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Global Forum on Competition

COMPETITION, STATE AIDS AND SUBSIDIES

Contribution from Pakistan

-- Session I --

This contribution is submitted by Pakistan under session I of the Global Forum on Competition to be held on 18 and 19 February 2010.

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COMPETITION, STATE AIDS AND SUBSIDIES

-- Pakistan --

I. The use of state aids in your country

1. *Does your country regularly engage into the following practices? If so, could you provide information about: (i) the affected sectors; (ii) an order of magnitude of the corresponding amounts, and (iii) the evolution over time? If possible, distinguish between government-owned and private firms.*

a. *Direct subsidies to companies;*

b. *Tax breaks to selected companies or selected sectors;*

c. *The granting of government-owned inputs (such as land, bandwidth, government facilities) to companies at a price below market levels (possibly a regulated price);*

d. *Government purchases at above-market prices;*

e. *The granting of loans at below-market rates;*

f. *The provision of loan guarantees at below-market rates.*

1. Direct subsidies have been provided to:

2. Pakistan International Airlines (PIA), a state-owned company, received around PKR 1 billion (USD 11.8 million¹) from the government for mark-up reimbursement during 2008-09.²

3. Sugar sector – The government provided a subsidy of one billion rupees on sugar to ensure its availability at PKR 38 (USD 0.45) per kilogram at all Utility Stores Corporation outlets.³ In the budget for FY 2009-10, subsidy for sugar import would be reduced to PKR 4 billion (USD 47.3 million) against PKR 6.3 billion (USD 74.5 million) in FY 2008-09.⁴

4. Fertilisers – In the Federal Budget for FY 2009-10, Fauji-Jordan Fertiliser Corporation, a private fertiliser manufacturing company, was allocated PKR 210 million (USD 2.49 million) as subsidy compared to PKR 231 million (USD 2.73 million) allocated in FY2008-09.⁵

1. US Dollar equivalents calculated using exchange rate (1USD = PKR 84.50) on 1 January 2010 - adapted from <http://www.forex.pk/open-rates.php>.

2. <http://pakobserver.net/200906/13/Articles03.asp>.

3. http://www.thenews.com.pk/daily_detail.asp?id=208426.

4. http://www.brecorder.com/latestindex.php?latest_id=10336&cindex=29¤t_page=2.

5. *Id.*

2. *To what extent have state aids in your country been motivated by the following goals? For each of them, please specify whether domestic and foreign firms have been treated differently.*

- a. *Protecting employment (in the case of aid to ailing firms);*
- b. *Fostering innovation and the development of new sectors;*
- c. *Attracting firms to economically distressed regions;*
- d. *Remedying competition distortions created by the granting of aid by foreign governments;*
- e. *Inducing firms to supply goods or services deemed to contribute to the general interest in cases when market incentives alone were insufficient to ensure that these goods or services would be provided;*
- f. *Palliating the undersupply of credit by the financial sector;*
- g. *Preventing strategic firms from being purchased by foreign companies.*

5. State aid is extended to the national air carrier, Pakistan International Airlines (PIA) to overcome its financial liabilities. The employee to aircraft ratio of PIA is 1:418 while generally for an airline, the employee to aircraft ratio is between 1:130 - 1:170.⁶ This indicates that extending state aid in such a scenario is making an ailing situation worse.

6. State aid is often extended to help the end-consumer in case of vital commodities such as sugar, wheat and rice. Farmers can also purchase fertiliser at subsidised rates. However, in the case of powerful state-run players in a market, state aid is sometimes used to support otherwise failing or ailing organisations. Hence, the contribution of state aid towards innovation and development of state-run organisations is often limited, other than prolonging their inefficiencies.

7. N/A.

8. No.

9. Yes.

10. Yes.

11. No.

3. *What are your country's laws, and the actual practice, regarding the provision of government-owned or government-controlled inputs? In which circumstances is an auction process mandatory? In which circumstances does a non-discrimination clause apply? In practice, what is the prevalence of auctions? If possible, please provide information about the way in which the following inputs have been allocated.*

- a. *License to operate a mobile telephony network (with access to the corresponding bandwidth);*
- b. *License to operate a television network;*
- c. *Access to natural resources.*

6. http://www.dailytimes.com.pk/default.asp?page=2008%5C12%5C28%5Cstory_28-12-2008_pg5_13.

