

## Fair trade necessary for economic growth: experts

By Mansoor Ahmad

LAHORE: Elimination of anti-competition practices are vital for economic growth, experts at an international conference said recently in Lahore.

According to them, protection of public funds is also a top priority for global competition agencies - Public procurements currently account for up to 25 percent of most countries' GDPs.

The challenges and opportunities in reforming public procurements were highlighted by competition experts representing the United States, Germany, India and Pakistan at an International Conference of the Competition Commission of Pakistan recently held in Lahore.

Ratnesh Sahay, advisor to the

Competition Commission of India, said problems in public procurement include collusive bidding, fraud and corruption, conflicts of interests, lack of transparency, denial of a level playing field and close links between collusion and corruption.

In many cases "the match is already fixed before the game starts," he remarked. "Defective bidding packages facilitate collusion." He said the magnitude of procurement is so high that bidders try to grab the contract by hook or by crook and too much discretion leads to extraction of rents. "Magnitude of procurement gives temptation to the decision-maker," he added.

He said a level playing field is not confined to each player having an equal chance to succeed, but that all participants play by

In public procurement, the government cannot act as both judge and prosecutor

Ratnesh Sahay

the same set of rules. "A level playing field is created if no external interference affects the ability of the players to compete

fairly," and there should not be uneven or unequal participation.

Sahay said in public procurement no differential/preferential treatment should be given to one area/ sector/ industry/ class of enterprises over others. "Government regulations must be competition-neutral," he said.

Such neutrality means there is no undue competitive advantages or disadvantage, that SOEs enjoy competitive advantages simply as a consequence of their public ownership.

He said the government can affect markets in a wide variety of ways monopoly power and exclusive rights conferred to PSEs-postal service, railways, coal mining, Oil majors and preferential access to natural resources, such as land, air, water and mines.

He said the rationale behind the creation of the monopolies by the public authorities is that a fully competitive market is not able to fulfil the need of the neglected and downtrodden. "Competition outcome should outweigh the social outcome," he emphasised.

He said major infrastructure facilities are now created in India thru PPP model. Under this model, contracts are awarded either on single nomination basis; direct negotiations with concessionaires or through competitive bidding. However, he added the manner in which contracts are awarded always raises controversy because of lack of transparency in the entire process of granting a contract and there are no uniform policy guidelines.

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ments the government cannot act as both judge and prosecutor.

Theodore Voorhees, Jr., an anti-trust lawyer at Covington & Burling LLP said since competition is engine of economic growth there is a need to ensure that anti-competitive behaviours in public procurement is eliminated.

He said even after over the century-long fight against anti-competitive practises bidders in the US still collide with each other agreeing to refrain from bidding; comparing bids before submission; single bid followed by sharing of work and profits; rotating bids (taking turns as low bidder); and knowingly submit non-compliance bids. He said all these efforts point towards sham competition. How-

ever, he said the anti-trust agency has regularly been trying to stop these malpractices through regular changes in laws.

Dr Gabriele Herlemann of German Competition said Germany is a good example of a level playing field in public procurement.

She said for certain kinds of public contracts there is a level playing field, for other public contracts this is not the case. This division she added demonstrates very obviously which circumstances are necessary to create an effective and fair pp-law.

Director General Competition Commission of Pakistan, Ikram ul Haq Qureshi, endorsed the views of the foreign experts on public procurement.

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# Tough competition policy key to attracting investment: experts

## RECORDER REPORT

ISLAMABAD: Domestic and international competition law experts on Saturday termed tough competition policy essential for fostering trade and attracting local and foreign investment.

This was the consensus of the participants of a two-day-long international conference on 'The Role of Competition in Fostering Trade and Investment' held at the headquarters of the Competition Commission of Pakistan (CCP).

During the second day's session, Professor of Law at George Washington University William E Kovacic explained in detail the competition policy as a spur to trade and investment.

"There is a positive correlation between competition policy, trade and investment. Where a country enacts Competition law and creates a competition agency, it sends a signal to all players, locally and international, that it is serious about enforcing competition policy," said Dr Joseph Wilson, a CCP Member.

The session on 'Nexus between competition regime and Trade and Investment' was also addressed by Prof William E Kovacic, a world renowned expert on anti-trust law.

In his presentation on 'Competition Policy as a Spur to Trade and Investment', he said that states "must improve domestic competitiveness by improving trade policies to reassure investors. The aims of strengthening domestic compet-

itiveness should be to reduce costs, raise productivity and encourage innovation".

Prof Kovacic said that competition "helps by reducing cost/raising quality of key inputs such as transport, telecommunications, energy, finance, professional services, and public procurement. For improve trade policy, there is a need to discourage protectionism and encourage regional integration".

