

INTERVIEW

Fostering competition



By Haris Zamir

Competition protects consumers and provides a level playing field for all stakeholders. However, in several cases, monopolies have emerged dominant in Pakistan. To understand how the two play out in the current economic environment, *Money Matters* interviewed Chairperson, Competition Commission of Pakistan (CCP), Rahat Kaunain Hassan. She shared her views on competition and explained how it can help strengthen the economy.

Q. What is the importance of the CCP given that industrial performance has shown little growth for over a decade now?

A. Its role becomes even more important in such a scenario. There are various reasons for this economic performance. One major reason is that dominant players want to maintain their strong hold on the economy whereas the role of competition authority is to free the economy from their strong hold. We must ensure that we are not held hostage to anticompetitive practices such as cartel or abuse of market position. We have recent examples of the ICH in the telecom sector or exploitative excessive pricing by urea manufacturers wherein anticompetitive practices have proved to be the norm. This must be addressed.

Also, slow growth indicates a need to take pro-competitive measures and to ensure that there are no barriers to entry that keep other players from coming forward. We have to choose between retreating and advancing towards competition principles. In my view, the choice is obvious - we must not retreat.

Q. Is the CCP free to execute its plans or does it face impediments?

A. There are always hurdles.

We are still struggling to attain financial autonomy. The three percent fee and charges owed us by five regulatory bodies have not been deposited. This certainly hampers free execution of our plans in fact it suspends much of our planning. For institutional sustainability, financial autonomy is a must. Because of this we are also facing a challenge as to how to retain the trained valuable resource that has acquired professional expertise.

In our decision making, we have demonstrated our independence as an autonomous organization. Be it cement, sugar, LPG, banks, poultry, telecom, fertilizer or a profession body like ICAP, these are powerful lobbies and sectors. We have fearlessly guarded our independence. What we need now is to evolve our national jurisprudence in this regard. I am referring to the competition issues. We have backed our judgments with reasoned arguments, supported by facts and figures. They are now with the courts.

Q. Several penalties were imposed by CCP, most recently on fertilizer producers and telecoms. Have these been received?

A. Unfortunately, courts in the sub continent are not known for their efficiency. However, we all have to play our respective roles in overcoming this. We must evolve a speedy mechanism for resolving key economic disputes. I strongly believe that the earlier provision with the right of appeal directly before the Supreme Court would have worked far more beneficially for everyone involved. Even now it would do well, if competition benches are constituted in the high courts - matters having economic impact need to be prioritized. Letting interim relief and injunctions operate for extended durations, virtually operating as main relief must be discouraged.

In cases of cartels and abuse of dominant position where we have imposed huge penalties (owing to the public harm done) these companies should perhaps be required to deposit at least 50 percent of penalty upfront (with the courts). This will keep their interests alive in expeditious disposal and eventually reduce exploitation of the system by those who have already been found to be on the wrong side of the law. Also, it would be helpful if,

prior to grant of stay, the regulatory bodies are given due opportunity to present the true and full picture before the courts and stays are not granted ex-parte. I must clarify that CCP is not the beneficiary of these fines/penalties to be recovered; these are deposited with the exchequer. We have only been getting a limited grant of Rs200 million for the last three years.

Q. What are some of the successful strategies that have been adopted by regional countries to re-vamp industrial sectors?

A. In economic development, China has proven that there is no single best practice. As for CCP, we are benchmarking ourselves with developed economies. In the South Asian region, or the Asia Pacific Middle East and Africa, we are rated as one of the top performance agencies. Among the SAARC states, we are the first in the region to provide technical training to officers from Afghanistan. Yet, in reshaping the industrial sector, many other factors will play their role including the pro-competitive measures and policies adopted by the government as well as the judicial precedents contributing to economic jurisprudence of the country.

Q. How do competition laws help foster investment and trade?

A. The purpose of promoting competition is to provide a level playing field and ensure fair play. This encourages trade and attracts investment. Trade, investment or competition, are not an 'end' in themselves but a means to an end; intended to achieve economic growth through efficiency.

