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PART I

**Acts, Ordinances, President's Orders and Regulations**

**NATIONAL ASSEMBLY SECRETARIAT**

*Islamabad, the 13th October, 2010*

**No. F. 22 (30)/2009-Legis.**—The following Act of Majlis-e-Shoora (Parliament) received the assent of the President on the 6th October, 2010 and is hereby published for general information:—

ACT NO. XIX OF 2010

*An Act to provide for free competition in all spheres of commercial and economic activity to enhance economic efficiency and to protect consumers from anti competitive behaviour.*

WHEREAS it is expedient to make provisions to ensure free competition in all spheres of commercial and economic activity to enhance economic efficiency and to protect consumers from anti-competitive behavior and to provide for the establishment of the Competition Commission of Pakistan to maintain and enhance competition; and for matters connected therewith or incidental thereto;

It is hereby enacted as follows:—

(645)

*Price : Rs. 30.50*

[2918(2010)/Ex. Gaz.]

## CHAPTER I

## PRELIMINARY

1. **Short title, extent, application and commencement.**—(1) This Act may be called the Competition Act, 2010.

(2) It extends to the whole of Pakistan.

(3) It shall apply to all undertakings and all actions or matters that take place in Pakistan and distort competition within Pakistan.

(4) It shall come into force at once.

2. **Definitions.**—(1) In this Act, unless there is anything repugnant in the subject or context;—

(a) “acquisition” means any change of control of any undertaking by way of acquisition of Shares, assets or any other means;

(b) “agreement” includes any arrangement, understanding or practice, whether or not it is in writing or intended to be legally enforceable;

(c) “Chairman” means the Chairman of the Commission and includes the Acting Chairman;

(d) “Commission” means the Competition Commission of Pakistan established under section 12;

(e) “dominant position” of one undertaking or several undertakings in a relevant market shall be deemed to exist if such undertaking or undertakings have the ability to behave to an appreciable extent independently of competitors, customers, consumers and suppliers and the position of an undertaking shall be presumed to be dominant if its share of the relevant market exceeds forty percent;

(f) “goods” includes any item, raw material, product or by-product which is sold for consideration;

(g) “Member” means a member of the Commission;

(h) “merger” means the merger, acquisition, amalgamation, combination or joining of two or more undertakings or part thereof into an existing undertaking or to form a new undertaking; and expression “merge”

means to merge, acquire, amalgamate, combine or join, as the context may require:

- (i) "Minister" means the Federal Minister for Finance and in his absence, the Advisor to the Prime Minister on Finance;
- (j) "Ordinance" means the Companies Ordinance 1984 (XLVII of 1984);
- (k) "relevant market" means the market which shall be determined by the Commission with reference to a product market and a geographic market and a product market comprises of all those products or services which are regarded as interchangeable or Substitutable by the consumers by reason of the products' characteristics, prices and intended uses. A geographic market comprises the area in which the undertakings concerned are involved in the supply of products or services and in which the conditions of competition are sufficiently homogenous and which can be distinguished from neighboring geographic areas because, in particular, the conditions of competition are appreciably different in those areas;
- (l) "retailer", in relation to the sale of any goods, means a person who sells the goods to any other person other than for re-sale;
- (m) "regulations" means the regulations made by the Commission under this Act;
- (n) "rules" means the rules made by the Federal Government under this Act;
- (o) "services" means a service of any description whether industrial, trade, professional or otherwise;
- (p) **"Tribunal" means Competition Appellate Tribunal under section 43 of the Act;**
- (q) "undertaking" means any natural or legal person, governmental body including 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 or undertakings; and
- (r) "wholesaler" in relation to the sale of any goods, means a person who purchases goods and sells them to any other person for re-sale.

(2) The words and expressions used but not defined in this Act shall have the same meanings respectively assigned to them in the Ordinance.

## CHAPTER II

### PROHIBITION OF ABUSE OF DOMINANT POSITION, CERTAIN AGREEMENTS, DECEPTIVE MARKETING PRACTICES AND APPROVAL OF MERGERS

3. **Abuse of dominant position.**—(1) No person shall abuse dominant position.

(2) An abuse of dominant position shall be deemed to have been brought about, maintained or continued if it consists of practices which prevent, restrict, reduce, or distort competition in the relevant market.

