

# COMPETITIVENESS



## Does Pakistan Need A Competition Commission of Pakistan – Yes!

An interview with Professor Khalid A. Mirza, ex-Chairman CCP, on the genesis of the Competition Commission of Pakistan and its role in the economy.



PIDE: CCP was borne out of the realisation of limitations in the 1970s Monopolies and Restrictive Trade Practices (Control and Prevention) Ordinance' (MRTPO). What were those limitations, and do you think the CCP mandate addresses those adequately?

KAM: Monopoly Control Authority (MCA) was established to enact the MRTPO and it tried to register agreement and enterprises that were likely to impinge upon what this law prescribed but it didn't have the authority to act at the enforcement level. For example, it could only impose a maximum fine of PKR 100,000, and if it was a continuing fine it was about PKR 10,000 per day till the offence continued.

It was not a very effective way of acting against restricted trade practices. First of all it was a very normative law and it was also very difficult to determine unreasonably restrictive trade practices. What it had essentially done was that it created auction lines for example If the enterprises were together and had more than 33% of the market, all the law required you to do was come below it and not cross the 33% line. If unreasonable monopoly power is there and do not remain within the limit, all it is, is a violation of this law in terms of undue concentration of economic power and unreasonably restricted trade practices. It has power also, in section six which add to the different aspects. But it wasn't effective in implementing and achieving a robust anti-trust regime.

One other problem was that the civil servants were untrained and not equipped to do this sort of work. This was a huge issue and then what happened was that there a drive to nationalize organizations and industries. Nationalization brought a lot of economy outside the preview of this law, since the law did not allow the MCA to act against the government.

Our law now is actually a very modern form, it is a state-of-the-art law and what it does is it sets the agency, the Competition Commission of Pakistan to take a very progressive approach. What they say is we are not against companies becoming big.

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We are not against size, what we are against is anti-competitive behavior like we are against cartelization, we are against collusive behavior, we are against abuse of dominance, we are against deceptive marketing practices. The law enables the CCP to act against such practices and such behaviors. Now that is the role of the commission, where right from the beginning there were people who make it ineffective in the first few years. It actually worked quite well latter on but the government of Pakistan didn't support the funding that this institution needed. There was pressure of the people who were against this whole antitrust regime that it became ineffective.

PIDE: Competition commission provides advocacy support and is responsible for the competition culture in the domestic economy. What are the best ways to protect competition and innovation in a small economy like ours?

KAM: In the economy like ours, there is large part that is controlled from commanding heights, so it is either the government determine the prices and it is intervening in the market process. On that area the Commission can do very little because it (the Commission) can only act in that part of the economy that is left free. The Commission supports the market, and it makes the market works effectively. If no markets there, the Commission will not work. If you talk about the market-based economy, you have to ensure the rights of all economic agents are protected in a fair manner and they are able to compete with each other on a level playing field.

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CCP was very effective in the early years. It was regarded as the number one anti-trust agency in the developing world, the other two agencies that were effective that are Egypt and Mauritius. A group of OECD convene regularly for an international competition network meeting. I was actually there for a meeting in Istanbul in 2010 because this group usually takes few countries of the developing world as observers and Pakistan was placed at the top, when comes enforcement law in policy, India was not included.

As we had enforced competition law and policy very effectively, it had been recognized globally in OECD. So much so that I was even asked to represent Pakistan and preside over a one day session about the whole business of corruption in the public procurement.

In this area whether anybody recognizes this or not within Pakistan, but actually we have achieved quite a lot. For example on the enforcement side despite all the problems, we have moved very quickly against cartelization, collusion, abuse of dominance, unacceptable concentration and against deceptive marketing practices. We have made an impact around the globe.

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Within Pakistan it had a visible impact on how business community acted as a consequence of our enforcement, and advocacy.

PIDE: How does CCP acts against cartels or abuses of market power?