In his presentation, CCP Member Dr Joseph Wilson said that just as a competition agency had a positive obligation of advocacy with the government, all government ministries/departments "whose policies affect commercial activity and free trade must consult with competition agency before issuing such policy".

"Competition policy aims to promote rivalry among business and allocation of resources in which consumer welfare is maximized," Dr Wilson said.

According to him, trade policy objectives "are to reduce protection, increase market access for exports and greater global integration. Trade and investment liberalisation is seen as contributing to economic efficiency, competitiveness and export-led growth".

He quoted Prof Kevin C Kenned, Professor of Law, Michigan State University-Detroit College of Law, who described the relationship between international trade, foreign direct investment and com-

petition policies: "These three policies can be mutually reinforcing when pursued with the common goal of encouraging cross-border competition. For example, a liberal trade policy has as its goal the elimination or lowering of barriers to trade in goods, opening foreign markets to goods from abroad, and bringing competition to bear on domestic producers."

Dr Wilson said that in Pakistan, legislation has been made to promote competition.

"PTA shall ensure that fair competition in the telecommunication sector exists and is maintained (Sec. 6(e). Pemra shall ensure that open and fair competition is facilitated in the operation (Sec 23(2)). Ogra shall ensure that open and fair competition is facilitated in the operation (Sec 6(g)). CCP shall prevent...restricting or reducing of competition," he said citing pertinent sections of various laws.

He said that under the Telecom Deregulation Policy of 2003, the policy paved the way for bringing competition in fixed telephony. The objectives, among others, of the Mobile Cellular Policy of 2004 "are to increase choices for customers of cellular mobile services at competitive and affordable price and encourage private investment in the cellular mobile sector."

He said that new telecom policies "have helped attracting foreign direct investment in Pakistan".

## Competition policy essential for fostering trade



ISLAMABAD  
OUR STAFF REPORTER

National and international competition law experts have termed competition policy essential for fostering trade and attracting local and foreign investment.

"There is a positive correlation between competition policy, trade and investment. Where a country enacts competition law and creates a competition agency, it sends a signal to all players, locally and international, that it is serious about enforcing competition policy," said Dr. Joseph Wilson, CCP Member, at a recently held International Conference, "The Role of Competition in Fostering Trade and Investment," held in Islamabad.

The session on "Nexus between competition regime and Trade & Investment" was also addressed by Professor William E. Kovacic, Professor of Law at George Washington University, USA, who is also regarded internationally as Guru of the anti-trust law, in his presentation on "Competition Policy as a Spur to Trade and Investment" said that states must improve domestic competitiveness by improving trade policies to reassure investors. The aims of strengthening domestic competitiveness should be to reduce costs, raise productivity and encourage innovation. Kovacic said that competition helps by reducing cost/raising quality of key inputs such as transport, telecommunications, energy, finance, professional services, and public procurement. For improve trade policy, there is a need to discourage protectionism and encourage regional integration.

In his presentation, CCP Member Dr. Joseph Wilson further said that just as a competition agency has a positive obligation of advocacy with the government, all government ministries/departments whose policies affect commercial activity and free trade must consult with competition agency before issuing such policy.

"Competition policy aims to promote rivalry among business and allocation of resources in which consumer welfare is maximized," Dr. Wilson further said.

Trade policy objectives are to reduce protection, increase market access for exports and greater global integration. Trade and investment liberalization is seen as contributing to economic efficiency, competitiveness and export-led growth.

Dr. Wilson said that in Pakistan, legislation has been made to promote competition. PTA shall ensure that "fair competition in the telecommunication sector exists and is maintained.

## Deceptive marketing practices

Last week, I was invited by the Competition Commission of Pakistan (CCP) to present a paper on Deceptive Marketing Practices, at the 3rd International Conference, organized by CCP, in collaboration with the Delegation of the European Union, at the Serena Hotel, Islamabad.

The theme of the two-day conference was, "The Role of Competition in Fostering Trade and Investment" and the objectives were, "To explore and discuss the importance of competition law for creating a business environment that fosters trade and investment and policies by other countries".

Besides distinguished speakers from trade, industry and consumer bodies in Pakistan, the other participants included internationally acclaimed experts on competition laws from America, Europe, Africa, Far East, and South Asia.

In her welcome address, Ms Rahat Kaunain Hassan, Chairperson, Competition Commission of Pakistan, highlighted the activities of CCP in the last three years and its achievements.

While in his keynote address, HE Lars-Gunnar Wigemark, Ambassador and Head of Delegation of the European Union to Pakistan, explained the role of the EU in promoting the Role of Competition in industry and trade, in order to protect consumer interests.