(3) The expression "practices referred to in sub section (2) shall include, but are not limited to—

- (a) limiting production, sales and unreasonable increases in price or other unfair trading conditions;
- (b) price discrimination by charging different prices for the same goods or services from different customers in the absence of objective justifications that may justify different prices;
- (c) tie-ins, where the sale of goods or service is made conditional on the purchase of other goods or services;
- (d) making conclusion of contracts subject to acceptance by the other parties of supplementary obligations which by their nature or according to commercial usage, have no connection with the subject of the contracts;
- (e) applying dissimilar conditions to equivalent transactions on other parties, placing them at a competitive disadvantage;
- (f) predatory pricing driving competitors out of a market, prevent new entry, and monopolize the market;
- (g) boycotting or excluding any other undertaking from the production, distribution or sale of any goods or the provision of any service; or
- (h) refusing to deal.

4. **Prohibited agreements.**—(1) No undertaking or association of undertakings shall enter into any agreement or, in the case of an association of undertakings, shall make a decision in respect of the production, supply, distribution, acquisition or control of goods or the provision of services which have the object or effect of preventing, restricting or reducing competition within the relevant market unless exempted under section 5.

(2) Such agreements include but are not limited to—

- (a) fixing the purchase or selling price or imposing any other restrictive trading conditions with regard to the sale or distribution of any goods or the provision of any service;
- (b) dividing or sharing of markets for the goods or services, whether by territories, by volume of sales or purchases, by type of goods or services sold or by any other means;
- (c) fixing or setting the quantity of production, distribution or sale with regard to any goods or the manner or means of providing any services;
- (d) limiting technical development or investment with regard to the production, distribution or sale of any goods or the provision of any service; or
- (e) collusive tendering or bidding for sale, purchase or procurement of any goods or service.
- (f) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a disadvantage; and
- (g) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

(3) Any agreement entered into in contravention of the provision in sub-section (1) shall be void.

5. **Individual exemption.**—(1) The Commission may grant an exemption from section 4 with respect to a particular practice or agreement, if a request for an exemption has been made to it by a party to the agreement or practice and the agreement is one to which section 9 applies.

(2) The exemption under sub-section (1) may be granted subject to the conditions as the Commission considers it appropriate to impose and has effect for such period as the Commission considers appropriate.

(3) That period must be specified in the grant of the exemption.

(4) An individual exemption may be granted so as to have effect from a date earlier than that on which it is granted.

(5) On an application made in such a way as may be specified by the rules made under section 55, the Commission may extend the period for which an exemption has effect; but, if the rules so provide, the Commission may do so only in specified circumstances.

**6. Cancellation, etc., of individual exemptions.**—(1) If the Commission has reasonable grounds for believing that there has been a material change of circumstances since it granted an individual exemption, it may by notice in writing—

- (a) cancel the exemption;
- (b) vary or remove any condition or obligation; or
- (c) impose one or more additional conditions or obligations.

(2) If the Commission has reasonable suspicion that the information on which it based its decision to grant an individual exemption was incomplete, false or misleading in a material particular, the Commission may by notice in writing take any of the steps mentioned in sub-section (1).

(3) Breach of a condition has the effect of cancelling the exemption.

(4) Failure to comply with an obligation allows the Commission, by notice in writing to take any of the steps mentioned in sub-section (1).

(5) The Commission may act under this section on its own initiative or on complaint made by any person.

**7. Block exemption.**—(1) If agreements which fall within a particular category of agreements are, in the opinion of the Commission, likely to be agreements to which section 9 applies, the Commission may make a block exemption order giving exemption to such agreements.

(2) A block exemption order may impose conditions or obligations subject to which a block exemption is to have effect.

(3) A block exemption order may provide—

- (a) that breach of a condition imposed by the order has the effect of canceling the block exemption in respect of an agreement;
- (b) that if there is a failure to comply with an obligation imposed by the order, the Commission may, by notice in writing, cancel the block exemption in respect of the agreement ;
- (c) that if the Commission considers that a particular agreement is not one to which section 9 applies, the Commission may cancel the block exemption in respect of that agreement.

(4) A block exemption order may provide that the order is to cease to have effect at the end of a period specified in the block exemption order.

8. **Block exemption procedure.**—(1) Before making a block exemption order, the Commission must—

- (a) publish details of its proposed order in such a way as the Commission thinks most suitable for bringing it to the attention of those likely to be affected; and
- (b) consider any representations about it which are made to the Commission.

(2) A block exemption order may provide for a block exemption to have effect from a date earlier than that on which the order is made.

