

Unclassified

DAF/COMP/GF/WD(2005)34



Organisation de Coopération et de Développement Economiques
Organisation for Economic Co-operation and Development

09-Feb-2005

English text only

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

Global Forum on Competition

**THE RELATIONSHIP BETWEEN COMPETITION AUTHORITIES
AND SECTORAL REGULATORS**

Contribution from Pakistan

-- Session II --

This contribution is submitted by Pakistan under Session II of the Global Forum on Competition to be held on 17 and 18 February 2005.

JT00178277

Document complet disponible sur OLIS dans son format d'origine
Complete document available on OLIS in its original format

**DAF/COMP/GF/WD(2005)34
Unclassified**

English text only

RELATIONSHIP BETWEEN COMPETITION AUTHORITIES AND SECTORAL REGULATORS

1. Pakistan's macro-economic policy considers that on-going monitoring of newly privatised state monopolies was necessary to safeguard the consumer interest but at the same time over-regulation of the state owned firms offered to the private sector was avoided, to encourage the private ownership. Therefore, the national competition authority, i.e. MCA, was stopped to take cognizance of the emerging competition issues in the sectors regulated by sector regulators through an amendment in 2002, to further enlarge the scope of exemptions. A sector-wise review is provided in the paragraphs to follow.

1. Pakistan Telecommunication Authority (PTA)

2. PTA regulates the operation and maintenance of the telecommunication system and telecommunication services in accordance with the 'Pakistan Telecommunication (Re-Organization) Act, 1996'. It grants licenses and whenever the Authority has preferred an applicant to another in the award of a license, it records reasons for doing so.

3. Until recently, the Pakistan Telecommunication Company Limited (PTCL), having majority shares and pre-dominantly being controlled by Government, enjoyed monopoly in fixed telephony services. The Government of Pakistan has already issued a telecom deregulation policy. A number of mobile telephone companies have entered the market and are competing with each other as well as with PTCL.

2 National Electric Power Regulatory Authority (NEPRA)

4. NEPRA, established to regulate the power sector under the Regulation of Generation, Transmission and Distribution of Electronic Power Act, 1997, has the following functions to perform:

5. The NEPRA Act states that the Authority shall be exclusively empowered to determine rates, charges and other terms and conditions for electric power services. Nothing in this Act shall affect the jurisdiction, power or determination of the Corporate Law Authority or the Monopoly Control Authority. However, the sector lies outside the purview of the monopolies law to the extent of activities covered in the NEPRA Ordinance.

6. The electric power sector, earlier dominated by government owned power generation and distribution organisations like Water and Power Development Authority (WAPDA), Karachi Electric Supply Corporation (KESC), Karachi Nuclear Power Plant (KANUPP), now has a number of Independent Power Plants (IPPs) and Small Power Plants (SPPs). Similarly on the distribution end, a number of distribution companies are operating in the power distribution sector. Also, KESC's privatisation is going on.

3. Oil & Gas Regulatory Authority (OGRA)

7. OGRA was established to foster competition, increase private investment and ownership in the mid-stream and down-stream petroleum industry and to protect the public interest in accordance with the 'Oil & Gas Regulatory Authority Ordinance, 2002'.

8. OGRA is responsible for protection of users of regulated activities and consumers against monopolistic or oligopolistic pricing. Yet there are no controls over the formation of monopolies and

evading any prohibitory clauses as specified under MRTPO. The OGRA Ordinance does not give OGRA any specific mandate to act in a manner so as to check such an eventuality. Also, the Government has opened the oil and gas sector to private entrepreneurs for exploration, drilling, refining and distribution of petroleum products.

9. Oil Companies Advisory Committee (OCAC) was formed in the mid sixties as a forum of the oil companies to interact with each other and the Government in matters relating to the management of the oil business, etc. The members of OCAC comprise refineries, oil marketing companies and gas distribution companies. The consumer prices of petrol and diesel are reviewed and adjusted on fortnightly basis by Oil Companies Advisory Committee (OCAC) on variations in the international market prices. Any increase/decrease in the international market prices is passed on to the consumer with the approval of Ministry of Petroleum & Natural Resources.

4. Pakistan Electronic Media Regulatory Authority (PEMRA)

10. PEMRA was established under the Pakistan Electronic Media Regulatory Authority Ordinance, 2002 for regulating establishment and operation of all broadcast and Cable Television (CTV) stations in Pakistan.

11. The Authority deals not only with tariff rates but also specifies that a licensee shall not merge or amalgamate with any other person without the prior approval of the Authority, and a person who is the shareholder of, or owns an interest in, a company which is a licensee, shall not transfer or dispose of his shares or the interest, without the prior approval of the Authority. Provided that in the case of a listed company, the shares, representing not more than two percent of the issued and paid up share capital, is transferred without such approval. Also the PEMRA (Media Ownership and Control) Regulations, 2002 prohibits the undue concentration of media ownership and states that there shall be no undue concentration of media ownership, cross media ownership, monopoly power or restrictive trade practices by a person or associated persons or associated undertakings.

5. Role of the competition authority

12. It is noted at the outset that the definition of ‘service’ in the monopoly law is quite limited and only covers provision of board, lodging, transport, entertainment or amusement, facilities in connection with the supply of electrical or other energy, purveying of news, banking, insurance and investment. Also the Law does not apply to following undertakings:

- Federal/ Provincial Government owned undertakings;
- The activity or functions of an undertaking or undertakings that are regulated, prescribed, determined or required to be approved by a Regulatory Authority. The “Regulatory Authority” means the NEPRA, PTA, OGRA and any other regulatory authority as the Federal Government may, by a notification in the official Gazette, specify.

13. Therefore, the limitations of the Law include a limited definition of services, major areas of services are outside the definition and some of the services are covered under the sector regulators. Hence, MCA’s role in the sectors regulated by sector regulators has been marginalised. MCA can only make recommendations to the Federal Government for suitable governmental actions to prevent or eliminate undue concentration of economic power, unreasonable monopoly power or unreasonably restrictive trade practices, which, in its opinion exists in case of any undertaking or group of undertakings engaged in business activities in a sector regulated by a sector regulator. However, in practice this function of ‘advice/recommendation’ is hampered by the fact that the undertakings lying outside the purview of the

Law are not bound to provide any information to the MCA, thus making it difficult to conduct any probing into the sector.

5. Dual jurisdiction of competition authority and sector regulators

14. To control quality and prices of drugs, the applicable law is Drugs Act, 1976 that regulates the import, export and manufacture, distribution and sale of drugs. Maximum prices for drugs are also set under the Drugs Act, 1976. Under section 12 of Drugs Act 1976 the Federal Government may, by notification in the official Gazette, fix the maximum price at which any drug is to be sold and specify a certain percentage of the profits of manufacturers of drugs to be utilised, in accordance with the rules for purposes of research in drugs.

15. Like pharmaceuticals, there are a few other sectors that are regulated by sector regulators such as the banking sector being regulated by State Bank of Pakistan under the Banking Companies Ordinance, 1962, the insurance sector by the Securities and Exchange Commission of Pakistan (SECP) under Insurance Ordinance, 2000, the air transport by Civil Aviation Authority (CAA), road transport by District Transport Authorities (DTA), postal service by Postal Authority (PA), but simultaneously competition issues are left for the competition authority to regulate. Therefore, matters relating to undue concentration of economic power, unreasonable monopoly power or unreasonably restrictive trade practices in the aforementioned sectors are dealt with by MCA.