


Why compete when you can co-operate: *the effects of competition on economic units*

CREATING AND APPROVING ACCEPTANCE OF COMPETITION IN THE ECONOMY: PAKISTAN'S EXPERIENCE
 TURKISH COMPETITION AUTHORITY/SESRIC WORKSHOP ON
 COMPETITION V REGULATION AND THE APPROPRIATE
 ORGANISATIONAL STRUCTURE OF A COMPETITION AGENCY
 6 APRIL 2021



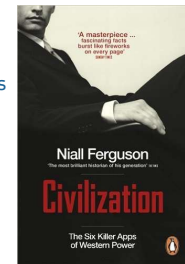
1

COMPETITION — A KILLER APP

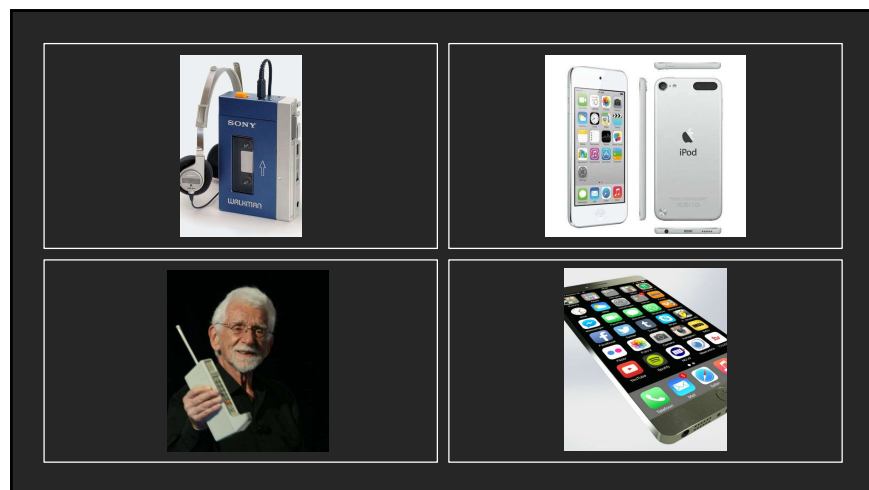
“The Harvard historian Niall Ferguson...puts things in historical context:

‘For 500 years the West patented **SIX KILLER APPLICATIONS** that set it apart...Over the last century, one Asian country after another has downloaded these killer apps — **COMPETITION**, **MODERN SCIENCE**, the **RULE OF LAW** and **PRIVATE PROPERTY** rights, **MODERN MEDICINE**, the **CONSUMER SOCIETY** and the **WORK ETHIC**. Those six things are the secret sauce of Western civilization.’”

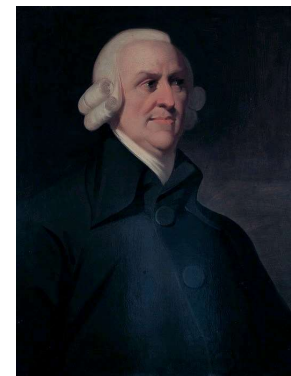
Fareed Zakaria, “Are America's Best Days Behind Us?” TIME, 3 March 2011



2



3



COMPETITION IS NOT AUTOMATIC!

“People of the same trade seldom meet together, even for merriment and diversion, but the conversation ends in **A CONSPIRACY AGAINST THE PUBLIC...**” (Adam Smith, The Wealth of Nations, 1776)

4

www.spiegel.de/international/germany/the-cartel-collusion-between-germany-a-big

SPIEGEL ONLINE SPIEGEL.DE

English Site | Germany | Automotive Industry | The Cartel: Collusion Between Germany's Biggest Carmakers

The Cartel

Collusion Between Germany's Biggest Carmakers

The diesel scandal is not a failure on the part of individual companies, but rather the real biggest secrets of the German automotive industry lies behind the cartel that opens and closes a convertible top at the push of a button.

By Frank Dohmen and Dietmar Hawranek


July 27, 2017 02:10 PM

Sometimes big things are hidden behind much smaller things. For instance the biggest secrets of the German automotive industry lies behind the mechanic that opens and closes a convertible top at the push of a button.