9. **The criteria for individual and block exemptions.**—(1) The Commission may grant individual or block exemption in respect of agreement which substantially contributes to—

- (a) improving production or distribution;
- (b) promoting technical or economic progress, while allowing consumers fair share of the resulting benefit; or
- (c) the benefits of that clearly outweigh the adverse effect of absence or lessening of competition.

(2) The onus of claiming an exemption under this Act shall lie on the undertaking seeking exemption.

10. **Deceptive marketing practices.**—(1) No undertaking shall enter into deceptive marketing practices.

(2) The deceptive marketing practices shall be deemed to have been resorted to or continued of an Undertaking resorts to—

- (a) the distribution of false or misleading information that is capable of harming the business interests of another undertaking;
- (b) the distribution of false or misleading information to consumers, including the distribution of information lacking a reasonable basis, related to the price, character, method or place of production, properties, suitability for use, or quality of goods;
- (c) false or misleading comparison of goods in the process of advertising; or
- (d) fraudulent use of another's trademark, firm name, or product labeling or packaging.

11. **Approval of mergers.**—(1) No undertaking shall enter into a merger which substantially lessens competition by creating or strengthening a dominant position in the relevant market.

(2) Notwithstanding the provisions contained in the Act where an undertaking, intends to acquire the shares or assets of another undertaking, or two or more undertakings intend to merge the whole or part of their businesses, and meet the pre-merger notification thresholds stipulated in regulations prescribed by the Commission, such undertaking or undertakings shall apply for clearance from the Commission of the intended merger.

(3) The concerned undertakings shall submit a pre-merger application to the Commission as soon as they agree in principle or sign a non-binding letter of intent to proceed with the merger.

(4) Application referred to in sub-section (3) shall be in the form and accompanied by a processing fee as may be prescribed by the Commission. The concerned undertakings shall not proceed with the intended merger until they have received clearance from the Commission.

(5) The Commission shall by way of an order referred to in section 31, decide on whether the intended merger meets the thresholds and the presumption of dominance as determined in section 3. Such order shall be made within thirty days of receipt of the application.



(6) If so determined, the Commission shall initiate a second phase review and for that purpose the Commission may require the concerned undertakings to provide such information as it considers necessary to enable the Commission to make the necessary determination.

(7) Failure to make a determination within the prescribed period of thirty days for the first phase review shall mean that the Commission has no objection to the intended merger.

(8) On initiation of the second phase review the Commission shall, within ninety days of receipt of the requested information under sub-section (6), review the merger to assess whether it substantially lessens competition by creating or strengthening a dominant position in the relevant market, and shall give its decision on the proposed transaction. In case concerned undertakings fail to provide the information requested, the Commission may reject the application.

(9) Failure to render a decision within ninety days shall be deemed to mean that the Commission has no objection to the intended merger.

(10) If after the second phase review the Commission determines that the intended merger substantially lessens competition by creating or strengthening a dominant position, it may nonetheless approve the transaction, if it is shown that—

- (a) it contributes substantially to the efficiency of the production or distribution of goods or to the provision of services;
- (b) such efficiency could not reasonably have been achieved by a less restrictive means of competition;
- (c) the benefits of such efficiency clearly outweigh the adverse effect of the absence or lessening of competition; or
- (d) it is the least anti-competitive option for the failing undertaking's assets, when one of the undertakings is faced with actual or imminent financial failure:

Provided that the burden of proof shall lie with the undertaking seeking the approval.

(11) In case the Commission determines that the transaction under review does not qualify the criteria specified in sub-section (10), the Commission may;

- (a) prohibit the consummation of the transaction;

- (b) approve such transaction subject to the conditions laid by the Commission in its order;
- (c) approve such transaction on the condition that the said undertakings enter into legally enforceable agreements specified by the Commission in its order.

(12) Where an undertaking has consummated the merger without complying with the provisions of sub-section (1) to sub-section (4), the Commission shall, after giving the undertaking an opportunity of being heard, make appropriate orders under section 31.

(13) Where the Commission has granted approval subject to conditions, the Commission may, within one year, review the order of approval of merger on its own or on the application of the undertakings concerned on the ground that it is satisfied that the circumstances of the relevant market or the undertakings have so changed as to warrant review of the conditions imposed.

(14) If the Commission determines that the approval was based on false or misleading information submitted by the undertaking, or the conditions prescribed in the relevant order of the Commission have not been fully complied with, the Commission may after affording the undertakings concerned an opportunity of being heard —

- (a) undo such merger or acquisition; or
- (b) prescribe modifications or additions in the original order.