For competition to prosper, apart from effective competition enforcement authority, we need consistent pro-competitive measures and policies - of which competition law is only a subset. To lend certainty to investments, our judicial precedents must evolve to a stage where we are able to provide a set of economically sound jurisprudential principles, lending clarity, certainty and direction to economic actors.

Decisions being challenged before the court fall under due process and cannot be pre-empted. Even in the absence of judicial precedents, competition law enforcement has helped create awareness for other economic actors,

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The contribution at our end will hopefully go a long way but experts predict it will take about 10 to 15 years for the impact to become visible.

Q. What has the CCP achieved in terms of enforcing competition law?

A. CCP has become a success story globally. In the process, we have earned respect for our country. You cannot measure achievements unless you take into account the challenges one is confronted with. We have received immense appreciation and recognition for our hard work. Despite all constraints, in a little over five years, we have competed globally. National regulatory bodies or South Asian competition regimes are no longer our benchmark. For the last two years we have been short listed in the top five (of 42 competition agencies in the Asia Pacific Middle East and Africa region) for our 'enforcement' and for the 'Agency of the year award' by the Global Competition Review (a prestigious international UK-based organization).

CCP is the only agency, which retained this status for successive years. We were short listed and



running for this title alongside countries like Japan, Australia and Korea, which are far more developed regimes.

Our leniency decision was also short listed for best behavioural matter in the region. We held two successful, fully sponsored international conferences. It had to be our performance that drew endorsement from the international community. People who have visited us are all praise for our work environment, culture and performance. We have been praised for our well reasoned decisions and innovative approaches to advocacy. We have jealously guarded our independence and are proud to have contributed in building and strengthening a national organization. It's a heavy burden to maintain that quality and reputation and to further enhance our expertise.

Q. It the competition law sector-specific or sector-blind?

A. It is sector blind. The preamble envisages promoting competition in all spheres of commercial and economic activity. We have clearly addressed in our ICH decision why competition law cannot be administered and enforced by a sector-specific regulator.

It is part of a legislative scheme aimed at deterring anticompetitive practices that affect trade and commerce. It is not limited to a single industry, commodity or sector and hence cannot be regulated by a sector-specific regulator. Since the presence or absence of healthy competition may affect the welfare of the economy, it is maintained that competition law falls within the sphere of the federal Parliament.

Q. How do you expect the new government to support the CCP?

A. It is heartening to hear from the new government that the economy remains the focal priority. For that we need effective policies, strong regulatory institutions and political will. If we are pro-business, we have to be pro-competition. The sooner we understand this, the easier it will be to reap the benefits of competition. Therefore, I trust that financial autonomy will be strengthened and that the government will support us strongly in expeditious disposal of significant economic matters. The CCP recently organized

an international conference in Islamabad. What are its outcomes?

A. Apart from getting recognition for our work, it has helped create awareness from exchange of international experiences. What visibly emerged was that competition is everyone's business and leads to fostering trade and investment. High profile speakers such as William Kovacic (former US FTC chairman/commissioner and a competition guru) and Eduardo Perez Motta (chair of the steering committee ICN and president of the Mexican Federal Competition Commission), among others from Canada, India, Sri Lanka, Kenya, South Africa, Turkey, Morocco and Switzerland made the conference a truly international experience. The interaction with these delegates provided a unique opportunity to better understand competition issues. It was also a humble effort to make them appreciate the other and brighter side of Pakistan. Importantly, as a result of this conference the Consumer Protection Agencies have come forward and expressed their interest in supporting us to pursue expeditious disposal of cases for the benefit of consumers.

Q. Goals planned for the next five years?

A. That I leave for my successor to determine. As for myself, I am told (and I believe) I have played a successful innings. I am proud of my team. I agree that nationally, CCP deserves more credit than it usually gets. In our most recent Rating Enforcement, Global Competition Review's annual survey, wherein the world's leading competition authorities are invited to volunteer for evaluation (CCP has been volunteering for three years) we have earned a fair rating with 'an arrow up'. This recognizes that we have made excellent use of our resources and have surpassed our previous accomplishments. The GCR observed that the CCP '...keeps moving from strength to strength and is clearly heading in the right direction'. Our peer review by UNCTAD will be shared with 52 countries in Geneva in July, 2013; that will also not only review our performance but also include recommendations for improvement.

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