Daimler, BMW, Audi, Porsche and Volkswagen are engaged in cutthroat competition to produce the best cars. At least that's the story often told by auto company CEOs, economists and politicians. It's a narrative about the beneficial effect of market economy, which is based on competition among companies. But this narrative is wrong, and this is reflected in the convertible top.

EU regulators raid auto giant BMW in German cartel case

The bloc's anti-trust officials have searched the offices of the premium carmaker this week in a probe investigating BMW and four other German automobile firms for suspected anti-competitive practices.



BMW confirmed on Friday that EU anti-trust regulators had searched its offices in Munich this week, after the European Commission had earlier in the day refused to name the company involved.

The EU, in its statement, said that the inspection related to the Commission's concerns that several German car manufacturers may have violated EU antitrust rules that prohibit cartels and restrictive business practices.

5


BUSINESS NEWS JUNE 10, 2020 / 9:59 PM / 6 DAYS AGO

U.S. states accuse 26 drugmakers of generic drug price fixing in sweeping lawsuit

Diane Barz, Jonathan Stempel

2 MIN READ


(Reuters) - Twenty-six drug manufacturers were sued on Wednesday by the attorneys general of most U.S. states and several territories, which accused them of conspiring to reduce competition and drive up generic drug prices.



6

Six Chicken-Industry Officials Are Indicted in Price-Fixing Probe

New charges expand Justice Department's antitrust action in poultry industry



Prosecutors allege the price-fixing took place from 2012 into early 2019.

PHOTO: DAVID J. PHILLIPS/REUTERS

By Jacob Berman and Brett Kendall
Updated Oct. 7, 2020 6:09 pm ET

MOST POPULAR VIDEOS:

- 1. Harris, Pence Squat in White House Gymnastics of Covid-19
- 2. 'Mr. Vice President, The President: The High School Football Game
- 3. Michigan Gov. Gretchen Whitmer Discusses Alleged Kidnapping Plot
- 4. Wall Street Moves in China, Despite Tech and Trade Battles
- 5. What Voters Saw as the Strongest Arguments in Vice Presidential Debate

THE WALL STREET JOURNAL

Home World U.S. Politics Economy Business Tech Markets Opinion Life & Arts Real Estate

Six current and former chicken industry executives were indicted on price-fixing charges, expanding the U.S. government's antitrust prosecutions in the \$65 billion poultry industry.

The charges, made public Wednesday, target executives from several different chicken companies, including Pilgrim's Pride Corp., and provide new details about the alleged conspiracy. Prosecutors said the price-fixing took place from 2012 into early 2019, a longer period than the Justice Department previously had alleged.

Among the people charged is Bill Lovette, the former chief executive of Pilgrim's Pride, who retired in March 2019. Mr. Lovette declined to comment. Representatives for Pilgrim's, the second-largest U.S. chicken supplier by sales, didn't respond to requests for comment.

"Executives who choose collusion over competition will be held to account for schemes that cheat consumers and corrupt our competitive markets," said Mahan Delrahman, the Justice Department's top antitrust official, in making public the new charges. The department said its investigation continues.

The new charges deepen the department's efforts to address alleged price-fixing and bid-rigging in an industry that supplies billions of pounds of chicken nuggets, breast fillets and wings to U.S. restaurant chains and grocery stores annually. Prosecutors made public in June indictments of four senior industry executives on similar charges, including the then-chief executive of Pilgrim's, Jayson Penn. Mr. Penn, who [quitted the company last month](#), and the other charged officials have pleaded not guilty.

Justice Department attorneys previously alleged that executives of Pilgrim's and Claxton Poultry Farms, a smaller chicken company, exchanged prices and other details during the process of bidding on chicken supply deals for major restaurant chains.

Government attorneys in 2019 subpoenaed chicken companies, seeking information on their activities.

After receiving one, officials at Tyson Foods Inc. found some of its employees were involved in the efforts alleged by the Justice Department, the company has said. Tyson, the biggest U.S. chicken company by sales, [disclosed the findings](#) to the government under a federal corporate leniency program and is cooperating with the investigation.


The new charges expand the number of companies and chicken industry employees linked

7

JOSEPH STIGLITZ

Competition is the basis of a dynamic market economy. Yet, as Adam Smith recognised, **FIRMS INEVITABLY SEEK TO RESTRICT IT.** More profits can be made by creating a monopoly rather than through better products... So government must **"set the rules of the game"** to maintain a fair playing field, and vibrant competition.

