

**Competition Policy, Competitiveness and
Investment in a Global Economy: The
Asian Experience
May 19, 2004, Sri Lanka**

**Anti-Competitive Business Conduct: Cases and
Experience of Pakistan**

**Presented by
Muhammad Arshad Parwaiz
Member
Monopoly Control Authority
Islamabad**

1. Introduction

Good Morning!

I am pleased to be here this morning before this distinguished panel to share our experiences of Anti-Competitive Business Conduct in Pakistan.

The importance and desirability of having a competition regime was recognized by us more than four decades ago. In 1963 the Government constituted an Anti-Cartel Laws Study Group to carry out a detailed and in-depth study into the trade, commerce and industry of the country and their market behavior. The Group prepared a comprehensive report which pointed out the existence of concentration of economic power in a few hands, monopoly power and cartel-like situations in the economy.

As a result of these findings it was decided to frame a law to guard against the said economic evils, to ensure economic development and to protect consumer interest. The outcome was the promulgation of “Monopolies and Restrictive Trade Practices (Control & Prevention) Ordinance in February, 1970 (MRTPO). To administer this law, the Monopoly Control Authority (MCA) was constituted under its provisions in 1971.

The MCA controls situations of undue concentration of economic power, unreasonable monopoly power and unreasonably restrictive trade practices, by conducting investigations of firm, sectors and markets. Based

on the findings of these investigations appropriate remedial measures are ordered.

It may be mentioned that immediately after the formation of MCA, a paradigm change took place when major businesses were nationalized on a massive scale in 1972. This virtually marginalized the role of MCA because under the law all the public sector enterprises (and some others) fall outside its jurisdiction.

This situation continued till late 1980s when the Government changed its policy to encourage and increase the role of private sector. One aspect of this policy is to privatize public sector units.

Incidentally the first instance of anti-competitive business conduct emerged in the shape of cartel like situation in 1992 in the cement sector after privatization of a few cement manufacturing units. This gave rise to widespread concern that de-nationalization will result in conversion of state monopolies into private sector cartels and monopolies which would obviously be detrimental to the public interest.

Since “Public Interest” is the pivotal point of the Competition Law of Pakistan, the new situation prompted increased interest in the Government as well as the public in the competition issues. As a result an in-depth exercise to strengthen the MRTPO through suitable amendments to cater with the new & potential challenges, including those posed by the globalization of the economies is currently in-hand.

It is important to mention that the jurisdiction of the Monopoly Control Authority has always remained rather limited. In the first two decades of its establishment the reason was the major role of state enterprise system in the economy, which under the law are outside the purview of the MCA. After privatization of the state owned units, Sectoral Regulatory Authorities were established in late 1990s which have exclusive jurisdiction over the major sectors of the economy i.e., Oil and Gas, Telecommunication, Power and Electronic Media.

There are however, some grey areas of jurisdiction between the MCA and the Sectoral Regulatory Authorities. These areas have yet to be probed into and reconciled.

2. Cases and Experience of Pakistan

I may mention that due to the considerable period of limited activity of the MCA, its scope of jurisdiction and the size & structure of the economy, the opportunities to gain experience in all the areas of competition issues have been rather inadequate. In spite of these factors the MCA took a few important initiatives in some major cases of anti-competitive business practices some of which are shared with the learned delegates of this conference.

1. Cement Cartel

Today there are 22 manufacturers of cement in Pakistan. Out of these 4 are in the public sector. These manufacturers appear to have formed a cartel on a long-term basis.

The first investigation in the formation of this cartel was made in 1992 when majority of the market share was with public sector cement manufacturers who do not fall under the jurisdiction of the MCA. It was a strange situation of connivance between the public and private sector firms to manipulate the cement prices. The solution adopted was to recommend to the Government to open fair price retail shops and to sell cement on the suggested prices through these outlets. This solution was successful and resulted in the demise of the cartel.

The second cartel like behavior came to notice in late 1998 when cement price was increased from Rs.140 per bag to Rs.240 per bag ie., a net increase of Rs.100 per bag. Production was also decreased simultaneously. This cartel was proved as a result of investigations and in February 1999 the MCA ordered its members to break it up and to restore the pre-cartel price.