KAM: Whatever part of the market is left free by the government, it is the purpose of competition law in policy to get the market to work. The Commission acts against cartelization (i.e. collusive behavior part of market agents), it acts against abusive dominance, you don't mind anybody big, you don't mind anybody come through normal competition, there is no problem there till you become dominant. Once you become dominant you must not abuse your dominance and must not try to exploit. There are some abuses which are defined in the law; predatory pricing, discriminatory pricing etc. That abuse is something that the Commission acts against because that abuse is the one that actually acts against the market and weakens it. The other important one is deceptive marketing practices (you have somebody that is actually deceiving the public in their advertisements). The purpose of law into policy is to provide the basis of getting the market work.

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PIDE: There are many cartels formed in Pakistan. How does CCP detect cartels? Or is it the consumer's hue and cry that indicates a problem for the CCP to investigate and report on?

KAM: Somethings are very clear, they come to knowledge. The other things are suspects when you see a movements of either prices or behavior on the part of large number of economic agents in a particular sector that gives you an indications that they are cartelizing. Then you do your investigation and you find out about them; you get the proof and then you proceed against them. When I was there we did competition impact assessments of different sectors; the sugar sector, the auto mobile sector. What we tried to achieve by doing these studies was to find out (it is not economic study) where are the vulnerabilities? You see in some sectors there is a kind of pattern the way in which bids have been awarded to that sector, then you investigate to find out. It doesn't mean that there is abusive behavior or any violation of the law, but it give you indication that you need to watch this act. Then there are complaints; there are people who come and tell you, then you investigate. So every time there is a whistle blower. We have rewards scheme, and we have given between PKR 4 to 5 million to informants/whistleblowers.

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The sugar companies started cartels and we started an investigation, we proceeded against them, we determined their guilt, we then prodded judicially with our own judicial proceeding. The sugar companies went to Sindh High Court and got a stay order, so we went to Supreme Court and got the stay order partially vacated. The Supreme Court ordered the High Court will decide within one month. The second thing they said the commission should complete its hearings, write out its order and file the order with the High Court. We did exactly that and fined the sugar mills association PKR 50 million. After that we were going to proceed against 20 sugar mills because we got the evidence that they have cartelized, but between that day and today that case was not heard; God knows what happened and what the High Court did about that.

PIDE: Once a fine is imposed by CCP on an illegal activity, do firms abide by the law and does it alter behaviour in the future (e.g. as happened in case of stock exchange)

KAM: There are large number of fines which were imposed by the Commission. In the case of the cement industry it was PKR 6.4 billion alone. Only one or two people paid the fine the rest of them went to court. How does one make oneself effective; I make myself effective by become a somebody with great moral authority so when I say something that is what matters.

Will you see the thing is that in under our law we don't have criminality this is a civil wrong but not criminal as is I think recently England has made cartelization a criminal act. USA had made that from a long time ago.

PIDE: As the CCP has a "carrot and stick" approach; do firms try to avail the carrot in one way or another if they are found guilty?

KAM: We have 2 tools the MCA did not have; (i) we have the ability to do what we call surprise inspection, we have ability to do a raid. (ii) there is grant of leniency, when there is a cartel if any one party or any one cartelist comes to the commission and presents evidence of what is being cartelized, that party goes scoot free under grant of leniency. An example of this is the leniency granted in the cement industry.

There are lots of flexible powers that the commission has which the MCA did not have; the whole approach of the Commission is far more progressive then a MCA. The commission is not modern as our competition law is. There are certain behavioral norms that's you must follow if you don't follow those behavioral norms then you copy it. Cartelization is a very serious offence; the supreme evil of antitrust. What cartelization is it is conspiracy against the public that businessmen engage in. Do you know that in Rome; Ancient Rome, in the far eastern Roman Empire, what that constitution provided was that if you cartelized and collusively fixed prices, collusively fixed production or divided territories then they were liable to be exiled from the empire, and the place of exile was what is now Great Britain.

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PIDE: The structure of the CCP appears to be composed primarily of lawyers; there are no economists in senior management. Is that by design? Why?

