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Global Forum on Competition

ROUNDTABLE ON BRINGING COMPETITION INTO REGULATED SECTORS

Contribution from Pakistan

-- Session I --

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BRINGING COMPETITION INTO REGULATED SECTORS

1. In the era of the sixties, Pakistan was pursuing the policy of economic development through the private enterprises system. As a result, industrialisation got a boost by the initiative of the private sector. Major industries were set up in the textile and engineering sectors. Several big industrial groups were in a position to abuse their economic power. It was, therefore, strongly felt that absolutely unregulated private sector businesses tend to result in concentration of wealth, creation of monopolies and formation of cartels which are detrimental to the consumers interest and social well being.

2. The Government constituted in 1963 an Anti-Cartel Laws Study Group to carry out a detailed and in-depth study into trade, commerce and industry of the country and their market behaviour. The group formulated a comprehensive report, based upon which a draft anti-monopoly and anti-cartel law was published for public opinion in 1968-69. Consequently, the Monopolies and Restrictive Trade Practices (Control and Prevention) Ordinance, 1970 (MRTPO), was promulgated on February 26, 1970 and enforced with effect from August 17, 1971. Simultaneously, an independent body, the Monopoly Control Authority (MCA), was constituted to administer this law.

3. The Economic Reform Order of 1972 resulted in the nationalisation of thirty-two large scale manufacturing units including chemicals, automobiles, iron and steel, petrochemicals, heavy and light engineering, oil refining, cement and fertilisers. All heavy industry was placed under the public sector. The Board of Industrial Management (BIM) was created with ten corporations and thirty-two nationalised industries under its control. Subsequently, life insurance, banking, vegetable oil processing, cotton ginning, grain milling, and oil distribution companies in the private sector were also taken under state control. The private sector industry was further placed under pressure through introduction the Price Control and Prevention of Profiteering and Hoarding Act 1977.

4. In the equity market the main policy impediment was the entry barrier put up by the Controller of Capital Issues, who had to approve every issue, and in addition, set the issue price. A company could only approach the financial markets to raise funds when the Government had approved its project. In addition, public sector financial institutions, the insurance companies and the Development Financial Institutions (DFIs) were all major players in the equity market giving the government effective control. This dominance was compounded by the fact that there was no competition from foreign institutional investors.

5. All the nationalised enterprises enjoyed exemption from the application of competition law under the provisions of Section 25 of MRTPO. This retarded competition.

6. In 1976, the Government promulgated the Foreign Private Investment (Promotion and Protection) Act to 'promote' and 'protect' foreign private investments in the country. The Law provided protection to foreign investors with respect to their 'industrial undertakings' established in Pakistan in or after September 1954.

7. In 1981, the Monopoly Control Authority and the Securities and Exchange Authority were combined and placed under the umbrella of a newly created organisation – the Corporate Law Authority (CLA). The Chairman and Members of the Authority were concurrently notified as Chairman and Members of Monopoly Control Authority for performing functions under MRTPO. Under this arrangement, the other corporate laws, viz Company Law, Securities and Exchange law, Modaraba Law, enjoyed first priority.

8. Another feature of industrial policy was that permission was required from the government before the establishment of large-scale industries. These included various kinds of restrictions and many other steps such as investment licensing, import restrictions on capital and intermediate inputs, location clearances, and the pace of industrial investment. In 1984, the number of industries requiring these licenses was reduced and by the year of 1992, all these restrictions were removed.

9. De-regulation and privatisation policy was started in 1988. The financial sector was deregulated and leading banks and financial institutions have been sold to employees and private parties. With the economic liberalisation, new banks, financial institutions, leasing companies, housing finance, investment companies and foreign banks, have come up, which has created a competitive milieu.

10. The Capital Issues (Control and Continuance Act, 1947), was repealed in 1992 leading to freer pricing issues. The foreign investors as well as domestic private sector mutual funds have been attracted to trade in the equities, increasing competition on the buyer side of the equity market.

11. In the 90's, public enterprises in manufacturing, banking, telecommunication, and electricity generation were divested. Ninety industrial units, two banks, twelve percent of the shares in telecommunication, ten percent of the shares in PIA, and one thermal power station were divested.

12. A high powered Privatisation Commission and later a Ministry of Privatisation was set up and the Privatisation Commission Ordinance, 2000, was promulgated to accelerate the process of privatisation. Assets amounting to Rupees 60.9 billions have been sold to the private sector till 2000-2001. The sick units were reviewed for the purpose of rehabilitation and/or closure.

13. Sectoral Regulatory authorities were established during 1996 onwards. These include Pakistan Telecommunication Authority, National Electric Power Regulatory Authority (NEPRA), Oil & Gas Regulatory Authority (OGRA), etc.