### CHAPTER III

#### COMPETITION COMMISSION OF PAKISTAN

12. **Establishment of Commission.**—(1) There is hereby established a Commission to be called the Competition Commission of Pakistan.

(2) The Commission shall be a body corporate with perpetual succession and common seal, and may sue and be sued in its own name and, subject to and for the purpose of this Act, may enter into contracts and may acquire, purchase, take, hold and enjoy moveable and immovable property of every description and may convey, assign, surrender, yield up, charge, mortgage, demise, reassign, transfer or otherwise dispose of or deal with any moveable or immovable property or any interest vested in it, upon such terms as it deems fit.

(3) The Commission shall be administratively and functionally independent, and the Federal Government shall use its best efforts to promote, enhance and maintain the independence of the Commission.

13. **Head Office.**—The head office of the Commission shall be in Islamabad and the Commission may establish and close down offices at such other places in Pakistan as it considers necessary.

14. **Composition of Commission.**—(1) The Commission shall consist of not less than five and not more than seven members:

Provided that the Federal Government may increase or decrease the number of Members, from time to time, as it may consider appropriate.

(2) The Members shall be appointed by the Federal Government and from amongst the Members of the Commission, the Federal Government shall appoint the Chairman.

(3) All the Members of the Commission shall serve on a full-time basis.

(4) Not more than two Members of the Commission shall be employees of the Federal Government.

(5) No person shall be recommended for appointment as a Member unless that person is known for his integrity, expertise, eminence and experience for not less than ten years in any relevant field including industry, commerce, economics, finance, law, accountancy or public administration:

Provided that the Federal Government may prescribe qualifications and experience and mode of appointment of such Members in such manner as it may prescribe.

(6) No person shall be appointed or continued as a Member if he —

(a) has been convicted of an offence involving moral turpitude;

(b) has been or is adjudged insolvent;

(c) is incapable of discharging his duties by reason of physical, psychological or mental unfitness and has been so declared by a registered medical practitioner appointed by the Federal Government;

(d) absents himself from three consecutive meetings of the Commission. Without obtaining leave of the Commission;

- (e) fails to disclose any conflict of interest at or within the time provided for such disclosure under this Act or contravenes any of the provisions of this Act pertaining to unauthorized disclosure of information; or
- (f) deemed incapable of carrying out his responsibilities for any other reason.

(7) No act or proceeding of the Commission shall be invalid by reason of absence of a member or existence of any vacancy among its members or defect in the constitution thereof.

(8) No Member or officer of the Commission shall assume his office until he has made such declaration affirming secrecy and fidelity.

15. **The Chairman.**—(1) The Chairman shall be the chief executive of the Commission and shall, together with the other Members, be responsible for the administration of the affairs of the Commission.

(2) The Chairman may subject to such conditions as he may deem fit, from time to time delegate all or any of his powers and functions to any of the Members.

16. **The Acting Chairman.**—At any time when the position of the Chairman is vacant, or the Chairman is unable to perform his functions due to any cause, the Federal Government shall appoint the most senior Member of the Commission to be the Acting Chairman of the Commission until the appointment of a Chairman on regular basis.

17. **Term of office.**—(1) The Chairman and Members of the Commission shall be appointed for a terms of three years on such salary, terms and conditions of service as the Federal Government may by rules prescribe:

Provided that the Chairman and Members shall be eligible for re-appointment for such term or terms but shall cease to hold office on attaining the age of sixty-five years or the expiry of the term whichever is earlier.

18. **Restriction on employment of the Chairman and other Members in certain cases.**—The Chairman and other Members shall not, for a period of one year from the date on which they cease to hold office, accept any employment in, or connected with the management or administration of, any undertaking with has been a party to any investigation before the Commission under this Act.

19. **Termination of appointment of Members.**—(1) Subject to sub-section (2), the appointment of any Member or the Chairman may, at any time, be revoked and he may be removed from his office by order of the Federal Government if it is found that such person has become disqualified under sub-section (6) of section 14.

(2) Unless a disqualification referred to in section (1) arises from the judgment or order of a court or tribunal of competent jurisdiction under any relevant provision of applicable law, a Member or the Chairman shall not be removed or his appointment revoked without an enquiry by an impartial person or body of persons constituted in accordance with such procedure as may be prescribed by rules made by the Federal Government and such rules shall provide for a reasonable opportunity for the Member or the Chairman to be heard in defence.