KAM: We have very good economists, but competition enforcement needs good sense; the skills you need in competition law and enforcement are the following: you need the law first, secondly you need a knowledge of economics because it helps when you investigate and it helps when you actually do an assessment of a sector, so you need micro economists, not macroeconomists. I have never lead a competition agency that doesn't have economists. The economists are very essential part of enforcement of competition law and provide input in policy. A prime example is the policy of abuse of dominance. Thirdly we need forensic accountants; they determine the motive and who is doing what, and to whom. They study the accounts of a company and determine what is really going on, so you need all these skills over there in the CCP.

PIDE: The CCP has many feathers in its belt. Do you think the economy has responded well to the CCP actions in the manner intended? Could you provide some examples?

KAM: This is something I set up; it is not there in many countries. I don't know any country in which it is there. When I took this agency, I found that I must have a coalition of support so how I built that, I supported advocacy. I was talking to media, I was issuing these reports, I was talking to government, issuing policy notes to the government, all that was there but I was need support for intelligence here in Pakistan.

The people that mattered was the regulators, I needed them to know what I was doing, to give me suggestions, to give me feedback as to what I have done right and what I have done wrong; their view. I wanted them to be my agents to propagate what I was doing. I was sanitizing and trying to get feedback try to pushing something, putting an idea and see that how they react. For this reason I set up a Competition Competitive Group; it was comprised essentially of regulators, top businessmen in Pakistan, intellectuals from academia (about 15 to 18 people). I met them once a month to tell them what I am doing and seek their reactions; toss things to them that this what I am doing, what you think and asked them to tell me what should I be doing?

You talked about where I got to know about cartels, a lot of things I got there in consultative groups, lot of hints, ideas that which I should investigate this or that, then the regulators I tell them I am here to help you whenever you have competition issue you come to me I will help you. These regulators have their provisions of competition but they were incomplete and they are not able to implement them. I said all you do if there is an issue of competition in your sector, refer it to me and I will deal with it. This group I setup and I had no less than in the three years (in which I was there) I think 25 meetings and every time we issued a press release also. It was very successful and the advocacy we are doing through a variety of meeting the association meeting the chamber talking to the press. I was always in the news and the way in which we got the Competition Act projected.

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PIDE: CCP has many feathers in its belt. Could you provide some examples?

KAM: I think the best example would be the comment I received from a US consultant when he came and stayed here. He said in a public meeting there are two areas in which Pakistan's Competition Commission can provide technical assistance to the US; one was on advocacy and second is the way you actually go about the initial part of your investigation. We had taken advocacy to a new high level. In the early days we had success, we made a mark, globally, and there was a clear effectiveness from the reaction we got from the market.

PIDE: Do you think that deregulating the economy; i.e. reducing red tape and bureaucracy, will lead to an uptick of commercial and manufacturing activity?

KAM: When I was there, there was lot of red tape its didn't bother me because we were independent, we were outside from the government bureaucracy, we had our own rule and procedures which we were doing independently. The monopoly control authority from where I inherited the staff, I just send them back to the ministry of finance, so it was a completely changed institution. There were a lot of changes in management that we had. We had our own rule procedure processes, there was no file moving, assistant director send a file straight to a chairman. It is within his authority and he needed my advice on something he come straight to me. If somebody didn't exercise the authority, so as I was concerned, he was a failure thats the approach. If it is beyond your authority, you send it up, if it is with in your authority you take your action.

