

# Origins and Challenges of Pakistan's Competition Regime

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*This essay presents two basic arguments. First, that Pakistan's contemporary competition law owes its existence to the globalisation of national competition laws, in particular to the application of international soft law. Secondly, that the competition regime in Pakistan faces several sustainability challenges, many as a result of the globalised transformation, which need to be addressed at the earliest.*

## I. The Globalisation of Competition Law

According to the Asian Development Bank, over a hundred jurisdictions around the globe have an enactment dealing with competition matters.<sup>1</sup> The membership of the International Competition Network (ICN)<sup>2</sup>, based on competition agencies, is a staggering 189.<sup>3</sup> The 56 member states of the Organisation of Islamic Conference<sup>4</sup> have begun deliberating on competition issues confronted by the member states.<sup>5</sup> The Korea Policy

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<sup>1</sup> ADB, 'Competition Law Toolkit' (Countries with Competition Law Systems, ADB 2007) <<http://www2.adb.org/Documents/Others/OGCToolkits/CompetitionLaw/complaw030000.asp>> accessed 3 January 2012.

<sup>2</sup> ICN, 'About' <<http://www.internationalcompetitionnetwork.org/>> accessed 11 December 2012.

<sup>3</sup> ICN, 'Member Directory' (ICN) <<http://www.internationalcompetitionnetwork.org/members/member-directory.aspx>> accessed 3 January 2012.

<sup>4</sup> OIC, 'About OIC' <[http://www.oic-oci.org/page\\_detail.asp?p\\_id=52](http://www.oic-oci.org/page_detail.asp?p_id=52)> accessed 11 December 2012

<sup>5</sup> Rekabet Kurumu, 'Istanbul Conference on Needs Assessment of the OIC Member States in the Field of Competition Law and Policy' (Rekabet Kurumu 2011) <<http://www.rekabet.gov.tr/index.php?Sayfa=sayfahtml&Id=1759&Lang=EN>> accessed 3 January 2012.

Centre (KPC)<sup>6</sup> is undertaking efforts<sup>7</sup> to shore up discussion on competition matters in Asia. Since the enactment of the Competition Act in 1889 in Canada, among the first<sup>8</sup> national competition laws in any modern state, the world has come a long way in globalising economic and legal principles that affect how businesses compete with each other and how states or supranational bodies, intervene in markets to ensure free and effective competition. Competition law has truly become global. The world has, over the last few decades, rapidly moved away from using ‘ineffective’<sup>9</sup> traditional diplomatic methods and towards adoption of the more ‘flexible’<sup>10</sup> soft law framework – ‘acts of international actors having a prescriptive content and non-binding effect’<sup>11</sup> – to reconstruct international economic governance regime in place since the end of the second world war.

While the globalisation of competition law is a more recent phenomenon, traditional diplomatic efforts to create an international competition framework are much older.<sup>12</sup> As far back as 1947, there were calls to introduce international rules regarding competition on the International Trade Organisation forum through the Havana Charter.<sup>13</sup> The organisation was never formed and the General Agreement on Tariffs and Trade made no mention of competition rules.<sup>14</sup> Efforts to internationalise competition rules through United Nations Economic and Social Council in the 1950s and through the voluntary UN General Assembly’s Set of Multilaterally Agreed Equitable Principles and Rules for Control of Restrictive Business Practices in 1980 met similar fate.<sup>15</sup> There was a short lived hope with the Working Group on the Interaction between Trade and Competition Policy, along with

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<sup>6</sup> KPC, ‘History and Function’ <[http://www.oecd-korea.org/centre/sc\\_history\\_eng.asp](http://www.oecd-korea.org/centre/sc_history_eng.asp)> accessed 11 December 2012.

<sup>7</sup> ‘OECD-Korea Policy Centre – Competition Programme – Events in 2011’, (KPC 2011) <[http://www.oecd.org/document/14/0,3746,en\\_40382599\\_40393092\\_46799566\\_1\\_1\\_1\\_1,0.html](http://www.oecd.org/document/14/0,3746,en_40382599_40393092_46799566_1_1_1_1,0.html)> accessed 3 January 2012.

<sup>8</sup> The Canadian Competition Act 1889 is chronologically among the very first national competition legislation to be enacted in any modern day jurisdiction and ahead of the more famous U.S. Sherman Act 1890.

<sup>9</sup> Fiammetta Borgia, ‘New Governance Mechanisms in International Economic Law: The Role of Soft Law’ (2010) Society of International Economic Law Paper 2010/31, 3 <<http://ssrn.com/abstract=1633984>> accessed 5 January 2012.

<sup>10</sup> *ibid.*

<sup>11</sup> *ibid.*

<sup>12</sup> Einer Elhauge and Damien Geradin, *Global Competition Law and Economics* (2<sup>nd</sup> edn, Hart Publishing 2011) 1239-42.

<sup>13</sup> *ibid.*

<sup>14</sup> *ibid.*

<sup>15</sup> *ibid.*

the adoption of the Doha Ministerial Declaration in 2001.<sup>16</sup> In 2004, however, the Doha Work Program Decision stopped all efforts in this regard.<sup>17</sup>

The involvement of international and regional organisations greatly changed the situation. The most prominent organisations in this regard have been the World Bank (WB) and the International Monetary Fund (IMF), the Organisation of Economic Conference and Development (OECD), and the United Nations Commission of Trade and Development (UNCTAD).<sup>18</sup> The IMF and the WB have been instrumental since, in many instances, they make adoption or improvement of competition laws as one of the conditions states must agree to before getting access to their fiscal resources.<sup>19</sup> The OECD is primarily active in providing technical capacity building assistance to states which have recently adopted competition legislations, or have plans to adopt it in the near future, China being one major example.<sup>20</sup> Finally, the UNCTAD considers itself to be an informal platform where discussions about competition policy can take place. It recommends domestic competition legislation, has published a model competition law and provides technical assistance.<sup>21</sup>

## II. The Impact of Globalisation on Competition Law in Pakistan

### 1. Early Anti-monopoly Law

Pakistan enacted its first competition law in the 1970s with the promulgation of the Monopolies and Restrictive Trade Practices (Control and Prevention) Ordinance, 1970 (MRTPO 1970).<sup>22</sup> The concentration of economic power in the hands of few family based business groups<sup>23</sup> back

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<sup>16</sup> *ibid.*

<sup>17</sup> *ibid.*

<sup>18</sup> Mark Williams, *Competition Policy and Law in China, Hong Kong and Taiwan* (Cambridge University Press 2005) 76.

<sup>19</sup> *ibid.* 84-85. See also Borgia (n 9) 7-9.

<sup>20</sup> Williams (n 18) 80-84.

<sup>21</sup> Williams (n 18) 77-80.

