# An Exclusive Interview with

# Dr. Joseph Wilson,

## Chairman, Competition Commission of Pakistan (CCP)

Dr. Joseph Wilson is the Chairman of the Competition Commission of Pakistan and has over 21 years experience of public service, law practice, teaching and research in regulatory laws. He has been serving as a founding member of the Commission since its establishment in 2007. He has supervised Monopolies and Trade Abuses, Mergers & Acquisitions, International Affairs, Strategic policy, Research and Exemptions Departments at the Commission. Prior to joining the Commission, he was an Associate Professor of Law at the Lahore University of Management Sciences (LUMS where he taught "competition law" in addition to other courses. Before joining LUMS, Dr. Wilson taught at McGill Faculty of Law, Montreal Canada, from where he earned Doctor of Civil Law (D.C.L.) with Deans Honour List and Master of Laws (LL.M.) degrees. He also holds an LL.M. from the University of Georgia, USA. He has presented at various international conferences, published in international law journals and authored a book titled "Globalization and the Limits of National Merger Control Laws (published by Kluwer Law International). Mr. Joseph Wilson is a member of the State Bar of New York, USA and Lahore High Court Bar, and also serves on the International Advisory Board of the Loyola University Chicago's Institute for Consumer Antitrust Studies, USA.

**Question: Sir, this issue of Management Accountant is on the theme of 'Cartelization and Market Malpractices', which is more relevant to CCP. Would you like to tell us about 'cartels' and how does they harm consumers?**

**Answer:** A Cartel is an agreement whereby firms agree not to compete with one another. They injure customers by raising prices and restricting supply, thus making goods and services completely unavailable to some purchasers and unnecessarily expensive for others. Typical cartel behavior includes price fixing, output restrictions, market allocation, bid rigging (submission of collusive tenders).Cartels are considered to be the most serious violations of competition law. One of the tools employed by competition agencies to quantify this harm is to estimate the 'cartel mark-up' above the competitive price. A survey of the OECD's Competition Committee found that the cartel mark-up can exceed 50%. It also suggests that the harm from cartels is even larger than was previously thought and conservative estimates suggest that the harm caused exceeds approximately USD 55billion per year. In other words, cartels can cause prices of products to rise by as much as 50%. Cartels are however, difficult to detect. Members of a cartel go to great lengths to keep their agreement secret which means that competition agencies need to be equipped with necessary powers, skills and expertise to detect cartels.

**Question: Would you like to share with us as to what is the legal framework in Pakistan for tackling cartels?**

**Answer:** Let us begin by briefly discussing the evolution of competition legislation in Pakistan. The first competition legislation in Pakistan was the Monopolies and Restrictive Trade Practices Ordinance (MRTPO), 1970 which was enforced by the Monopolies Control Authority (MCA). MRTPO was focused on preventing the concentration of economic power in the hands of few rather than ensuring that the markets remained competitive. The Competition Ordinance was passed in October 2007 replacing MRTPO, 1970. The same Ordinance was enacted and went into force as the Competition Act in October 2010.

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The new law is broadly based on international best practices and the model laws of the OECD and UNCTAD. It empowers the Commission to take action against anti-competitive behavior, covers both the services and public sectors and increases penalties to a maximum of PKR 75 million and PKR 1 million per day (from a maximum of PKR 100,000 and an

additional PKR 10,000 per day). The Commission is a Federal Agency and is exclusively mandated under the Competition Act and the rules, regulations, directives and guidelines issued thereunder to ensure free competition in all spheres of economic activity.

Section 4 of the Competition Act empowers the Commission to detect and prosecute cartels. Section 4 of the Competition Act, 2010 prohibits agreements or even any conspiracy to enter into agreements, and concerted practices that have the objective or effect of preventing, restricting, or distorting competition within Pakistan, and in particular those which (i) directly or indirectly fix purchase or selling prices or any other trading conditions (ii) limit or control production, markets, technical development, or investment; (iii) allocate markets or sources of supply (iv) apply dissimilar and disadvantaged conditions to equivalent transactions across trading parties (v) make conclusion of contracts subject to acceptance by other parties of supplementary obligations which have no commercial connection with the subject of such contracts or (vi) rig, suppress, rotate or complement bids.

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**Question: What are Leniency and Reward Payment Schemes of CCP and how do they help in the fight against cartels?**

**Answer:** As I already mentioned, detecting cartels can be difficult and the two tools that help us in the fight are leniency programme and reward payment programme. The Commission has recently revised Leniency Regulation and issued Reward Payment Regulation to bring them in line with international best practices. Putting it briefly, the leniency provision enables the Commission to grant full immunity or reduction in penalties that would otherwise be imposed on a participant (of a cartel) in consideration of voluntary disclosure. So far, CCP has received one leniency application filed by Siemens Pakistan which is related to a case of collusive bidding by electric power equipment manufacturers and their Association in procurement tenders of different electric power distribution companies (DISCOs) for switchgear and transformers. Siemens has filed a leniency application with the Commission requesting immunity from prosecution in exchange for evidence of illegal activity.

Reward Payment Scheme, on the other hand, is a strategy to financially reward informants has proved to serve as an effective tool for giving incentive to informants to come forward against the parties to the cartels. The essence of cartels is their secrecy; they involve secret arrangements between competing undertakings and reduce competition in various ways at the expense of consumers' interest. It is virtually impossible to detect and prove the existence of a cartel without having some credible evidence which, in particular, includes 'inside information'. Such information is not volunteered by individuals given the risk attached. Informants/whistleblowers have been able to draw competition agency's attention to unlawful behaviour of undertakings and have helped in cracking some major cartels. The Commission offers a reward to informants from Rs.200,000 to Rs.2,000,000.

