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BUSINESS



” **Wilson:** We are a bit more careful in inspection, which the businesses complain is bringing them a bad name

Acting Chairman Competition Commission of Pakistan **Dr Joseph Wilson** at a press conference in Islamabad on Monday

Competition rules

No leniency to violators once CCP hands down verdict

Anti-trust watchdog amends regulations to stop violators from buying time

SHAHBAZ RANA
ISLAMABAD

The anti-trust watchdog has barred violators of competition law from seeking leniency once it is established by a bench of the Competition Commission of Pakistan (CCP) that they have violated the law, filling a major lacuna in its regulations that is exploited by the guilty to buy time.

The CCP has amended leniency regulations that allowed parties to take benefit of these rules even after an order is passed by a bench, said CCP Acting Chairman Dr Joseph Wilson here on Monday.

"Now the parties can seek leniency until the matter is under investigation and before the bench gives a verdict," said Wilson while speaking at a press conference.

Under the 2007 regulations, the parties were claiming leniency after the issuance of an order besides challenging the CCP's decisions in various courts aimed at seeking more time.

Wilson said the CCP was reviewing all the regulations, which were framed under the CCP Ordinance 2007. "The 2007 regulations were outside the ambit of the parent statute," he added.

The CCP has also provided more protection to informers, but reduced their cash reward to Rs2 million from Rs5 million due to budgetary constraints. Penalties imposed by the CCP are deposited in the national kitty.

The CCP's source of income is 3% fee that various regulators are supposed to contribute but they are not paying, sparking financial difficulties for the anti-trust watchdog.

INCENTIVE

Rs2m

is the cash reward the CCP gives to informers, but it has been reduced from Rs5 million due to budgetary constraints

The CCP is currently working below capacity, as it neither has a permanent chairman nor all posts of members are filled.

Since the PML-N government took power in June, there has been a strong feeling that the commission has been forced to slow down its activities, as its actions are hurting the businesses – which are traditional voters of the PML-N – involved in anti-competitive practices.

In reply to a question, Wilson said though the pace of its activities had slowed down, it had nothing to do with the government. "We are a bit more careful in research and inspection, which the businesses complain are bringing them in bad name," said Wilson.

The biggest hurdle in ensuring a level playing field to all market players and breaking cartels is the partial implementation of the CCP Act to date.

The CCP's decisions are challenged in courts and in almost every case the courts grant stay orders. Over 90% of the cases decided by the CCP are in litigation, said Wilson.

The CCP's decisions could be chal-



RIGHT TO APPEAL: The CCP's decisions could be challenged in a three-member appellate tribunal before taking them to higher courts. However, the government has not constituted the tribunal. PHOTO: FILE

lenged in a three-member appellate tribunal before taking them to higher courts. However, the PML-N government has not constituted the tribunal, which has only one member.

Wilson said the tribunal had become dysfunctional, slowing the process of penalising the culprits.

However, he said despite serious challenges, the CCP was successful in many ways. For instance, Indus

Motor agreed to revise its provisional buying order, which would give more comfort to its customers, said Wilson.

So far, the customers despite paying the entire amount in advance were uncertain about the final price, delivery time, quality of car and various specifications.

Wilson said since assuming charge of acting chairman at the end of August, he had taken steps

to reorganise the CCP, which was earlier practically under the control of chairperson. The regulations designed for conduct of CCP business were amended, giving members more responsibilities, he added.

Wilson said previously the members did not have the right to bring any item on the agenda, giving an overarching role to the chairperson in deciding virtually everything.

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CCP drafts new Competition Leniency Regulations 2013

RECORDER REPORT

ISLAMABAD: The Competition Commission of Pakistan (CCP) has drafted new Competition Leniency Regulations 2013; Reward Payment Scheme; Conduct of Business Regulations to improve Competition Rules and Regulations in view of past experience, bringing them in line with the latest developments and competitive business environment.

Addressing a press conference on Monday, Acting Chairman CCP, Dr Joseph Wilson said that since assumption as Acting Chairman of the Commission, the CCP has focused on internal reorganization; revised rules and regulations; enforcement actions; advocacy and capacity building.