<sup>22</sup> Monopolies and Restrictive Trade Practices (Control and Prevention) Ordinance, 1970 (PAK) (Published in the Gazette of Pakistan, Extraordinary on 26 February 1970) <<http://www.globalcompetitionforum.org/regions/asia/pakistan/ATT01665.pdf>> accessed 21 December 2011.

<sup>23</sup> Joseph Wilson, 'At the Crossroads: Making Competition Law Effective in Pakistan' (2006) 26 *Northwestern Journal of International Law & Business* 565, 568-69 <[http://www.cc.gov.pk/images/Interview/wilson\\_jilb.pdf](http://www.cc.gov.pk/images/Interview/wilson_jilb.pdf)> accessed 22 December 2011.

then, led the country to adopt legislation that aimed to prevent ‘undue concentration of economic power, growth of unreasonable monopoly power and unreasonably restrictive trade practices’.<sup>24</sup> The bare reading of the provisions, leads to the conclusion that the MRTPO 1970 was designed mainly to break up single or familial<sup>25</sup> ownership of businesses in the country by introducing ceilings on private ownership<sup>26</sup> and limits on mergers and acquisitions.<sup>27</sup> To oversee implementation, the Monopoly Control Authority (MCA)<sup>28</sup> was formed.

Despite being ambitious, the MRTPO 1970 proved far from efficacious due to several legal, economic and political considerations. Almost immediately after its promulgation, the government nationalised all major industries, which then, due to the exemption<sup>29</sup> given to state owned enterprises, did not attract the application of the MRTPO 1970 until the privatisation process started in the nineties.<sup>30</sup> The MCA lost its independent existence, and the MRTPO 1970 was pushed further on the backburner in 1981, when it was made part of Pakistan’s Corporate Law Authority.<sup>31</sup> While the MRTPO 1970 still existed on paper, it lost its significance compared to the primary task undertaken by the Corporate Law Authority, ie registering companies and regulating corporate affairs. By the time the MCA regained its independence in 1994, the desire to attract private and foreign investment, made the notion of applying competition law less desirable for the government.<sup>32</sup> In wake of the changing economic realities, the MCA found itself to be rather toothless: it had no power to make pre-merger notification mandatory, or go after state owned enterprises, or to do anything more than slap a violator on the wrist.<sup>33</sup>

## 2. Towards a Globalised National Competition Law

With the liberalisation and privatisation regime of the nineties, Pakistan started the process to reform its competition law. Although there were calls

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<sup>24</sup> MRTPO 1970 Preamble; Wilson (n 23) 568-69.

<sup>25</sup> MRTPO 1970, s 2(2).

<sup>26</sup> MRTPO 1970, s 4.

<sup>27</sup> MRTPO 1970, s 5.

<sup>28</sup> MRTPO 1970, s 8.

<sup>29</sup> MRTPO 1970, ss 25 (a) and (b).

<sup>30</sup> Wilson (n 23) 583-84.

<sup>31</sup> *ibid.*

<sup>32</sup> *ibid.*

<sup>33</sup> *ibid* 584 and 565.

to overhaul the competition regime as early as 1993,<sup>34</sup> the government only really became serious when the soft law framework of various international organisations came into play in the last decade. To restructure Pakistan's largely nationalised economy, the government turned to the IMF and WB for financial and technical support. Since 1995 Pakistan has accessed IMF resources<sup>35</sup> through three Standby Credit Facilities (1995-1997,<sup>36</sup> 2000-2001,<sup>37</sup> 2008-2011<sup>38</sup>), one three-year combined Enhanced Structural Adjustment Facility/Extended Fund Facility (1997-2000),<sup>39</sup> and one three year Poverty Reduction and Growth Facility (2001-2004).<sup>40</sup> As part of the understanding to obtain these facilities, Pakistan prepared three national strategies in the last decade titled Poverty Reduction Strategy Papers (PRSP): the Interim PRSP<sup>41</sup> in 2001 (I-PRSP), the PRSP-I<sup>42</sup> in 2003 and PRSP-II<sup>43</sup> in 2009. These papers were prepared with the active involvement

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<sup>34</sup> *ibid* 589.

<sup>35</sup> Borgia (n 9) 7.

<sup>36</sup> IMF, 'IMF Approves Standby Credit for Pakistan' (Press Release 95/66, 13 December 1995) <<http://www.imf.org/external/np/sec/pr/1995/pr9566.htm>> accessed 4 January 2012; IMF, 'IMF Approves Extension and Augmentation of Standby Credit to Pakistan' (Press Release 96/63, 17 December 1996) <<http://www.imf.org/external/np/sec/pr/1996/pr9663.htm>> accessed 4 January 2012

<sup>37</sup> IMF, 'IMF Approves US\$596 Million Standby Credit for Pakistan' (Press Release 00/64, 29 November 2000) <<http://www.imf.org/external/np/sec/pr/2000/pr0064.htm>> accessed 4 January 2012.

<sup>38</sup> IMF, 'IMF Executive Board Approves US\$7.6 Billion Standby Arrangement for Pakistan' (Press Release 08/303, 24 November 2008) <<http://www.imf.org/external/-np/sec/pr/2008/pr08303.htm>> accessed 4 January 2012; IMF, 'IMF Completes Second Review under Standby Arrangement for Pakistan and Increased Financial Support to US\$ 11.3 Billion' (Press Release 09/281, 7 August 2009) <<http://www.imf.org/-external/np/sec/pr/2009/pr09281.htm>> accessed 4 January 2012; IMF, 'IMF Approves Nine Month Extension of Standby Arrangement for Pakistan' (Press Release 10/515, 27 December 2010) <<http://www.imf.org/external/-np/sec/pr/2010/pr10515.htm>> accessed 4 January 2012.

<sup>39</sup> IMF, 'IMF Approves Combined ESAF/EFF Financing for Pakistan' (Press Release 97/48, 20 October 1997) <<http://www.imf.org/external/np/sec/pr/1997/pr9748.htm>> accessed 4 January 2012.

<sup>40</sup> IMF, 'IMF Executive Board Approves US\$1.3 Billion PRGF Credit to Pakistan' (Press Release 01/51, 7 December 2001) <<http://www.imf.org/external/np/sec/pr/2001/pr-0151.htm>> accessed 4 January 2012.

<sup>41</sup> Government of Pakistan, 'Interim Poverty Reduction and Strategy Paper' (IMF 2001) <<http://www.imf.org/external/np/prsp/2001/pak/01/113001.pdf>> accessed 23 December 2011.

<sup>42</sup> Government of Pakistan, 'Poverty Reduction and Strategy Paper' (Country Report 04/24, IMF 2004) <<http://www.imf.org/external/pubs/ft/scr/2004/cr0424.pdf>> accessed 23 December 2011.