**Question: What is the concept of exemptions?**

**Answer:** The Competition Act recognizes that certain practices or agreements that would otherwise be prohibited may provide an overall benefit to consumers , such as improving production or distribution, and making technological developments that would outweigh the adverse effect of decreased competition in the market. Thus, the Act makes a provision for undertakings to apply for exemptions, should the pro-competitive effects of a prohibited agreement or practice outweigh its adverse effects. To facilitate the undertakings in applying for exemptions and to make it convenient for them to obtain relevant information, the Commission has issued separate Exemption Regulations.

**Question: What actions has the CCP taken in prosecuting cartels?**

**Answer:** Since October 2007, CCP has taken actions against 18 cartels. CCP has taken action against cartels in several important sectors such as sugar, cement, vanaspati ghee, poultry, telecom sector among others. All of these cases are pending in the courts.

**Question: How successful has the Competition Commission of Pakistan been in advocating for a pro-competitive environment? Can you share some success stories?**

**Answer:** Section 29 of the Competition Act, 2010 empowers CCP to review policy frameworks that affect competition and give non-binding recommendations to the Government. A success story for the Commission is the opening up of the market for air travel between Pakistan and Saudi Arabia. The Commission, in a policy note to the government, observed that the Bilateral Air Services Agreement of 1972 between Pakistan and Saudi Arabia had created a duopoly by granting exclusive rights, to operate direct routes, to PIA and Saudi Airlines(SV). The Commission noted that the Agreement restricted competition on direct routes between the two countries. In addition, the Agreement provided for the establishment of airfares pursuant to mutual consultations between the two designated airlines, thus the Agreement mandates and condones collusion between PIA and SV. This collusion is particularly marked during hajj season when the two airlines set a joint airfare for direct air services under the annual Hajj Agreement.

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The Policy Note had recommended to the Government that the agreement be amended to allow multiple airlines of both countries to operate direct scheduled services and hajj services between the two countries; abolish any market division, quotas and payment of royalties; and allow market forces to determine ticket prices without interference from either country's aviation authority or airlines. Its recommendations were implemented by the Civil Aviation Authority, resulting in two new airlines entering the market and a decrease in the cost of air travel for consumers. This action of the Commission was hailed internationally and it won the World Bank's Competition Advocacy Contest 2013 for "successfully promoting pro-competition market reforms, opening of markets, and infusion of competition principles in other sectoral policies."

Another success story was the withdrawal of the International Clearing House (ICH) Agreement by the government. ICH Agreement, which came into force in September 2011, created a cartel of all 14 Long Distance & International (LDI) operators to terminate all incoming international call traffic exclusively on the network of PTCL. The agreement suspended all interconnection capacities of all LDIs except for PTCL. LDIs also agreed to terminate all incoming international traffic at a fixed settlement rate of 8.8 US cents/minute.

Under the agreement LDIs shared revenue amongst themselves as per the agreed quota allocated to each LDI. In April 2013, CCP passed an order condemning the arrangement as it was a blatant violation of the Competition Act, in the form of cartelization by all LDI operators. In fact the arrangement was more egregious than a simple price fixing cartel in that all LDIs except for PTCL shut their networks and it was only PTCL, which was carrying the traffic. CCP held that the ICH was anti-competitive as it fixed prices, reduced choice, foreclosed the market, removed incentive for better quality of service and incentives for investment in improvement of infrastructure and was thus a clear threat to consumer welfare and a total negation of the Telecom Deregulation Policy, 2003. CCP declared the ICH agreement illegal and imposed a penalty of 7.5% of annual turnover of each LDI. It also advised PTA to ensure restoration of competition amongst LDI operators as it existed prior to the implementation of ICH agreement. LDIs filed a petition in the Sindh High Court (SHC) against CCPs order and the SHC suspended the operation of the order. The policy was finally withdrawn by government in April 2014, vindicating the Commission's stance.

**Question: What are the future priorities for the Commission?**

**Answer:** Our priorities for the coming year are to revise our regulations and processes, which are still based in Competition Ordinance of 2007 despite the promulgation of the Competition Act in 2010 and to enhance the strength of staff responsible for the enforcement of law. Our further priorities in future are robust law enforcement; active advocacy both with the public and private sectors; ensure financial and administrative independence of the Commission; and to launch measures to improve the staff's technical expertise.

**Question: What role do you think management accountants can play to assist CCP in detecting and controlling cartels?**

**Answer:** The Commission in 2008, issued an order against All Pakistan Cement Manufacturers Association(APCMA) for cartelization. In that case a chartered accountancy firm was hired to monitor the quotas set under the illegal agreement. The Commission in its order noted that an undertaking facilitating or contributing to the cartel in any manner can be penalized for cartelization, notwithstanding whether an undertaking is directly part of the cartel activity or not. Management accountants or for that matter other consultancy firms, must not facilitate any illegal activity under a scheme of cartelization lest they be suspected/charged with aiding and abetting their client firms in operating a cartel.

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The interview ended with a vote of thanks to **Dr. Joseph Wilson,** Chairman, Competition Commission of Pakistan (CCP) , who spared his valuable time and gave his candid views exclusively for this journal. **— Editor**