’

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Focusing on Parliament’s intention, the Full Bench the Honorable Lahore High Court also upheld section 62 of the Act which validated and granted continuity to all actions, orders, proceedings etc. of the CCP since the date of the promulgation of Competition Ordinance 2007. This means that all actions, proceedings, orders of the Commission issued under and since the 2007 Ordinance, and all subsequent ordinances as well as the Competition Act, 2010 stand validated.

Petitioners had also assailed the exercise of certain regulatory powers of CCP as judicial powers. The LHC held that exercise of powers of adjudication and enforcement by CCP are part of its administrative law and regulatory powers. These are exercised in a regulatory capacity, and are incidental rather than being core judicial powers. As far as Competition Appellate Tribunal is concerned, the court found in a 2-1 split that the Appellate Tribunal does exercise ‘judicial powers’ and appointment of its members should be under the control and supervision of the Honorable Supreme Court in line with the apex court’s ruling in the Sheikh Riaz ul Haq case in 2013. The Federal Government has been given sixty (60) days to ensure that the ratio of the Sheikh Riaz case is complied with. The judgment represents an enormous moment for constitutional law in Pakistan in general and for Competition Commission in particular. It is also a significant constitutional moment for the determination of powers of federation and provinces over the regulation of economic activity. It is worth mentioning that since 2008, CCP’s enforcement powers had been severely hampered as a result of stay orders obtained by petitioners which included major entities, among others, from the banking, telecom, cement, fertilizer, sugar industries.

The historical judgment is the second significant milestone for the Commission as the first one was the transition of Competition law from an Ordinance in 2007 into an Act in October 2010. This was also achieved during the current Chairperson Rahat Kaunain Hassan’s previous tenure who assumed charge in July 16, 2020. It is noteworthy that in the first three years when she was a Member i.e. 2007-2010 Commission imposed penalty of Rs 7.2 billion which during her previous term as Chairperson i.e. 2010-2013 was taken to Rs 21.63 billion (a total of over Rs 28 billion). In the last seven years, the Commission only witnessed enforcement and imposition of penalty which was less than Rs 1 billion. The Commission believes that this validation of laws and actions will pave way for effective enforcement and implementation of competition regime. The Attorney General himself appeared on behalf of the Federal Government and the Commission was represented by team of lawyers led by Azid Nafees, Barrister Waqqas Ahmad Mir, Muqtedir Akhtar Shabir and Dr. Azeem Raja, Muhammad Ahmad Qayyum, Rizwan Mushtaq, Ashfaq Qayyum Cheema and Morris Nadeem, Salman Mansoor, Ahmad Hassan Anwari, Babur Suhail, Imran Muhammad Sarwar, Ahmed Hassan Khan, Mehr Muhammad Iqbal and Imran Khan Klair, Nasir Mahmood Qureshi, Amjed Hameed Ghauri, Sultan Qamar Afzal.