<sup>43</sup> Government of Pakistan, 'Poverty Reduction and Strategy Paper – II' (Country Report 10/183, IMF 2010) <<http://www.imf.org/external/pubs/ft/scr/2010/cr10183.pdf>> accessed 23 December 2011.

of numerous international organisations.<sup>44</sup> While considering regulatory reforms in PRSP-I, the government announced plans to restructure the MCA and adopt a new competition law.<sup>45</sup>

While the MCA had advocated reform using German and OECD models in 1993 and 2001, respectively, it was the first time the government paid serious attention to this issue. Pakistan's desire to reform its economic structures in order to obtain IMF and WB funding, and the latter's involvement provided the much needed push to promote this issue on the government's agenda. Several other factors provide support to the view that international organisations played an almost pivotal role in the reform process. In 2005, the government requested the technical assistance of the WB to develop the new competition law and policy framework.<sup>46</sup> The WB in turn engaged a Brussels-based law firm, to draft a proposed law.<sup>47</sup> The firm, arguably naturally, developed a law modelled after the EU, a 'framework with which it was most familiar'.<sup>48</sup> The law was tailored by the executive branch of the government which by-passed the country's legislature<sup>49</sup> and promulgated it as the Competition Ordinance, 2007 (CO 2007).<sup>50</sup>

The CO 2007 greatly retained the overarching EU legal characteristics and language. Section 3 and Section 4, two of the four substantive provisions<sup>51</sup> relating to abuse of dominance and prohibited agreements, bore striking resemblance to Article 101 and 103 of the Treaty on the Functioning of the European Union,<sup>52</sup> which is evident on bare reading. In 2009, the government reported the progress in reforming the competition law to the

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<sup>44</sup> Government of Pakistan, 'PRSP' (n 42 ) Cover and 7.

<sup>45</sup> *ibid* 41.

<sup>46</sup> Joseph Wilson, 'Crossing the Crossroads: Making Competition Law Effective in Pakistan' (2011) 8(2) *Loyola University Chicago International Law Review* 105, 106.

<sup>47</sup> *ibid* 111.

<sup>48</sup> *ibid*.

<sup>49</sup> Under Pakistan's 1973 Constitution, laws, called Acts, are to be passed the Parliament. The executive branch may pass temporary legislation by issuing Ordinances through the office of the President. See also Wilson, 'Crossing the Crossroads' (n 46) 106-09.

<sup>50</sup> Competition Ordinance, 2007 (PAK) (Ordinance LII of 2007, Published in the Gazette of Pakistan, Extraordinary, Part 1 on 2 October 2007) <[http://www.na.gov.pk/uploads-/documents-/1302737461\\_746.pdf](http://www.na.gov.pk/uploads-/documents-/1302737461_746.pdf)> accessed on 24 December 2011.

<sup>51</sup> CO 2007, ss 3,4,10 and 11.

<sup>52</sup> Consolidated Version of the Treaty on the Functioning of the European Union (TFEU) [2010] OJ C 83/47.

international organisation in PRSP-II<sup>53</sup> while seeking a new funding facility. As a rough indicator of the importance the government was giving to this issue, the term 'competition' appears no less than thirty times<sup>54</sup> in PRSP-II in relation to various sectors of the economy.

### 3. Pakistan's New Competition Regime

With the promulgation of CO 2007, the MRTPO 1970 was repealed and the MCA was dissolved.<sup>55</sup> The government notified the establishment of the Competition Commission of Pakistan (CCP) in place of the MCA.<sup>56</sup> CO 2007, in line with the global trends and best practices, focused on protecting competition and increasing consumer welfare,<sup>57</sup> and outlawed four categories of anti-competitive behaviour: abuse of dominance, collusive agreements, deceptive marketing practices, and certain mergers & acquisitions.<sup>58</sup> The changed perspective on the rationale for competition law appeared clear, with the notion of curbing monopolies for wealth distribution converted into the idea of promoting competition for economic efficiency and growth.

Under CO 2007, the CCP was mandated and empowered to do three main functions to protect and promote competition. First, it was authorised to undertake law-enforcement actions by conducting investigations into possible violations of the substantive provisions<sup>59</sup>; to order remedial measures to restore competition where violations were found, and to impose substantial<sup>60</sup> penalties on the violators.<sup>61</sup> Second, it was mandated to conduct research into the competitiveness of various sectors of the economy.<sup>62</sup> Third, it was also empowered to increase awareness about competition to all stakeholders in the society, and to suggest policy and legislative reviews to the government.<sup>63</sup> To carry out these functions, the

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<sup>53</sup> Government of Pakistan, 'PRSP-II' (n 43) 158-59.

<sup>54</sup> Government of Pakistan, 'PRSP-II' (n 43).

<sup>55</sup> CO 2007, ss 59(a) and 59 (b).

<sup>56</sup> Wilson, 'Crossing the Crossroads' (n 46) 107.

<sup>57</sup> *ibid* 109-11.

<sup>58</sup> CO 2007, ss 3,4,10 and 11.

<sup>59</sup> CO 2007, s 37.

<sup>60</sup> PKR 75 million or 10% of last annual turnover.

<sup>61</sup> CO 2007, ss 31 and 38.

<sup>62</sup> CO 2007, s 28 (1)(b).

<sup>63</sup> CO 2007, s 29.

CCP was given powers to collect information from various sources,<sup>64</sup> conduct inspections and impound evidence,<sup>65</sup> record testimony and documentary evidence,<sup>66</sup> request assistance from other private and public agencies,<sup>67</sup> give leniency,<sup>68</sup> and exercise broad powers for the recovery of penalties.<sup>69</sup> The decisions of the CCP were made appealable before the Supreme Court of Pakistan, the country's apex court, directly.<sup>70</sup> The new law, therefore, not only created a contemporary regime, very similar to the ones found in advanced legal jurisdictions, in accordance with global best practices, but also empowered it substantially to enforce the law.

### III. Challenges for the New Competition Regime

Despite having introduced a modern competition law, Pakistan still faces numerous challenges, the primary one being to create acceptability for the regime. Some of the challenges arise from the fact that the law has been adopted as the result of globalisation rather than due to domestic political and economic demands. Contributing to the challenges are the big business interests in numerous economic sectors, some controlled by the state itself due to decades of nationalisation and continued mixed planned-market economic policies. Some of the major challenges – political acceptance, enforcement, financial autonomy, capacity building, and judicial review – are discussed below.