PIDE: Once a fine is imposed by CCP on an illegal activity, do firms abide by the law and does it alter behaviour in the future (e.g. as happened in case of stock exchange)

KAM: The Commission imposes a fine but the fine is not the only thing that it does. It also gives a speaking order with details of what the offence is, and it does what is called naming and shaming. The extent of the fine reflects the extent of egregious behavior. I don't have concern about the fine because in courts of law things will get tied-up, but how can it be effective. It can't be effective if I rely on payments of fines because the courts system does not work effectively. So I had to climb up high get more authority so that with the moral authority when I call somebody, it should matter. I don't care what the court said if the high court or any tribunal had said. I am concerned that once I issue my order they alter their behaviour. As my orders were out on the CCP website because that is the punishment, the punishment is what the orders says about you, not the fine. The fine only reflects the gravity of the offence and what really happens. In Pakistan nobody paid any fine so this it is complete ineffective. We were effective because of the high moral authority. Later on, the Commission became ineffective when they lost that moral direction. When you lose the moral high ground, you've lost everything.



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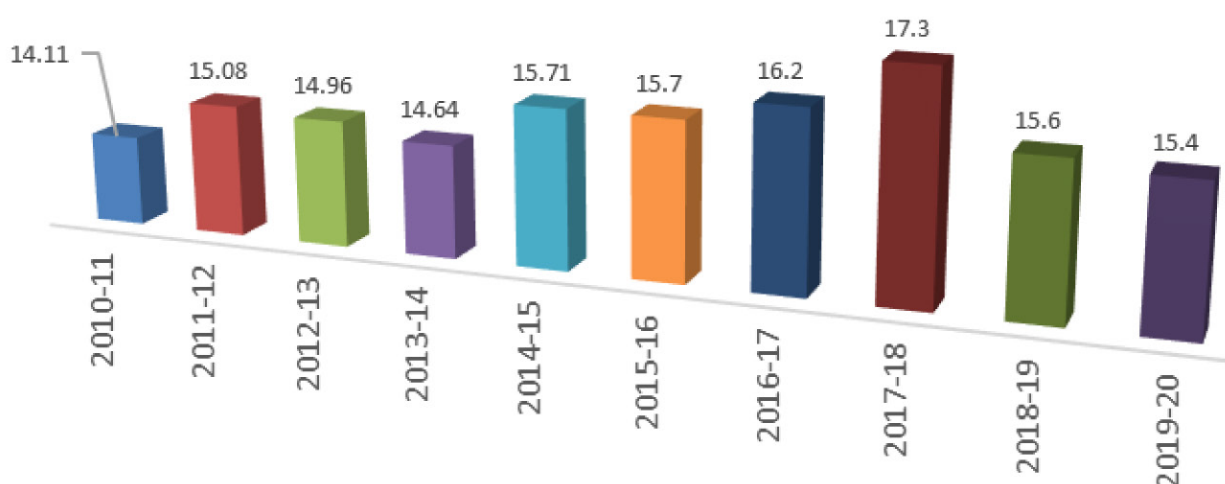
## Trust Deficit and Low Investment Levels in Pakistan

By Uzma Zia, Amena Urooj and Usman Ahmad

Pakistan's economy is faced with several macroeconomic issues including low GDP growth rates, balance of payment issues, low investments and budget deficit. The economy couldn't maintain reasonable growth rate and ended up with negative growth this year. Ongoing recessionary phase worldwide and COVID-19 was another nail in the coffin of growth in the country.

A major concern is the trust deficit of investors. From time to time the government of Pakistan tried to focus on public and private sector investment and attracting FDI in the economy to increase competitiveness. Board of Investment and provincial BOI are working since 1997 but the investment position is distressful in the country. The short-lived business growth cycles are not driven by public private investment. In fact, there are multiple factors adding to the situation. Total investment in Pakistan is at 15.4% of GDP in 2019-20 (see graph below). It stands at the lowest levels in comparison to other countries of the region like China having total investment at 45% of its GDP. In GCI ranking, Pakistan stands at 107th in year 2018 and in EDBI ranking the country stands at 147th position in 2018.

Total Investment (% of GDP)- Pakistan



Economic Survey of Pakistan, various Issues

Some impressive economic performance was observed between 2002-07 but the country is in troublesome condition since last few years. Currently being under IMF programme, their interventions, and recent COVID-19 devastation the country is encountered with volatile policy structure. Pakistan has