This time the cartel (cement manufacturers) failed to comply with the orders of MCA resulting in imposition of maximum lump sum penalty of Rs.100,000 on each firm and an additional amount of Rs.10,000 per day in case of continued default.

The manufacturers appealed before the High Court against the penalty orders. Before the High Court could take up the appeals, the

Government intervened and as a result of negotiation with the manufacturers the price was set at Rs.200 per bag. The pending appeals before the High Court were disposed of accordingly.

The cement manufacturers have again created a prima-facie cartel like situation since May 2003, which is currently in advanced stages of investigation. On this occasion the manufacturers are raising legal questions, apparently to delay these proceedings.

During the last 12 years the cement manufacturers have made three attempts to form a cartel. Two reasons given on each occasion to justify the price increase is; (i) the increase in the cost of input; and (ii) lower utilization of production capacity due to a decrease in demand for cement. Interestingly both these reasons remained unsubstantiated by them.

The MCA is of the view that the recurring emergence of the cement cartel is because the manufacturers find it easy to indulge in this restrictive business practice due to the absence of any strong deterrent provision in the law. This shortcoming has been recognized by the Government and a suitable amendment is proposed to be made in the law.

2. Collusive bidding by Cable and Conductor Manufacturers.

In mid 2002 information was received that 9 main manufacturers of power Cables and Conductors had been indulging in collusive bidding

for providing items to a public sector electric distribution company. The information was supported with documentary evidence.

When confronted, the 8 manufacturers gave all sorts of excuses and denied this arrangement. However, one manufacturer categorically admitted to the existence of a collusive bid rigging arrangement through prior mutual negotiations and understanding amongst themselves.

The existing Competition Law is rather very soft on the first time violators. It does not provide for imposition of any penalty on them. Rather the MCA can only direct the cartel members to discontinue or not to repeat any such restrictive trade practices and to terminate or modify any agreement relating thereto. An order was accordingly passed in December 2003.

Before the December 2003 order could be served on the manufacturers, new information along with evidence, was received in January 2004, about another instance of formation of cartel by 6 of the 9 Cable and Conductor manufacturers. They had been indulging in similar collusive bid rigging arrangement. This is being actively investigated by MCA.

3. Collusive bidding by Hardware Manufacturers.

Another case of bid rigging by 7 Hardware Manufacturers for supply of hardware items i.e., Single Structure Platform and Double Structure

Platform to a public sector electric distribution company, came to the attention of the MCA in October 2003.

This cartel is also under active investigation by the MCA.

The MCA is of the opinion that the formation of the above cartels in mid-2002, October 2003 and January 2004 by more or less the same group of manufacturers or their associated undertakings was possible due to the absence of deterrent penal provisions in the existing competition law. This flaw is planned to be removed.

4. Oil Companies Advisory Committee (OCAC).

Besides the formation of cartels by the private sector businesses, another important cartel like situation exists in the form “Oil Companies Advisory Committee (OCAC)” which constitutes of oil refining and distribution companies. This has been approved by the government because of the importance of this sector. One of the functions of this committee is to review and fix the prices of different petroleum products every fortnight on the basis of the crude oil prices in the international market.

The experience gained from the investigation of the cartel and other anti-competitive cases has identified the following problems:

- Internal obstacles: structural and resource problems as well as legal issues within the MCA. Inadequate, unreliable data or its

non-availability are critical factors. Larger issues relating to the overall macro economic and political environment within which competition policy must operate.

- Resource and Structural Constraints: low number of employees in relation to the potential number of cases that can be examined. The quality and the capacity of the existing employees is a major area of deficiency, which is being tried to be filled through different remedial measures.

Pakistan is a developing country but it has a forward looking view in competition matters. Experience of the developed countries shows that the provisions of anti-monopoly legislation is best implemented just when concentration of economic power, monopolies and restrictive trade practices are beginning to take shape. Action at a later stage impairs business confidence and makes the remedy extremely difficult to apply. MCA endeavors to keep this in view in enforcing the law.

At the end I would once again thank Mr. Rughvir Khemani and his associates of the World Bank Group for making excellent arrangements for this important Conference, providing an opportunity to the delegates of the Region to exchange their experiences and ideas. We hope that such events will be held regularly in the future as well.

Thank you