#### 1. Political Acceptance

CO 2007 was essentially introduced without ever having received a proper legislative discourse in the country's Parliament. As mentioned earlier,<sup>71</sup> the contemporary competition law was promulgated as an Ordinance, a temporary legislative instrument, on 3 October 2007. Under Pakistan's 1973 Constitution, all Ordinances are to be approved by the Parliament failing which they lapse after 120 days. On 3 November 2007, General Pervaiz Musharraf, the President of Pakistan, who was also the Chief of the Army Staff and who had previously imposed martial law in the country in 1999,

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<sup>64</sup> CO 2007, ss 36, 47 and 48.

<sup>65</sup> CO 2007, ss 34 and 35.

<sup>66</sup> CO 2007, s 33(1).

<sup>67</sup> CO 2007, s 51.

<sup>68</sup> CO 2007, s 39.

<sup>69</sup> CO 2007, s 40.

<sup>70</sup> CO 2007, s 42.

<sup>71</sup> See *supra* note 49.

proclaimed an 'emergency' and issued a Provisional Constitutional Order (PCO). The PCO, *inter alia*, purportedly gave permanency to all legal instruments taken and issued by the President, including the CO 2007, which had not yet been presented before the Parliament.<sup>72</sup> While the sitting parliament passed a resolution endorsing the PCO,<sup>73</sup> it never passed an amendment to the Constitution to condone the President's actions and legal instruments.

Therefore, the newly established competition regime in Pakistan faced its first major test of acceptability when the permanent status of CO 2007 was withdrawn as a result of the nullification of the emergency and of the PCO by the Supreme Court of Pakistan.<sup>74</sup> The future of the law was in doldrums. At the same time, however, this uncertainty provided the opportunity to the political parties to debate this law for the first time. As the debate took place, the newly elected democratic government reintroduced the law as temporary legislation twice in form of Competition Ordinance 2009 and Competition Ordinance 2010 as stop-gag measures.<sup>75</sup> Despite anticipated opposition from big businesses interests,<sup>76</sup> the CCP was able to successfully defend the law at hearings before a Parliamentary committee which unanimously approved the draft law.<sup>77</sup> The law was eventually passed as the Competition Act 2010 (CA 2010).<sup>78</sup>

The passage of the CA 2010 marked a major sign of real domestic endorsement of the new competition paradigm by the political forces in Pakistan and ensured competition an important place in the country's economic policy. More importantly, the debate and discussion preceding the

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<sup>72</sup>Provisional Constitutional Order Number 1 of 2007 <[http://www.dailytimes.com.pk/default.asp?page=2007%5C11%5C04%5Cstory\\_4-11-2007\\_pg7\\_27](http://www.dailytimes.com.pk/default.asp?page=2007%5C11%5C04%5Cstory_4-11-2007_pg7_27)> accessed 11 November 2012.

<sup>73</sup> Staff Report, 'National Assembly Approves emergency, PCO' *Daily Times* (Islamabad, 8 November 2007) < [http://www.dailytimes.com.pk/default.asp?page=2007%5C11%5C08%5Cstory\\_8-11-2007-\\_pg7\\_3](http://www.dailytimes.com.pk/default.asp?page=2007%5C11%5C08%5Cstory_8-11-2007-_pg7_3)> accessed 12 November 2012.

<sup>74</sup> *Sindh High Court Bar Association v Federation of Pakistan* (PLD 2009 SC 879).

<sup>75</sup> Wilson, 'Crossing the Crossroad' (n 46) 108-09.

<sup>76</sup> Afshan Subohi, 'Throwing Spanner in the Works' *Dawn* (Islamabad, 15 March 2010) <<http://archives.dawn.com/archives/25125>> accessed 30 December 2011.

<sup>77</sup> Sajid Chaudhry, 'Further Improvements: Senate Body Approves Competition Bill 2010' *The News* (Islamabad, 6 May 2010) < [http://www.dailytimes.com.pk/default.asp?page=2010/05/06/story\\_6-5-2010\\_pg5\\_12](http://www.dailytimes.com.pk/default.asp?page=2010/05/06/story_6-5-2010_pg5_12)> accessed 30 December 2011; Wilson, 'Crossing the Crossroad' (n 46) 108-09.

<sup>78</sup> Competition Act, 2010 (PAK) (Act XIX of 2010, Published in the Gazette of Pakistan, Extraordinary on 13 October 2010) <[http://www.cc.gov.pk/images/Downloads/competitionn\\_act\\_2010.pdf](http://www.cc.gov.pk/images/Downloads/competitionn_act_2010.pdf)> accessed 4 January 2012.

passage of CA 2010 meant that legislators understood the rationale for having a contemporary competition law. CA 2010, incorporating some changes over the CO 2007, introduced a Competition Appellate Tribunal (CAT) to hear appeals against CCP's decisions,<sup>79</sup> increased the maximum penalty for undertakings with ascertained turnovers,<sup>80</sup> decreased the maximum penalty for undertakings with unascertained turnovers,<sup>81</sup> and took away CCP's authority to deposit fines in its funds.<sup>82</sup> Except for these changes, CA 2010 remains substantially identical to CO 2007.

## 2. Enforcement

One of the most important challenges that can be faced by any new competition agency is that of consistent and sustainable enforcement. Since its inception, the CCP has done a significant amount of work covering all mandated areas. As of the end of October 2012, it has, *inter alia*, compiled thirty five enquiry reports,<sup>83</sup> issued fifty nine orders,<sup>84</sup> drafted thirteen policy notes and opinions<sup>85</sup>, undertaken two hundred and forty seven merger reviews,<sup>86</sup> held five conferences,<sup>87</sup> conducted eight sector studies,<sup>88</sup> written two 'state of competition' reports,<sup>89</sup> and has even authored a voluntary compliance code for the private sector.<sup>90</sup> For an institution barely five years into existence, the numbers are fairly significant.

Soon after its formation, the CCP targeted price and production fixing cartels operating through the trade associations which had, despite being the proverbial low-hanging fruits, plagued Pakistan's economy. These cartels

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<sup>79</sup> CA 2010, s 43.

<sup>80</sup> CA 2010, s 38(2)(a).

<sup>81</sup> CA 2010, s 38(2)(a).

<sup>82</sup> Done by removing the word 'penalties' from s 20(2)(b) of CA 2010.

<sup>83</sup> CCP, 'Enquiry Reports' <[http://www.cc.gov.pk/index.php?option=com\\_content&view=article&id=36&Itemid=90](http://www.cc.gov.pk/index.php?option=com_content&view=article&id=36&Itemid=90)> accessed 4 January 2012.

<sup>84</sup> CCP, 'Orders' <[http://www.cc.gov.pk/index.php?option=com\\_content&view=article&id=168&Itemid=41](http://www.cc.gov.pk/index.php?option=com_content&view=article&id=168&Itemid=41)> accessed 4 January 2012.