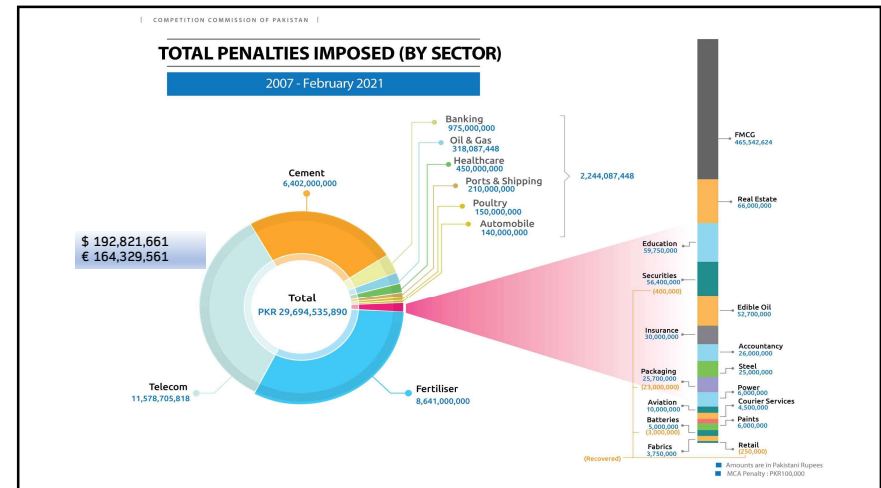
(2001)



8



9



10

What are effective ways to change the mindset to encourage greater competition?

ENFORCEMENT is a crucial tool. The COMMISSION remains committed to proactive, yet fair, open, and transparent enforcement of the competition law without fear or favour

But simultaneously, **ADVOCATING** for competition is useful policy tool for competition agencies

BALANCING ENFORCEMENT AND ADVOCACY: SOME OF OUR BROAD EXPERIENCES SINCE 2007

11

**1,2,3
HESITATION AND
A LACK OF
ACCEPTANCE**

FIRST, suspicion that we are another layer of bureaucracy, creating hurdles and adding to the cost of doing business

SECOND, competition regime have generally met with universal resistance and little support from businesses. Those who see real benefits often suffer from inertia and do not readily come in support

THIRD, anti-competitive behaviour is already firmly **ENTRENCHED** and any move towards a more competitive environment is seen as disruptive and unnecessary. People are comfortably ensconced in their business niches and **RESIST** the **CHANGE** proposed by the new law, preferring not to compete

• Anti-competitive behaviour can result from certain policies. The example of the [Telecom] International Clearinghouse is reflective of this

12

THE INTERNATIONAL CLEARINGHOUSE AGREEMENT

The ICH Agreement essentially permitted and allowed the 14 LDI Operators to fix the prices and allocate quota amongst themselves (based on existing market share) of incoming international calls in Pakistan



13

THE INTERNATIONAL CLEARINGHOUSE AGREEMENT

Commission annulled the ICH Agreement entered into among all fourteen LDI operators.

- The Bench held that the facts and figures available highlight the pernicious nature of the ICH arrangement, its harmful effects on the telecom sector, consumers and the economy in general which must be condemned and cannot be condoned at any cost.



Agreement reduced choice, foreclosed the market, removed incentives for better service quality and for infrastructure improvement, reduced the size of the market and market players

Any gains that in the telecom sector till now gains that have accrued precisely because of a focus on competition

Penalty
PKR **11.5** Billion

14

4

A LACK OF UNDERSTANDING OF BENEFITS

Genuine **lack of knowledge** and understanding of the law and the benefits it will bring to consumers and the business community

More severe in developing countries due to poorer modes of communication & a general inability by public sector organisations to effectively communicate about what they do, etc.

BENEFITS

15

5

THE ROLE OF MEDIA IN SUPPORTING COMPETITION

PRINT and **ELECTRONIC MEDIA** is weak and *captured* by economic interests

The situation is [somewhat] better in Pakistan and several news groups and correspondents and analysts have displayed a reasonable understanding of competition issues and have even defended the COMMISSION on occasion



16



6

THE LEGAL FRAMEWORK AND THE JUDICIARY

LEGAL UNCERTAINTY → the transition from an Ordinance – which lapsed **TWICE!!** – to an Act took **3 years**

The **JUDICIARY** has an important role...