The internal restructuring has been done to make the Commission more effective in

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day-to-day business. Previously, the command and control was in the hands of only one person - head of the Commission. Under new setup, members have been given more active role in different functions of the Commission. The Commission cannot do new hiring due to ban on recruitment. However, the CCP has new director general CAT and secretary to the Commission.

He said that the CCP has initiated a restructuring programme to enhance the power of its members and balance it with the powers of the chairperson. The reforms are likely to decrease the one person authority in the Commission and the voice of other members would also carry weight in the affairs of the CCP.

The past leniency regulations were framed in 2007 which needs to be updated. The CCP has issued new Competition Leniency Regulations 2013 for which SRO would be shortly issued. A number of changes have been made in the old law.

He said that the leniency could only be given when there is allegation of violations of competition laws. Once order has been passed, it is not an alleged violation. The issue of confidentiality has been maintained under the new regulations. Previously, a case of leniency was made public by placing it on the CCP's website which had negative impact on the proceedings.

To ensure confidentiality of the applicant under the new Leniency Regulations, upon request by the applicant, the Commission may endeavour, to the extent that is consistent with its obligations to disclose or exchange information, to keep the identity of the undertaking coming forward with evidence of the prohibited activity, confidential until the decision of the Commission to grant leniency, he explained.

If a cartel comes for leniency under the Competition Leniency Regulations 2013, its confidentiality needs to be ensured.

Under new regulations, the Commission may grant an undertaking the benefit of total immunity from financial penalties provided the undertaking give the Commission evidence of prohibited activity.

Moreover, the undertaking provides the Commission with all the information, documents and evidence available, regarding the prohibited activity; maintains continuous and complete cooperation throughout the proceedings and until the conclusion of the proceedings for the alleged suspected/prohibited activity by the Commission; refrains from further participation in the alleged prohibited activity from the time of its disclosure to the Commission, unless otherwise required by the Commission and must not have taken any step to coerce another undertaking to take part in any of the activities prohibited.

If an undertaking does not qualify for total immunity from financial penalty under the regulation, it may still be entitled to the benefit from a reduction in the financial penalty under regulation, CCP chairman said.

Sharing key features of the Reward Payment Scheme, he said that the maximum limit of reward has been reduced from Rs 5 million to Rs 2 million. A person is taking risk in disclosing information and a reasonable amount needs to be allocated for such claimants.

He said that the Conduct of Business Regulations have been made Commission specific instead of chairman specific. It has been made mandatory for convening a monthly meeting of the Commission. The members of the Commission have been empowered to bring their agenda before the Commission meeting.

Responding to a question, he said that all penalties would go into the Federal Consolidated Fund. Around 90 percent of the fines imposed are under litigation.

To a query on fee payments made to lawyers, he said since 2007 a total of fee of approximately Rs 2.5 crore has been made to the lawyers.

About 3 percent payment of fee by regulators, he said that he has met the chairman SECP, who has assured that the 3 percent of the total fines/penalties would be given to the CCP as per law.

He dispelled impression that action against the cartels is slow during the tenure of PML-N government.

On the issue of search and inspections, he said that the Commission has to adopt a careful approach while conducting inspections of the undertakings. In case of CNG, the CCP carried out search of the CNG association, but later unable to prove cartel.

To a question, he said that if a telecom company is providing free of cost service to its customers and not forcing such consumers to take the service, it is not against the competition law.

About his end of tenure as CCP Member on November 12, 2013, he defended that the federal government had notified that he can work as CCP chairman till appointment of new chairman. He read section 16 of the CCP Act saying that the federal government can appoint most senior member of the Commission to be acting chairman of the Commission until the appointment of a chairman on regular basis. About the Competition Appellate Tribunal, the Chairman said that currently it is dysfunctional due to absence of its members and chairman. "The government needs to show seriousness about the Tribunal by appointing its members and chairman," the chairman said.

Former Justice Faqir Muhammad Khokhar of Supreme Court of Pakistan was appointed Chairman of the Competition Appellate Tribunal in July 2011, while the technical members of the Tribunal were appointed in mid 2012. While the chairman of the Tribunal has retired, one technical member Khalid A. Mirza, former chairman of CCP has resigned from the Tribunal and Muhammad Arshad Tabrez, former judge of Islamabad High Court, is the lone member in the Competition Tribunal.