<sup>85</sup> CCP, 'Policy Notes & Opinions' <[http://www.cc.gov.pk/index.php?option=com\\_content&view=article&id=21&Itemid=42](http://www.cc.gov.pk/index.php?option=com_content&view=article&id=21&Itemid=42)> accessed 4 January 2012.

<sup>86</sup> CCP, 'Mergers & Acquisitions' <[http://www.cc.gov.pk/index.php?option=com\\_content&view=article&id=76&Itemid=137](http://www.cc.gov.pk/index.php?option=com_content&view=article&id=76&Itemid=137)> accessed 4 January 2012.

<sup>87</sup> CCP, 'Conference/Seminar' <[http://www.cc.gov.pk/index.php?option=com\\_content&view=article&id=25&Itemid=49](http://www.cc.gov.pk/index.php?option=com_content&view=article&id=25&Itemid=49)> accessed 4 January 2012.

<sup>88</sup> CCP, 'Research & Publication' <[http://www.cc.gov.pk/index.php?option=com\\_content&view=article&id=92&Itemid=138](http://www.cc.gov.pk/index.php?option=com_content&view=article&id=92&Itemid=138)> accessed 4 January 2012.

<sup>89</sup> *ibid.*

<sup>90</sup> *ibid.*

had done little to hide their collusive practices. In the past five years, the CCP has identified collusion in many sectors of the economy namely banking,<sup>91</sup> accountancy,<sup>92</sup> securities,<sup>93</sup> cement,<sup>94</sup> dredging,<sup>95</sup> poultry,<sup>96</sup> jute bags,<sup>97</sup> sugar,<sup>98</sup> shipping,<sup>99</sup> oil and gas,<sup>100</sup> edible oil,<sup>101</sup> electric power equipment,<sup>102</sup> and even the print media.<sup>103</sup> At the same time, the institution has not been shy of taking on more complex abuse of dominance cases. In fact, CCP maintains a near parity between enforcement actions against abuse of dominance and collusion. Till the end of October 2012, CCP has

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<sup>91</sup> *In re: Pakistan Bank Association and Others* (10 June 2010) <<http://www.cc.gov.pk/images/Downloads/Final%20PBA%20Order%2010.06.09.pdf>> accessed 4 January 2012.

<sup>92</sup> *In re: Institute of Chartered Accountants of Pakistan* (11 March 2009) <[http://www.cc.gov.pk/images/Downloads/ICAP%20Final%20Order%20\(11-3-09\).pdf](http://www.cc.gov.pk/images/Downloads/ICAP%20Final%20Order%20(11-3-09).pdf)> accessed 4 January 2012.

<sup>93</sup> *In re: Karachi Stock Exchange, Lahore Stock Exchange & Islamabad Stock Exchange* (26 November 2009) <[http://www.cc.gov.pk/images/Downloads/kse\\_floor\\_pricing\\_order.pdf](http://www.cc.gov.pk/images/Downloads/kse_floor_pricing_order.pdf)> accessed 4 January 2012.

<sup>94</sup> *In re: All Pakistan Cement Manufacturers* (27 July 2009) <[http://www.cc.gov.pk/images/Downloads/Cement%20\(final%20order\)%2027-08-2009.pdf](http://www.cc.gov.pk/images/Downloads/Cement%20(final%20order)%2027-08-2009.pdf)> accessed 4 January 2012.

<sup>95</sup> *In re: Dredging Companies* (23 July 2010) <[http://www.cc.gov.pk/images/Downloads/dredging\\_finalised\\_order\\_23\\_07\\_10.pdf](http://www.cc.gov.pk/images/Downloads/dredging_finalised_order_23_07_10.pdf)> accessed 4 July 2012.

<sup>96</sup> *In re: Pakistan Poultry Association* (16 August 2010) <[http://www.cc.gov.pk/images/Downloads/ppa\\_order\\_16\\_august\\_2010.pdf](http://www.cc.gov.pk/images/Downloads/ppa_order_16_august_2010.pdf)> accessed 4 January 2010.

<sup>97</sup> *In re: Pakistan Jute Mills Association* (3 February 2011) <[http://www.cc.gov.pk/images/Downloads/pjma\\_order\\_3%20feb\\_2011.pdf](http://www.cc.gov.pk/images/Downloads/pjma_order_3%20feb_2011.pdf)> accessed 4 January 2012.

<sup>98</sup> Shaista Bano Gilani and Syed Umair Javed, 'Collusive Practices in the Sugar Industry' (CCP, 21 October 2009) <[http://www.cc.gov.pk/images/Downloads/enquiry\\_report\\_october\\_2009.pdf](http://www.cc.gov.pk/images/Downloads/enquiry_report_october_2009.pdf)> accessed 4 January 2012.

<sup>99</sup> *In re: Pakistan Ships' Agents Association* (22 June 2011) <[http://www.cc.gov.pk/images/Downloads/psaa\\_order\\_22\\_june\\_2011.pdf](http://www.cc.gov.pk/images/Downloads/psaa_order_22_june_2011.pdf)> accessed 4 January 2011.

<sup>100</sup> *In re: LPG Association of Pakistan & JJVL* (14 December 2009) <[http://www.cc.gov.pk/images/Downloads/lpg\\_final\\_order\\_proof\\_15\\_december\\_2009.pdf](http://www.cc.gov.pk/images/Downloads/lpg_final_order_proof_15_december_2009.pdf)> accessed 4 January 2012.

<sup>101</sup> *In re: Pakistan Vanaspati Manufacturing Association* (30 June 2011) <[http://www.cc.gov.pk/images/Downloads/pvma\\_30\\_june.pdf](http://www.cc.gov.pk/images/Downloads/pvma_30_june.pdf)> accessed 4 January 2012.

<sup>102</sup> Nadia Nabi, Syed Umair Javed and Mohammad Fahad, 'Cartelisation Between Electric Power Equipment Manufacturers' (CCP, September 2011) <[http://www.cc.gov.pk/images/Downloads/pel\\_et\\_al\\_enquiry\\_report\\_20\\_sept\\_2011.pdf](http://www.cc.gov.pk/images/Downloads/pel_et_al_enquiry_report_20_sept_2011.pdf)> accessed 4 January 2012.