(3) A Member or the Chairman may resign his office at any time by notice in writing addressed to the Federal Government.

(4) A vacancy in the Commission caused by the death, resignation or removal of any Member or the Chairman shall be filled by the Federal Government within thirty days of the occurrence of such vacancy.

20. **Commission Fund.**—(1) There shall be established a fund to be known as the 'CCP Fund' which shall vest in the Commission and shall be utilized by the Commission to meet charges in connection with the functioning of the Commission including payment of salaries and other remuneration to the Chairman, Members, officers, officials, experts, advisers, and consultants of the Commission.

(2) The Fund shall consist of,

- (a) allocations or grants by the Federal Government;
- (b) charges and fees levied by the Commission;
- (c) contributions from local and foreign donors or agencies with the approval of the Federal Government;
- (d) returns on investments and income from assets of the Commission; and
- (e) all other sums which may in any manner become payable to or vested in the Commission.

(1) a percentage of the fees and charges levied by other regulatory agencies in Pakistan as prescribed by the Federal Government in consultation with the Commission and the percentage so prescribed shall not be varied to the disadvantage of the Commission.

(3) The Commission shall make regulations for incurring expenditures as well as investments from the Fund.

(4) The Commission may open and maintain accounts at such scheduled banks as it may from time to time determine. The Commission may with the approval of the Federal Government, open and maintain foreign currency accounts.

**21. Accounts and audits.**—(1) The Commission shall cause proper accounts to be kept and shall as soon as practicable after the end of each financial year cause to be prepared for that financial year a statement of accounts of the Commission which shall include a balance sheet and an account of income and expenditure.

(2) Within sixty days after the end of each financial year, the annual financial statements of the Commission shall be audited by the Auditor-General of Pakistan or by a firm of chartered accountants nominated by the Auditor-General of Pakistan.

(3) The auditors shall make a report to the commission upon the balance sheet and accounts and in such report they shall state whether in their opinion the balance sheet is a full and fair balance sheet containing all necessary particulars and properly drawn up so as to exhibit a true and correct view of the affairs of the Commission and, in case they have called for any explanation or information from the Commission, whether it has been given and whether it is satisfactory.

**22. Annual report.**—(1) Within ninety days from the end of each financial year, the Commission shall cause a report to be prepared on the activities of the Commission (including investigations, advocacy activities, enquiries and merger reviews made by the Commission) during that financial year.

(2) The Commission shall, within one hundred and twenty days of the end of each financial year send a copy of the annual report of the Commission under sub-section (1) together with a copy of the statement of accounts of the Commission certified by the auditors and a copy of the auditors' report to the Federal Government which shall cause them to be published in the official Gazette and laid before both Houses of the Majlis-e-Shoora (Parliament) within two months of their receipt.

23. **Appointments by Commission.**—(1) The Commission may appoint such officers, officials, experts, advisers, and consultants as it considers necessary to carry out such functions as may be prescribed by the Commission with such powers and on such terms and conditions as it may determine from time to time.

(2) The Commission may, by notification in the official Gazette, make regulations in respect of the terms and conditions of service of its employees.

24. **Meetings of Commission.**—(1) Subject to this section, the Chairman may convene such meetings of the Commission at such times and places as he considers necessary for the efficient performance of the functions of the Commission.

(2) The Chairman shall preside at every meeting of the Commission, and in the absence of Chairman, the Members may elect a Member to preside at the meeting.

(3) At any meeting of the Commission the quorum shall be three Members.

(4) All questions arising at any meeting of the Commission shall be determined by a majority of votes of the Members present and voting.

(5) in the event of an equality of votes, the Chairman shall have a casting vote.

(6) Subject to the provisions of this Act, the Chairman may give directions regarding the procedure to be followed at or in connection with any meeting of the Commission.

25. **Disclosure of interest by Members.**—(1) For the purpose of this and the next following section, a person shall be deemed to have an interest in a matter if he has any interest, pecuniary or otherwise, in such matter which could reasonably be regarded as giving rise to a conflict between his duty to honestly perform his functions under this Act and such interest, so that his ability to consider and decide any question impartially or to give any advice without bias, may reasonably be regarded as impaired.

(2) A Member having any interest in any matter to be discussed or decided by the Commission shall, prior to any discussion of the matter, disclose in writing, to the Commission, the fact of his interest and the nature thereof.