The Tribunal has decided only one case and only one case has been shifted from the routine courts to the Tribunal, he added.

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CCP being revamped for power balance

By A Reporter

ISLAMABAD, Nov 11: The Competition Commission of Pakistan (CCP) has initiated a restructuring programme to enhance the power of its members and balance it with the powers of the chairperson.

The reforms are likely to decrease the one person authority in the Commission and would give weight to the voice of other members.

The reforms have been initiated by acting chairperson Dr Joseph Wilson who was Member Mergers & Acquisitions in the CCP prior to August 22, 2013.

He became CCP chairman after the retirement of Ms Rahat Kaunain Hassan from the said position.

Talking to media, here Monday, Dr Wilson highlighted the reforms undertaken by him in two and a half months.

He said the new internal restructuring would ensure that the Commission meeting is held at least once a month. Previously the meeting schedules and agendas were solely decided by the chairperson.

In line with the restructuring of the CCP, the management of the commission has upgraded the Leniency Regulations 2013, set to be notified in coming days.

The major change in the Leniency Regulation is to ensure the confidentiality of the application/applicant that is providing evidence in a CCP inquiry. The other main issue related to position of the applicant, as any person or entity can only avail this option of Leniency, prior to the decision by the CCP.

"The Commission may, if it is satisfied that the applicant has made a full and true disclosure in respect of the alleged violation, grant leniency under Regulation 3 or 4, as it may deem fit, by issuing a letter to the applicant," Dr Wilson said.

"But previously it could be availed even after the CCP verdict, which is not correct as the accused know that they have been nabbed at that stage and all the hard work has been done by the CCP officials," he added.

It has been observed that

CCP...

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CCP activities have slowed down in the recent months, especially 'search and inspection' which decreased massively after the unsuccessful case of CNG sector that was taken up by the CCP in November 2012.

Responding to a question, Dr Wilson said that majority of the decisions made by the Commission ended in lengthy litigations whereas the Competition Tribunal remains non-functional.

Justice (Rtd) Faqir Muhammad Khokhar, former judge of Supreme Court of Pakistan, was appointed Chairman of the Competition Appellate Tribunal in July 2011, while the Technical Members of the tribunal were appointed in mid of 2012.

While the chairman of the tribunal has retired, one technical member Khalid A. Mirza, former Chairman of CCP, resigned from the tribunal. Muhammad Arshad Tabrez, former judge of Islamabad High Court, is the lone member in the Competition Tribunal.

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CCP chief to stay on after tenure ends

By Mehtab Haider

ISLAMABAD: Acting Chairman Competition Commission of Pakistan (CCP) Dr Joseph Wilson said that he would continue to perform on his existing slot despite the fact that his tenure as a senior member in the commission would lapse on Tuesday (today).

"Under the law I am empowered to continue performing as the acting chairman of the CCP," he said, while addressing a press conference on Monday.

While quoting different clauses of the CCP Act 2010, he said that his notification was issued with effect from November 12, 2010 instead of January 15, 2011.

Under the law, he said he was empowered to continue to perform his duty till the appointment of the permanent chairman of the CCP.

However, he said the CCP revised its earlier regulation of leniency, barring violators to seek this facility after the commission established their crime as this lacuna was ex-

ploited by guilty parties to gain more time.

He said that they also brought down the reward money for informers from Rs5 million to Rs2 million under the new regulations.

Now the parties can seek leniency until the matter is under investigation and before the CCP bench's verdict.

According to the regulations of 2007, parties were allowed to claim leniency after the issuance of the order, besides challenging the CCP's decisions in various courts.

Wilson said the CCP was reviewing all the regulations, which were framed under the 2007 CCP Ordinance.

"The 2007 regulations were outside the ambit of the parent statute," he added.

He said the CCP is a bit a careful in research and inspection, responding to a question if the commission has become lethargic since the PML (N) government came into being.

The CCP's chief said the decisions could be challenged in a three-member appellate

tribunal before they would be moved to the higher courts. However, the PML-N government has not made efforts to make this tribunal functional as currently there is only a member. The government has not appointed anyone on the slot relinquished by Justice (Retd) Faqir Kokhar.