<sup>103</sup> *In re: All Pakistan Akhbar Farooq Association and Others* (23 April 2009) <<http://www.cc.gov.pk/images/Downloads/APNS%20Final%20Order.pdf>> accessed 4 January 2012.

issued orders in over a dozen instances where it has found tying,<sup>104</sup> price discrimination,<sup>105</sup> or refusal to deal.<sup>106</sup>

CCP has recently announced its intent to include anti-competitive practices in public procurement and concessions in its enforcement priorities.<sup>107</sup> Given the massive contribution of these sectors in Pakistan's economy – public procurement alone amounting to an equivalent of around 25 percent of the national GDP at one estimate<sup>108</sup> – the choice appears to be rational. It is estimated that curbing malpractices, which includes collusive bidding and tendering, in public procurement alone would save around eight billion dollars a year.<sup>109</sup> In 2011 alone, the two most significant cartels found, in the jute bags manufacturing<sup>110</sup> and electric power equipment manufacturing<sup>111</sup> sectors, seemed focused on collusive bidding. Previously, collusive bidding was found in the sugar<sup>112</sup> as well as the dredging sector.<sup>113</sup>

<sup>104</sup> *In re: Bahria University* (24 July 2008) <<http://www.cc.gov.pk/images/Downloads/-order/Bahria%20University.pdf>> accessed 4 January 2012; *In re: Tetra Pak Pakistan* (13 August 2010) <[http://www.cc.gov.pk/images/Downloads/tetra\\_pak\\_final\\_order.pdf](http://www.cc.gov.pk/images/Downloads/tetra_pak_final_order.pdf)> accessed 4 January 2012; *In re: Cinepax* (28 March 2011) <[http://www.cc.gov.pk/images/Downloads/-cinepax\\_order\\_mar\\_31\\_2011\\_1.pdf](http://www.cc.gov.pk/images/Downloads/-cinepax_order_mar_31_2011_1.pdf)> accessed 4 January 2012.

<sup>105</sup> *In re: Pakistan International Airlines* (20 November 2009) <<http://www.cc.gov.pk/images/Downloads/PIA%20Hajj%20Fare%20Final%20Order%20%2020%20November%202009.pdf>> accessed 4 January 2012; *In re: Pakistan International Airlines* (20 December 2009) <[http://www.cc.gov.pk/images/Downloads/PIA%20ReschedulingCancellation%20Order%20\[8%20Dec%202009\].pdf](http://www.cc.gov.pk/images/Downloads/PIA%20ReschedulingCancellation%20Order%20[8%20Dec%202009].pdf)> accessed 4 January 2012; *In re: Pakistan Vanaspati Manufacturing Association* (30 June 2011) <[http://www.cc.gov.pk/images/Downloads/pvma\\_30\\_june.pdf](http://www.cc.gov.pk/images/Downloads/pvma_30_june.pdf)> accessed 4 January 2012.

<sup>106</sup> *In re: Siza Foods* (24 April 2009) <<http://www.cc.gov.pk/images/Downloads/Final%20Order-Siza%20Foods.pdf>> accessed 4 January 2012; *In re: Karachi Stock Exchange* (29 May 2009) <<http://www.cc.gov.pk/images/Downloads/Latest%20KSE-Order%2029-5-09.pdf>> accessed 4 January 2012; *In re: Pakistan Steel Mills* (22 March 2010) <<http://www.cc.gov.pk/images/Downloads/PSM-Final-Order-March%2022-10.pdf>> accessed 4 January 2012; *In re: Engro Vopak Terminal* (29 June 2011) <[http://www.cc.gov.pk/images/Downloads/section\\_3\\_order.pdf](http://www.cc.gov.pk/images/Downloads/section_3_order.pdf)> accessed 4 January 2012.

<sup>107</sup> Pakistan Today, 'CCP Probes Government's Concessionary Deals' *Pakistan Today* (Islamabad, 8 July 2011) <<http://www.pakistantoday.com.pk/2011/07/ccp-probes-government%E2%80%99s-concessionary-deals/>> accessed 5 January 2012; Mehtab Haider, 'CCP to share Information with Investigation Agencies' *The News* (Islamabad, 3 December 2011) <<http://www.thenews.com.pk/TodaysPrintDetail.aspx?ID=80544&-Cat=3>> accessed 5 January 2012

<sup>108</sup> Ansar Abbasi, 'Pakistan can save \$8 Billion: MD PPRA' *The News* (Islamabad, 22 June 2010) <[http://e.thenews.com.pk/tp\\_details.asp?id=29596](http://e.thenews.com.pk/tp_details.asp?id=29596)> accessed 11 November 2012.

<sup>109</sup> Haider (n 107).

<sup>110</sup> See n 97.

<sup>111</sup> See n 102.

<sup>112</sup> See n 98.

The enforcement choice therefore seems not only warranted but greatly natural as well.

To knit a broader strategy, the CCP is in the process to develop a partnership with the national regulator concerned with public procurement issues.<sup>114</sup> In the concessions sector, the CCP has just recently directed a major concession holder in container terminal operations to review its trade practices with its customers.<sup>115</sup> The years ahead will no doubt be crucial in how successful the CCP is in mainstreaming enforcement in the priority areas defined.

### 3. Financial Autonomy

In the past two decades, Pakistan has seen a rapid growth of autonomous sector regulators. This process started off in 1996 with the establishment of the Pakistan Telecommunication Authority<sup>116</sup> to regulate the telecommunication industry in wake of liberalisation in the sector. In 1997, the Securities and Exchange Commission of Pakistan<sup>117</sup> was formed to regulate the corporate and securities market sectors. The same year the National Electric Power Regulatory Authority<sup>118</sup> was formed to regulate the power sector. The Pakistani Electronic Media Regulatory Authority<sup>119</sup> came into being in 2002. The same year, the Oil and Gas Regulatory Authority<sup>120</sup> was established to provide oversight in middle and downstream markets in petroleum sector.

The idea behind establishing these authorities was to take regulation of liberalised sectors away from the bureaucracy and place it in the hands of

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<sup>113</sup> See n 95.

<sup>114</sup> Haider (n 107).

<sup>115</sup> *In re: Engro Vopak Terminal* (29 June 2011) <[http://www.cc.gov.pk/images/Downloads/section\\_3\\_order.pdf](http://www.cc.gov.pk/images/Downloads/section_3_order.pdf)> accessed 5 January 2012.

<sup>116</sup> Pakistan Telecommunications Authority, 'History' <[http://www.pta.gov.pk/index.php?option=com\\_content&view=article&id=358&Itemid=320](http://www.pta.gov.pk/index.php?option=com_content&view=article&id=358&Itemid=320)> accessed 11 December 2012.

<sup>117</sup> Securities and Exchange Commission of Pakistan, 'About SECP – The Establishment of the Commission' <[http://www.secp.gov.pk/about\\_secp.asp](http://www.secp.gov.pk/about_secp.asp)> accessed 11 December 2012.

<sup>118</sup> National Electric Power Regulatory Authority, 'National Electric Power Regulatory Authority' <<http://www.nepra.org.pk/nepra.htm>> accessed 11 December 2012.