12. License fees for Cellular Mobile Telephony Services (CMTS) are awarded through open bidding.⁷ The license fees, in fact, cover the fee for spectrum allocation for 15 years.

13. The fee structure for Satellite Television Licenses is as follows⁸:

Sr. No.	Category	Tariff
1	News / Current Affairs	License Fee: PKR 5.0 million (USD 59,172) Annual Renewal: PKR 1.0 million (USD 11,834) Other Charges: 5% of annual gross revenue as per audited accounts.
2.	Sports	License Fee: PKR 1.5 million (USD 17,751) Annual Renewal: PKR 0.7 million (USD 8284) Other Charges: 7.5% of annual gross revenue as per audited accounts.
3	Regional languages.	License Fee: PKR1 .0 million (USD 11,834) Annual Renewal: PKR 0. 5 million (USD 5,917) Other Charges: 5% of annual gross revenue as per audited accounts.
4.	Health/ Agro	License Fee: PKR 0.5 million (USD 5,917) Annual Renewal: PKR 0.3 million (USD 3550) Other Charges: 5% of annual gross revenue as per audited accounts
5.	Education	License Fee: PKR 0.5 million (USD 5,917) Annual Renewal: PKR 0.3 million (USD 3,550) Other Charges: 5% of annual gross revenue as per audited accounts.
6.	Entertainment	License Fee: PKR 1.5 million (USD 17,751) Annual Renewal: PKR 0.7 million (USD 8,284) Other Charges: 7.5% of annual gross revenue as per audited accounts.

14. Access to natural resources is provided under particular legislation and rules by the Ministry of Petroleum and Natural Resources for prospecting for gas and oil in the country. Any company, whether incorporated in Pakistan or abroad, may apply for a petroleum right - a reconnaissance permit, exploration license or development and production lease - in accordance with the Pakistan Petroleum (Exploration and Production) Rules 2009⁹. The Rules also state that “for grant of petroleum rights after the expiry of the lease period, the Authority (Director General Petroleum Concessions (DGPC) or any officer or authority appointed by the Authority to exercise the powers and perform the functions of the DGPC) shall invite bids one year before the end of the lease period from the companies participating in the lease area”.¹⁰

7. http://www.pta.gov.pk/index.php?option=com_content&task=view&id=303&Itemid=131.

8. <http://www.pemra.gov.pk/pdf/Revision%20of%20tariff-STV%20new.pdf>.

9. http://202.83.164.26/wps/wcm/connect/?MOD=PDMPProxy&TYPE=personalization&ID=NONE&KEY=NONE&LIBRARY=%2FcontentRoot%2Ficm%3Alibraries%5B127%5D&FOLDER=%2FMinistry+of+Petroleum+and+Natural+Resources%2FDGPC%2F&DOC_NAME=%2FcontentRoot%2Ficm%3Alibraries%5B127%5D%2FMinistry+of+Petroleum+and+Natural+Resources%2FDGPC%2FRules+2009.pdf&VERSION_NAME=NONE&VERSION_DATE=NONE&IGNORE_CACHE=false&CONVERT=NONE&MUST_CONVERT=false.

10. *Id.*

II. Aid to ailing companies, especially in the context of the financial crisis

1. In the context of the financial crisis, did your country provide emergency aid to some companies? If possible, please provide information on:

a. Specific rescue measures for banks and other financial institutions;

b. Aid to industrial firms (for instance in the car industry).

15. No aid was given to banks.

16. Aid was granted to the national air carrier, Pakistan International Airlines.

2. What are the criteria that have been used when delineating the beneficiaries of emergency aid, as well as the amount or nature of the aid?

17. No specific criteria.

3. Is aid to ailing companies in your country usually provided with conditions attached such as:

a. Clauses imposing at least partial reimbursement in the event of a return to better fortunes?

b. A cap on executive pay?

c. Restructuring (for instance, the closing of unprofitable factories or branches)?

d. Guarantees on total employment?

e. Clauses prohibiting the use of government funds in order to engage in predatory strategies?

f. An explicit commitment that the aid will be limited in time and will not be repeated?

g. Commitments regarding the environmental impact of the recipient's activity?