The COMMISSION's decisions are subject to stringent judicial scrutiny. But delays in the judicial review process are a major impediment for the COMMISSION.

"Systemic Pressures"

The constitutional challenge to the CA10 lingered in the High Court for a decade before a decision was announced in October 2020 and even then, it was not the clear-cut one the COMMISSION had hoped for; for example, the COMMISSION can act against anti-competitive behaviour at the inter-provincial level without explaining the spill-over effects but not at the intra-provincial one.

Nonetheless, we consider the ruling as a landmark moment for constitutional law in Pakistan in general and for the COMMISSION in particular

17

And seventh, and most importantly, the government's support is a critical and crucial factor. The ATTORNEY GENERAL himself appeared on behalf of the government and the COMMISSION in its constitutional challenge.

The government also issued a statutory regulatory order in November 2020 directing five regulators to commence immediate payment of three percent of their levied fees and charges to the COMMISSION, helped solve the long-pending problem of our funding sustainability.

This decision, after a long and arduous process spanning the past dozen years, with the COMMISSION engaging with and responding to all arguments and objections, guarantees its **financial independence** and **sustainability** and dispels any impression of conflict of interest in those it regulates.

7

THE GOVERNMENT'S SUPPORT

18

PROTECTING COMPETITION

Changing mindsets for the acceptance and promotion of a competition regime is complex and complicated
Victories do not happen without effort

Constant vigilance and continual efforts

Pressures from the private sector and its allies in government to **maintain** existing anti-competitive constructs or to **create** new ones.

Nonetheless, the COMMISSION has had a substantial impact

The law's non-discriminatory approach implied **predictability** in interpretation and is **supportive** of **transparency**, **accountability**, and **confidence** of businesses in its application.



19

COMMUNICATING WITH STAKEHOLDERS

Keep the **MEDIA**, the **PUBLIC**, and the **BUSINESS COMMUNITY** fully posted on all significant measures taken by us, and the rationale for each step, unless, as an adjudicatory body, disclosure or comment by us would be inappropriate

Hold numerous meetings of a **COMPETITION CONSULTATIVE GROUP** (representatives of sector regulators, senior business and financial sector executives, academics, and media persons) to discuss issues pertaining to the competition regime

Hold **WORKSHOPS, SEMINARS, ROUNDTABLES** etc. with various groupings of the business community to **EXPLAIN THE LAW** and how it not only protects the consumer from anti-competitive behaviour but also, most importantly, it is **SUPPORTIVE** of business enterprises and their growth

5 STIPS FOR AN EFFECTIVE COMMUNICATION STRATEGY FOR STAKEHOLDER ENGAGEMENT



20

GUIDANCE ON COMPETITION COMPLIANCE



a framework of sustainable engagement with two important stakeholders – **BUSINESSES** (through our national roadshow in 2015-16 and our Guidance booklet) and **ACADEMIA** with our module on economics and competition law.

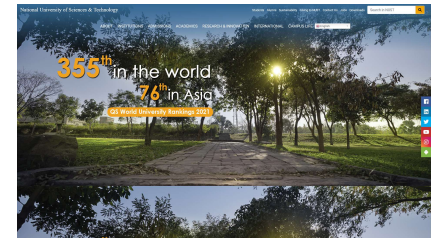
The **GUIDANCE ON COMPETITION COMPLIANCE** explains the do's and don'ts of compliance in an easy-to-understand manner we plan to help businesses develop internal capacity through compliance workshops, 2021 and onwards

21

LINKAGES WITH ACADEMIA

We have gone to universities to explain the importance of competition and its nexus with economics

- Our **MODULE** on **ECONOMICS AND COMPETITION LAW** became an elective course in the NATIONAL UNIVERSITY OF SCIENCE AND TECHNOLOGY in February 2016
- feedback from the university has helped us finetune the content for relevance



22

LINKAGES WITH SECTOR REGULATORS AND A THINK TANK

The **COMMISSION** formalised partnerships with key agencies:

- SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
- PUBLIC PROCUREMENT REGULATORY AUTHORITY
- INTELLECTUAL PROPERTY ORGANISATION

The **COMMISSION** also has partnered with the **SUSTAINABLE DEVELOPMENT POLICY INSTITUTE** for regulatory impact assessment and policy formulation

23

POLICY CONTRIBUTION

Convergence of **REGULATIONS** and co-operation of regulatory bodies for **COMPETITION, CONSUMER PROTECTION, and DATA PROTECTION**

The **COMMISSION** has **consumer protection powers** against deceptive marketing practices

- As part of the process of drafting Pakistan's **NATIONAL E-COMMERCE POLICY FRAMEWORK**, ensured consumer protection issues were included *ab initio*, are adequately addressed, and institutional roles and responsibilities are clearly defined

Data Protection and Privacy

- The **Commission** is contributing to relevant policy frameworks *i.e.*, the **PERSONAL DATA PROTECTION BILL** and **DIGITAL BANKING REGULATIONS**



24

INTERNATIONAL EVALUATION AND FEEDBACK

It's useful to have an international perspective on what we do and to help us in this, our office of international affairs was created in 2010

- Volunteered for UNCTAD's peer reviewed in 2012 only after five years of operation. Turkey was part of the peer review team

5 Jul 2013
English / Español
Voluntary Peer Review of Competition Law and Policy: Pakistan
Publication
UNCTAD/DTIC/CLP/2013/4
5 Jul 2013
English
Voluntary Peer Review of Competition Law and Policy: Nicaragua (Overview)
[Including Corrigendum]
Publication

- We have not shied away from GLOBAL COMPETITION REVIEW's **RATING ENFORCEMENT**

- The COMMISSION was shortlisted for Agency of the Year (Asia-Pacific) in 2012 and moved from a 2½ Star rating to 3-Stars in 2016 and 2017

GCR

Rating Enforcement 2017



Pakistan's Competition Commission

21 July 2017

The Competition Commission of Pakistan (CCP) expanded its resources yet remained on an even keel in its public output in 2016. The agency added more people into its non-administrative competition staff last year and increased its budget, but both its self-reported numbers and views from external observers indicate they had a year that was no par with 2015 – imposing a similar amount of competition-related fines and tackling a comparable number of mergers and investigations.

Star Rating: ***
Performance: 4.5
Head of Agency: Yakeez Khalid

IN CONCLUSION

Competition advocates have many global victories in the last few decades:

- the **intellectual debate**: economists, policymakers, and scholars now recognise the benefits of competition to consumers and to the economy as a whole;
- the **legal debate**: Courts are beginning to recognise the importance of efficiency and robust competition in business conduct.

Our advocacy has not been without an **equal and commensurate focus on enforcement**.

Had that been the case, the “competition” environment would have become worse because the COMMISSION could have been perceived to be only talk and no action – unable or unwilling to act against strong parties violating the law – and then, of course, no one would have taken its advocacy seriously.

25

26

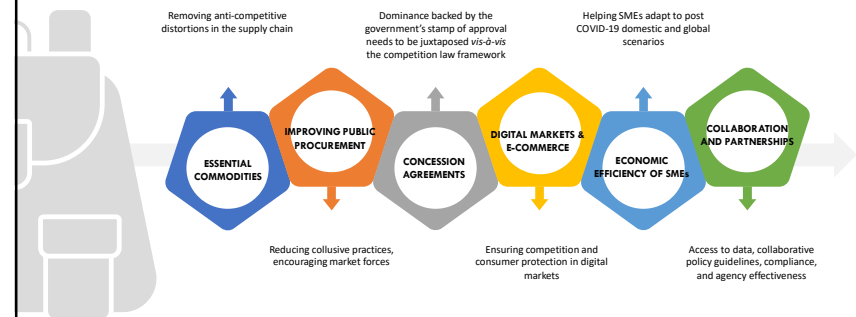
IN CONCLUSION

We are asserting our position in the policy debate in many economic sectors: from **airlines to automobiles to banking, e-commerce, electricity, telecommunications, etc.**

Improving competition in these sectors should [hopefully] lead to innovation(s) that benefit consumers, businesses, and improve economic efficiency

27

A STRATEGIC PLAN ALWAYS HELPS



28