<sup>119</sup> Pakistan Electronic Media Regulatory Authority, 'PEMRA'S Mandate' <[http://www.pemra.gov.pk/pemra/index.php?option=com\\_content&view=article&id=1&Itemid=2](http://www.pemra.gov.pk/pemra/index.php?option=com_content&view=article&id=1&Itemid=2)> accessed 11 December 2012.

<sup>120</sup> Oil and Gas Regulatory Authority, 'Introduction' <[http://www.ogra.org.pk/cats\\_disp.php?cat=8](http://www.ogra.org.pk/cats_disp.php?cat=8)> accessed 11 December 2012.

specialised statutory organisations. The formation of these special statutory organisations conveyed an important message of impartiality to the business concerns: regulation would be transparent, professional and apolitical. To ensure impartiality, these authorities were given operational, administrative and financial autonomy. The authorities were allowed to recruit their own staff, take regulatory decisions and, most importantly, generate their own funds by levying fees and penalties on those it regulated. The non-reliance on tax-payer money was important for many reasons. Not only did it ensure an operating environment free of political intervention, it allowed these organisations to offer special salary scales to lure better skill sets from the private sector.

CCP was given similar autonomy by CO 2007. Given that it would enforce competition laws across various regulated sectors and would not have any revenue generating activities per se, the CCP was mandated to receive a percentage of the revenue generated by the sector regulators.<sup>121</sup> In addition, it was allowed to take grants from the government<sup>122</sup> and, with the latter's permission, from donors,<sup>123</sup> and retain penalties recovered from violators.<sup>124</sup> This scheme did not work out as intended. Perhaps unforeseeable at the time of promulgation and despite assurances from the government, no regulatory authority has agreed to give the CCP a share in its revenue.<sup>125</sup> The CA 2010 took away the CCP's ability to receive penalties imposed.<sup>126</sup> In theory, this was a bona fide move, one that removed a structural bias in levy of penalties. As a practical consequence, however, the CCP has been made completely dependent on allocations made by the government, putting at risk its operational and administrative autonomy.

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<sup>121</sup> CO 2007, s 20(2)(f).

<sup>122</sup> CO 2007, s 20(2)(a).

<sup>123</sup> CO 2007, s 20(2)(c).

<sup>124</sup> CO 2007, s 20(2)(b).

<sup>125</sup> The News, 'Row over CCP Fee remains Unsolved' *The News* (Islamabad, 23 April 2011) <<http://www.thenews.com.pk/TodaysPrintDetail.aspx?ID=5494&Cat=13>> accessed 5 January 2012; Sohail Sarfraz, 'Prime Minister assures CCP secured Funding' *Business Recorder* (Islamabad, 3 December 2011) <<http://www.brecorder.com/market-data/stocks-a-bonds/single/636/0/1257327/>> accessed 5 January 2012; Business Recorder, 'Three Percent Fee: SECP not in league with CCP' *Business Recorder* (Islamabad, 30 December 2011) <<http://www.brecorder.com/market-data/stocks-a-bonds/single/636/202:pakistan/1266154:three-percent-fee-secp-not-in-league-with-ccp/?date=2011-12-30>> accessed 5 January 2012.

<sup>126</sup> See *supra* note 82.

Whether as a result of insufficient law making or turf issues of sector regulators, the CCP today faces the additional challenge of not being perceived as an extension of the government. If the CCP is perceived as such, its reputation as an impartial law enforcer and adjudicator will be damaged, which in turn would increase hesitance among private sector businesses to approach the institution. With no visible cracks appearing in the resolve of the sector regulators, the CCP must be extra vigilant to ward off any notion that the government is able to influence its operational decisions, especially those regarding public sector commercial bodies, through financial leverage. At the same time it must ensure compliance from the regulators; thorough proactive advocacy; and prompt legal recourse through the judicial system.

#### **4. Capacity Building**

As a nascent law enforcing institution implementing a new law, the CCP's need for well-trained professionals cannot be over emphasised. Realising this importance, the CCP has exposed the rank and file of its employees to trainings, seminars and conferences related to their respective fields. It used capacity building funds made available by the WB<sup>127</sup> to train its employees in competition law and economics, competition law enforcement tools, competition advocacy, and even computer forensics. Collaborations for these trainings were made around with various competition agencies, such as the Turkish Competition Authority, leading academic institutes like Kings College London, and policy institutes, like the KPC. These exercises constituted an important short-medium term strategy by the CCP to increase the ability of employees to undertake their assignments. Moreover, a recent amendment to CCP's Service Regulations means that employees who have worked with CCP for three consecutive years can be allowed a one year paid study leave to undertake higher studies in competition related fields.<sup>128</sup> This policy is expected to greatly increase the capacity of CCP employees in the years to come.

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<sup>127</sup> Ihtashamul Haque, 'WB's Concern over Delay in Formal Working of CCP' *Dawn* (Islamabad, 16 January 2008) <<http://archives.dawn.com/2008/01/16/ebr2.htm>> accessed 5 January 2012.

<sup>128</sup> Service Regulations, ch 10 reg 10 as amended by CCP decision dated 22 July 2012 <[http://www.cc.gov.pk/images/Downloads/amendment\\_in\\_the\\_service\\_regulations.pdf](http://www.cc.gov.pk/images/Downloads/amendment_in_the_service_regulations.pdf)> accessed 5 January 2012.

However, the CCP cannot rely solely on on-job trainings or study leaves to increase capacity in the long run. If the competition regime is to really take root, the CCP must ensure that lawyers, economists, policy makers, regulators, accountants, and business managers are trained in competition matters within the country. Currently, there is no university in Pakistan which offers any competition related course in its undergraduate or post graduate programs. This is a major challenge for the competition regime as the lack of academic training, research and debate in competition matters will severely hamper long term sustainability of the competition framework.

Suggestions have already been made to include competition law as an LL.B course in law schools.<sup>129</sup> The CCP must play a proactive role in this regard and develop links with the academic community in the country. It needs to encourage not only law schools but also business and economic schools and faculties to offer competition law and economics as part of their syllabus. This can be done by providing academic institutions with technical assistance in developing such courses and by providing visiting faculty from CCP's employees. In addition to providing the CCP with potential future employees, this initiative would also help in developing a broader academic, legal and political awareness about competition law and policy in the country.

## 5. Judicial Review

Of all the challenges confronting this new regime, nothing is as serious as acceptance of this law, and its underpinning principles, in the appellate courts of this country. The CCP functions as a quasi-judicial body with the power to issue remedial orders and impose penalties. According to Section 43 of CA 2010, these orders and penalties are appealable before the CAT, whereas the decisions of the CAT are appealable before the Supreme Court of Pakistan, as per Section 44 of CA 2010. In addition, writ petitions against CA 2010 are also possible before various High Courts<sup>130</sup> as part of the constitutional rights<sup>131</sup> afforded to people.

