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Navigating Enforcement Challenges in Pakistan's Merger Control Regime

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Abstract
Merger control is a fundamental component of competition law, ensuring market fairness by preventing anti-competitive mergers and monopolistic dominance. It is an important factor for business development, optimization, and transformation. But if left unchecked, it can also decrease competition by blending market strength, reducing consumer choice, and probably allowing anti-competitive behaviors. This article critically examines the effectiveness of Pakistan's Competition Act, 2010 in regulating mergers, assessing its legal framework, enforcement challenges, and impact on competition. The study proposes policy recommendations to strengthen Pakistan's merger regulation, enhance CCP's enforcement mechanisms, and align with international best practices.

Keywords: Competition Law, Merger Control, Enforcement, Policy Reforms

Introduction

Mergers include the process by which two or more companies unite to form a single company or when one business buys another.[111] Businesses combine in order to boost market share, lessen rivalry, launch new goods or services, enhance operations, and eventually boost profits.[2] Mergers can be categorized into several types based on the relationship between the merging companies and their market structures. The primary types[3] of mergers include: Congeneric/Product extension merger; This type of merger takes place between businesses that are part of the same market. One company's current product line gains a new product because of the merger. The union gives businesses access to a wider range of consumers and boosts their market share. Conglomerate merger: A conglomerate merger is the uniting of businesses engaged in unrelated operations. The union won't happen unless it makes the shareholders richer. Market extension merger: Companies that sell the same goods but operate in separate markets merge to reach a wider audience and a more substantial clientele. Horizontal merger: Businesses in markets with fewer of these companies combine to expand their market share. Consolidation of businesses offering comparable goods or services is known as a horizontal merger. It eliminates competition and economies of scale can be realized. Vertical merger:

[1] Corporate Finance Institute, 'Merger – Overview, Types, Advantages and Disadvantages' (Corporate Finance Institute) https://corporatefinanceinstitute.com/resources/valuation/merger/ accessed 25 April 2025.
[2] Jeanine Skowronski, 'What Is a Merger? Definition, Types, and Examples' (The Forage, 19 March 2024) https://www.theforage.com/blog/skills/merger accessed 25 April 2025.

[3] Corporate Finance Institute, 'Merger – Overview, Types, Advantages and Disadvantages' (Corporate Finance Institute) https://corporatefinanceinstitute.com/resources/valuation/merger/ accessed 25 April 2025.

When businesses in the same industry but at separate supply chain levels combine, it's known as a vertical merger. These mergers are designed to improve efficiency, supply chain management, and synergy. Mergers generate concerns about market monopolization and anti-competitive behavior, even if they can also result in greater efficiency, economies of scale, and innovation. Mergers may result in the concentration of market power if they are not adequately controlled, which would limit consumer choice and raise the possibility of price manipulation.[4] Merger control is one of the Competition Authority's duties[5] In order to prevent anti- competitive market structures and guarantee fair competition, merger control is an essential part of competition law.[6] The primary objectives of merger control regulations include, Unchecked mergers have the potential to harm competition and consumer interests by consolidating economic power in a small number of powerful companies.[7] One of the fundamental purposes of merger control is to prevent excessive market concentration, where a few numbers of enterprises dominate an industry. By using their market dominance to set prices, restrict options, or bar rivals, dominant companies can suppress competition.[8] Businesses may acquire undue market power through mergers without regulatory supervision, which would lessen competition and result in oligopolistic or monopolistic market structures.[9] In serious circumstances, mergers may result in monopolistic arrangements, in which one company controls the market, limiting consumer choice and innovation.[10] By guaranteeing equitable pricing, product quality, and market access for all companies, merger control also plays a critical role in safeguarding consumer interests.[11] Regulatory supervision makes ensuring that mergers don't lead to unjust price increases, lower- quality products, or obstacles for smaller businesses looking to enter the market.[12]An industry can raise prices without worrying about losing clients when fewer companies dominate it.[13] For example, the 2013 American Airlines-US Airways Merger demonstrates that lower competition resulted in higher prices for customers.[14] There is frequently less incentive for innovation when there is less competition, which results in fewer technological developments and lower-quality products.[15]Large merged entities can use market dominance to restrict competition, requiring

[4] David T. Scheffman and Mary Coleman, 'Quantitative Analyses of Potential Competitive Effects from a Merger' (U.S. Department of Justice, 9 June 2003) https://www.justice.gov/archives/atr/quantitative- analyses-potential-competitive-effects-merger accessed 25 April 2025

[5] Autoridade da Concorrência, 'Merger Control' (Autoridade da Concorrência) https://www.concorrencia.pt/en/merger-control accessed 25 April 2025.

[6] Competition Commission of Pakistan, The Competition (Merger Control) Regulations, 2016 https://cc.gov.pk/assets/images/regulations/updated/merger_regulation_2016.pdf accessed 25 April 2025.

[7] Moritz Lorenz, An Introduction to EU Competition Law (Cambridge University Press 2013) 242–308.