Khalid Mirza – who was member of this tribunal – had also tendered his resignation and afterwards no appointment was made, he said, adding the appellate tribunal – comprising of only one member – has become dysfunctional.

He said more than 90 percent of the cases decided by the CCP are in litigation. The courts gave stay orders to those who were slapped with the penalties and against who the commission had established the crime.

However, he said despite serious challenges the CCP was successful in many ways. For instance, the Indus Motors has agreed to revise its provisional buying order, which will give more comfort to its customers, said Wilson.

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مسابقتی کمیشن کے فیصلے عدالتوں میں چیلنج، اپیلیٹ ٹریبونل غیر فعال

کمیشن کو جدید رولز اور ریگولیشن کے مطابق ڈھالا جا رہا ہے، ڈاکٹر جوزف ولسن
اسلام آباد (سٹاف رپورٹر)

مسابقتی کمیشن کی طرف صارفین کے مفادات کے تحفظ کے لئے
اجارہ داریوں کے خلاف کیے گئے 90 فیصد فیصلے پاکستان کی
عدالتوں میں چیلنج ہو گئے ہیں جبکہ کمیشن کے فیصلوں کے خلاف اپیلوں کی شنوائی کے لئے قائم کردہ اپیلیٹ ٹریبونل بھی
عملی طور پر غیر فعال ہے۔ عدالتوں میں کمیشن کے فیصلوں کے خلاف اپیلوں کی سماعت کے لئے وکلا کو ڈھائی کروڑ
روپے سے زیادہ کی رقم فراہم کی جا چکی ہے۔ کمیشن کے فیصلوں کے خلاف اپیلیٹ ٹریبونل نے صرف ایک فیصلہ کیا ہے
جو کمیشن کے فیصلے کے خلاف تھا۔ حیر کے روز گفتگو کرتے ہوئے کمیشن کے چیئرمین ڈاکٹر جوزف ولسن نے بتایا کہ
مسابقتی کمیشن کے فیصلوں کے خلاف اپیلوں کی سماعت کے لئے قائم کردہ اپیلیٹ ٹریبونل کے چیئرمین مدت ملازمت
کی تکمیل کے بعد ریٹائر ہو چکے ہیں جبکہ ایک ممبر خالد مرزا مسلسل تنخواہ نہ ملنے کی وجہ سے استعفیٰ دے چکے ہیں جبکہ صرف
ایک ممبر اس وقت موجود ہیں انہیں بھی کئی ماہ سے تنخواہ نہیں ملی جبکہ ایک ممبر ابھی تک مقرر نہیں کیا گیا اس طرح عملی طور پر
صرف ایک ممبر موجود ہے جو بغیر تنخواہ کے کام کر رہا ہے۔ انہوں نے کہا کہ کمیشن کے جرماتوں کے فیصلوں کے خلاف
چاروں صوبوں کی ہائی کورٹس میں اپیلیٹس زیر سماعت ہیں۔ انہوں نے بتایا کہ کمیشن کی اندرونی تنظیم نو بھی کی جا رہی ہے
اور رولز اور ریگولیشن کو بھی وقت کے تقاضوں کے مطابق ڈھالا جا رہا ہے وزارت دفاع سے جوائنٹ سیکرٹری کے عہدہ
کے ایک افسر کو کمیشن کا سیکرٹری مقرر کیا گیا ہے۔ انہوں نے بتایا کہ ماضی میں اختیارات کا ارتکاز چیئرمین کے عہدہ کی
طرف تھا اس عمل کو اب تبدیل کیا جا رہا ہے کمیشن کے ممبران کا ماہانہ ایک لازمی اجلاس منعقد ہوا کرے گا جبکہ اجلاس میں
کمیشن کو کوئی بھی ممبر ایجنڈہ پر کوئی بھی چیز لانے کا مجاز بھی ہوگا۔ انہوں نے کہا کہ ماضی میں جن کے خلاف اجارہ داری
کے الزام میں فیصلے کیے گئے انہیں غلطی تسلیم کرنے کا ایک موقع ملتا تھا لیکن اس کے مثبت نتائج برآمد نہیں ہوئے۔