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<sup>129</sup> Wilson, 'Crossing the Crossroads' (n 46) 120-21.

<sup>130</sup> There are currently five High Courts in Pakistan: the Islamabad High Court, the Lahore High Court, the Peshawar High Court, the Sindh High Court and the Balochistan High Court.

<sup>131</sup> Under Pakistan's 1973 Constitution, High Courts can entertain petitions against the government functionaries under art 199.

While the CCP has produced a large number of decisions, the various appellate forums have been slow in hearing appeals filed against the former. The CAT is currently non-functional since the government has not fully constituted it yet.<sup>132</sup> In any event, of the almost 170 cases<sup>133</sup> of varying nature before the High Courts and Supreme Court of Pakistan, only one has been decided, and that too relating to a procedural matter.<sup>134</sup> Nonetheless, the orders of the CCP can have no bearing on the economy unless they are given finality at the highest judicial level. Only then can the CCP actually enforce its decision, recover penalties and maintain an effective deterrent.

The challenge before the courts is not just of expediency. It is as much about substance.<sup>135</sup> Due to the lack of any domestic jurisprudence or precedents on competition law, CCP is developing jurisprudence by learning from the legal and economic principles in place in various jurisdictions around the globe. The perusal of CCP's enquiry reports and orders clearly reveals that reliance is regularly made on principles and precedents set up by US and EU competition agencies and courts. In one of its first decision, the CCP used principles derived from EU and US case law, such as *US v Trenton Potteries*<sup>136</sup> and *Volkswagen v CEC*<sup>137</sup> to determine the object and effect of anti-competitive agreements and hold the Pakistan Bank's Association guilty of cartelisation. Similarly, a recent CCP enquiry in the telecom sector adopted the EU's margin squeeze tests, enunciated in *Deutsche Telekom v*

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<sup>132</sup> Shahbaz Rana, 'White Elephants live on: Govt Interference ruined State Owned Enterprises' *The Express Tribune* (Islamabad, 2 December 2011) <<http://tribune.com.pk/story/300990/white-elephants-live-on-govt-interference-ruined-state-owned-enterprises/>> accessed 5 January 2012. See also Wilson, 'Crossing the Crossroads' (n 46) 123-24.

<sup>133</sup> The Nation, 'Over 170 Cases of CCP Pending in Various Courts' *The Nation* (Islamabad, 3 November 2011) <<http://www.nation.com.pk/pakistan-news-newspaper-daily-englishonline-/Business/03-Nov-2011/Over-170-cases-of-CCP-pending-in-various-courts>> accessed 5 January 2012.

<sup>134</sup> *In re: Merger Clearance-FFC* (23 November 2011) <[http://www.cc.gov.pk/images-/Downloads/ffc\\_order\\_23\\_11\\_11\\_final.pdf](http://www.cc.gov.pk/images-/Downloads/ffc_order_23_11_11_final.pdf)> accessed 5 January 2012.

<sup>135</sup> Wilson, 'Crossing the Crossroads' (n 46) 124.

<sup>136</sup> *United States v Trenton Potteries* 273 US 392 (1927).

<sup>137</sup> Case T-62/98 *Wolkswagen AG v Commission of the European Communities* [2000] ECR II-2702

*EC*<sup>138</sup> and *Wanadoo Espana v Telephonica*,<sup>139</sup> to find a price squeeze in the DSL broadband market in Pakistan.<sup>140</sup>

An argument almost always made by respondents before the CCP, and subsequently in appeals and writ petitions, is that foreign principles are transplanted into domestic law. Given that no original contemporary competition law jurisprudence existed in the country prior to CO 2007, this argument may not be as persuasive as it appears. However, with no decision emanating from the appeals process, it largely remains to be seen whether the appellate courts of Pakistan agree with the broader framework of interpretation adopted by the CCP or not.

The situation is not helped by the fact that the judiciary in Pakistan is generally not very receptive to suggestions of on-the-job knowledge building. This concern would normally be offset by the adversarial system – judges learn as arguments are made before them. However, with these courts swamped with cases and a huge backlog – 138,945 at one count in 2009 – <sup>141</sup> the question arises whether judges will have the time to appreciate the very delicate nuances of competition law and economics without having being exposed to them beforehand. As a welcome first, a serving judge of the Supreme Court of Pakistan and the Chairperson of the CAT attended the ‘Competition Workshop for Judges in the Asian Region’ organised by the KPC in November 2011.<sup>142</sup> However, if this initiative is not followed by other judges, enough momentum to institutionalise the process may not happen.

While the CCP can only play a limited role in encouraging the judiciary to consider knowledge building exercises such as the one mentioned in the preceding paragraph, it can certainly offer training courses and hold seminars for lawyers by approaching the various bar councils. Since judges

<sup>138</sup> Case C-280/08 P. *Deutsche Telekom AG v European Union* [2010] ECR I-09555.

<sup>139</sup> *Wanadoo España v Telefónica* (Case COMP/38.784) Commission Decision of 4 July 2007.

<sup>140</sup> Shaista Bano and Mehreen Ibrahim Khan, ‘PTCL Broadband DSL’ (CCP, June 2012) <[http://cc.gov.pk/images/Downloads/enquiry\\_reports/ptcl\\_dsl\\_enquiry\\_report\\_11\\_june\\_2012.pdf](http://cc.gov.pk/images/Downloads/enquiry_reports/ptcl_dsl_enquiry_report_11_june_2012.pdf)> accessed 11 November 2012.

<sup>141</sup> Law and Justice Commission of Pakistan, ‘National Judicial Policy 2009’ (LJCP 2009) <[http://www.supremecourt.gov.pk/web/user\\_files/File/NJP2009.pdf](http://www.supremecourt.gov.pk/web/user_files/File/NJP2009.pdf)> accessed 5 January 2012.

<sup>142</sup> OECD-KPC, ‘Annual Report 2011’, 10 <<http://www.oecd.org/daf/competition/7.%202011%20Annual%20Performance%20Report.pdf>> accessed 10 November 2012.

are selected from within the lawyers in Pakistan, this approach may yield long term benefits for the competition regime. For early disposal of pending cases, the CCP should actively request the High Courts and the Supreme Court of Pakistan to establish a dedicated bench for hearing competition law cases.

#### **IV. Conclusion**

The contemporary competition regime in Pakistan, brought about by the globalisation of national competition regimes and the application of the international soft law framework, has started to take some root due to political acceptance and a good enforcement strategy. However, it is still too early to comment on the long term sustainability and efficacy of the law. This essay has identified some challenges which will continue to confront the regime in the years to come and provides some recommendations to address them. In the long run, the ability to attract professionals well versed in competition theory, and a judicial discourse based on sound economic rationale will be as important, if not more, as consistent enforcement of the law itself.