Please provide short information on each of these provisions and the standard conditions attached to them.

18. Generally, ailing companies do not receive help that includes such conditions. There are however, a few notable exceptions such as Pakistan International Airlines, which has approximately PKR 20 billion (USD 237 million) in debts.

4. Does aid to ailing companies in your country sometimes take the form of temporary government ownership in return for capital injection? If so, are there examples where such policies allowed the government to turn a profit after the aided firm's situation improved?

19. No companies have been taken into partial or complete government ownership.

III. Legal restrictions on state aids

1. Do competition authorities exert some control on state aids in your country? If so, has this control been weakened in the context of the financial crisis? Are there specific rules about aid to ailing firms, or aid to R&D? Please detail each, briefly.

20. There are no legal restrictions as such. The Government decides the extent of state aids on a case by case basis. The Textile sector in Pakistan had been allocated PKR 4 billion (USD 47.3 million) as the Research and Development (R&D) facility for this sector in FY2008-09. In the FY2009-10 budget, this R&D facility was withdrawn by the government. The three percent mark-up subsidy (to assess the impact of interest rate) to the spinning sector has now also been reduced to PKR 500 million (USD 5.92 million) from PKR 810 million (USD 9.59 million) in FY2008-09. In order to help the textile and other export industry, PKR 40 billion (USD 473 million) export investment fund is proposed to be established, from which around PKR 27 billion would go to cotton and textiles while the remaining PKR 13 billion (USD 153 million) would go to other export sectors to boost export earnings.¹¹

21. R&D support of 6% was allowed on the export of readymade textile garments from Export Processing Zone units with effect from April 14, 2006 as per rules and regulations.¹²

2. Is the amount and nature of state aids limited by virtue of regional trade agreements to which your country participates (not taking into account WTO disciplines)? If so, is there a supranational control mechanism? Has it ever been used? In competition cases?

22. No.

3. Did the competition authority in your country ever have to consider a case involving state aids? If possible, please distinguish the following (possibly overlapping) types of cases:

a. A private company complaining about predatory strategies (or unfair practices) implemented by a public company or by a private company benefiting from public funds (for instance in the case of a firm providing a public service and using the corresponding revenues in order to compete aggressively on another market);

b. A company complaining about discriminatory treatment, in comparison to a competitor benefiting from state aids;

c. Cases involving the existence of price regulation;

d. Cases involving abuse of dominance or merger cases (for example, in the latter, would remedies be affected if the state aid were to be withdrawn?).

23. No

4. Are government-owned companies subject to competition law to the same extent as private companies in your country? Are there any specific mechanisms for their implementation?

24. Government-owned companies in Pakistan are subject to competition law to the same extent as private companies in the country. Section 2(p) of the Competition Ordinance, 2009 (“the Ordinance”) defines an undertaking in the following words: “any natural or legal person, governmental body including

11. http://www.brecorder.com/latestindex.php?latest_id=10336&cindex=29¤t_page=2.

12. <http://www.sbp.org.pk/EPD/2006/FECL24.htm>.

a regulatory authority, body corporate, partnership, association; trust or other entity in any way engaged, directly or indirectly, in the production, supply, distribution of goods or provision or control of services and shall include an association of undertakings". These undertakings are required to observe the laws stated in the Ordinance.

5. *To what extent are state aid issues addressed in your competition authority's advocacy activity? What is your competition authority's message on state aids? Is this message well understood and taken duly into account by other parts of the government? Please describe briefly the relevant institutional mechanism(s), if any.*

25. In case a state aid plan with anticompetitive effects is being implemented by the government, the Competition Commission of Pakistan can intervene by holding public hearings and issuing policy recommendations on how the government should proceed to protect competition in the market and safeguard interests of the consumers. However, since competition law is relatively new in the country, the basic focus of advocacy activities is making the foundation principles of competition law known to the businesses and the public.