This was followed by a presentation by Mr Eduardo Perez Motta, President, Mexican Federal Competition Commission, who highlighted the role of his organization in providing a level field for manufacturers and service providers.

Session 1 dealt with the nexus between Competition Regime and Trade and Investment. Session Two was on Public Procurement. Creating a level-playing field. Session Three addressed Detecting Cartels: Investigative Techniques, Leniency and Reward Programs, moderated by Chairperson, CCP, while Session

Four was on Promoting Competition through Advocacy.

On the second day, the venue for the conference was shifted to CCP's new office on Jinnah Avenue. The interaction on the second day, was not the long and boring presentations, but interactive and in the form of four Round Table discussions, relating to four consumer related topics.

The first Round Table discussion was on Deceptive Marketing Hampering Fair Trade, in which the speakers were Ms Huma Bukhari, Chairperson, Consumer Forum, Mr Aijaz of CAP and yours truly.

This was followed by RT discussions on a very interesting topic, The Scent of a Cartel, relating to how Competition Commissions can detect a cartel. The last RT discussion focused on Distorting Competition, relating to subsidies, granting of exemptions, reduction in duties and other such benefits. The experts were of the opinion, that such incentives hamper fair competition and distort the principals of providing a fair level playing field for manufacturers and service providers.

My presentation was Deceptive Marketing and Misleading Advertisements.

Helpline Trust has been working on the issue of for a number of years, as such, I explained to the learned gathering that what is prevailing in Pakistan is very different from what is accepted as a normal code of conduct in advertising and industry in developed countries, which is respected and followed in letter and in spirit. I pointed out that in Pakistan, like in other Third World countries, we have numerous laws, but they are difficult to enforce.

For instance, we have three bodies that are supposed to control and monitor the quality and contents of advertisements that are used to promote products and services.

First, we have the government-managed organization, PEMRA and then two in the private sector, namely: Pakistan Advertising Society (PAS) and Pakistan Broadcasters Association (PBA). All these three organizations have very comprehensive laws and guidelines, relating to Deceptive Marketing Practices.

Some of these laws are: Advertisers undertake that they will not create advertisements that are: False or misleading, visual or verbal - Claims that distort the true meaning or practicable application of statements made by professional or scientific authority - Testimonials that do not reflect the real opinions of individuals involved - Price claims that are misleading - No advertisement should mislead by inaccuracy, ambiguity, exaggeration, omission or otherwise - Statements, suggestions or pictures offensive to public decency or minority

augmentments of the population - Advertisers should not exploit the credulity, lack of knowledge or inexperience of consumers". These laws and guidelines, if enforced in letter and in spirit, would be very effective, but unfortunately, like other laws in the country, this is not the case, as such, we have a free for all situation.

Crooked, greedy and unscrupulous manufacturers indulge in misleading the consumers through deceptive and misleading advertisements to promote sub-standard and poor quality products and services, without fear of being held accountable.

To combat this malpractice, Helpline Trust has introduced the Power of One, through its Consumers Hall of Shame, which gives a picture of the product and the name of the manufacturer or service provider and supporting documents.

This produces immediate and positive results and after the third letter, the organization indulging in malpractice,

takes immediate action to rectify the situation.

Another negative factor that hampers CCP efforts, are the Stay Orders that the powerful cartels obtain from the High Court and Supreme Court of Pakistan. These SO prevents CCP from collecting the fines, which run into millions of rupees and the cartels go unpunished for years.

Therefore, I suggest that the Supreme Court of Pakistan should establish a special tribunal, consisting of a panel of senior judges and experts, which should examine each penalty or charge sheet imposed by CCP against an organization and give its judgment within three months. This judgment should be acceptable and binding to both, CCP and the organization.

Mr Lars-Gunnar Wigemark, Ambassador, European Union to Pakistan, in his inspiring, closing address at the end of the two-day Conference, urged Pakistan to enforce competition laws and requested the incoming government to enhance trade and business with India and implement competition laws to improve economic conditions in the country.

"I have one message for the incoming government. Be inspired by the recent elections and create a truly level economic playing field for business in Pakistan. Make CCP. Give it more resources and use it to the fullest, as improved competition will be a win-win governance issue, which will benefit Pakistan and all of its consumers". "Get rid of cartels, price-fixing, distorting subsidies and kick-backs. These are hampering both domestic economic growth and the inflow of foreign investment and trade."

Let us hope that the new government of Mr Nawaz Sharif, combined with PTI, will take the Honorable Ambassador's suggestions seriously, strengthen CCP and assist the organization to function without fear or favour.

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### STRAIGHT TALK

Hamid Maker