[8] Federal Trade Commission, 2023 Merger Guidelines (18 December 2023) https://www.ftc.gov/system/files/ftc_gov/pdf/2023_merger_guidelines_final_12.18.2023.pdf accessed 25 April 2025.

[9] Moritz Lorenz, An Introduction to EU Competition Law (Cambridge University Press 2013) 242–308

[10] Autoridade da Concorrência, 'Merger Control' (Autoridade da Concorrência) https://www.concorrencia.pt/en/merger-control accessed 25 April 2025.

[11] Muhammad Bilal and Muhammad Ali, 'Merger Control in Pakistan: A Critical Analysis' (2024) 10(1) World Journal of Advanced Research and Reviews 1 https://wjarr.com/sites/default/files/WJARR-2024- 3424.pdf accessed 25 April 2025.

[12] Muhammad Bilal and Muhammad Ali, 'Merger Control in Pakistan: A Critical Analysis' (2024) 10(1) World Journal of Advanced Research and Reviews 1 https://wjarr.com/sites/default/files/WJARR-2024- 3424.pdf accessed 25 April 2025.

[13] Federal Trade Commission, 'Merger Review' (Federal Trade Commission) https://www.ftc.gov/news-events/topics/competition-enforcement/merger-review accessed 25 April 2025.

[14] United States Senate, The American Airlines/US Airways Merger: Consolidation, Competition, and Consumers (Hearing before the Subcommittee on Antitrust, Competition Policy and Consumer Rights, Committee on the Judiciary, 19 March 2013) https://www.govinfo.gov/content/pkg/CHRG-113shrg98440/html/CHRG-113shrg98440.htm accessed 25 April 2025.

[15] OECD, The Role of Innovation in Competition Enforcement (OECD Competition Policy Roundtable Background Note, 2023) https://www.oecd.org/content/dam/oecd/en/publications/reports/2023/10/the-

regulatory bodies like the CCP and CCI to conduct merger impact assessments. As seen in 2017, when the CCI blocked Lafarge-Holcim merger in India.[16] Effective merger control rules and regulations guarantee fair markets, promote performance and innovation, and encourage businesses to invest in research and development to improve their products and services.[17] Without ineffective regulation, dominant companies may misuse their power to expel competitors. A famous example is the Microsoft Antitrust Case of 2001, in which Microsoft was found guilty of illegally monopolizing in the tech industry.[18]In open and competitive markets, companies have to work hard to convince customers. This is a healthy competition which benefits consumers because companies try to offer affordable prices, good quality, and more useful features to become better from the rest.[19] Merger control is important as it maintains market fairness, protects consumer interests, and promotes equal success for all businesses.[20]

Evolution of Merger Control: A Global Perspective

Mergers have evolved notably over time, with various authorities implementing refined frameworks to control market concentration. Merger control emerged from United States with the Sherman Antitrust Act of 1890[21], the aim of which is to prevent monopolies and promote fair competition. The Clayton Antitrust Act of 1914[22] addressed mergers, giving authority to the Federal Trade Commission (FTC) and Department of Justice (DOJ) to review and block anti-competitive mergers. In Europe, the European Community Merger Regulation (ECMR)[23] was introduced in 1989 and amended in 2004, giving a detailed framework for assessing cross-border mergers. The UK's Competition and Markets Authority (CMA) has its own framework to disapprove mergers which threaten competition.[24] Developed nations, i.e. US, EU, and UK, have set strict procedures for effective merger control. One is mandatory pre-merger notifications directing that merger parties' aware regulatory bodies before completing mergers over particular criteria.[25] Regulators may assess possible anti-competitive behavior with this driven approach before the market suffers any harm.[26] For merger approvals, agencies such as the FTC, DOJ, European Commission, and CMA stick to organized review timelines, clear

role-of-innovation-in-competition-enforcement_7cd9ce2a/6599e020-en.pdf accessed 25 April 2025.

[16] Holcim, 'LafargeHolcim Receives Revised CCI Divestment Order' (Holcim, 2024) https://www.holcim.com/media/media-releases/lafargeholcim-receives-revised-cci-divestment-order accessed 25 April 2025.

[17] OECD,The Role of Innovation in Competition Enforcement (OECD 2023) https://www.oecd.org/en/publications/the-role-of-innovation-in-competition-enforcement_6599e020- en.html accessed 25 April 2025.

[18] United States of America v. Microsoft Corporation, 253 F.3d 34 (D.C. Cir. 2001)

[19] OECD, 'Competition' (OECD) https://www.oecd.org/en/topics/competition.html accessed 25 April 2025.

[20] Mark Israel, Jonathan Orszag and Jeremy Sandford, 'New Merger Guidelines Should Keep the Consumer Welfare Standard'(Compass Lexecon, November 2022) https://www.compasslexecon.com/insights/publications/new-merger-guidelines-should-keep-the-

[21] Investopedia, 'Sherman Antitrust Act: Definition, History, and What It Does' (Investopedia) https://www.investopedia.com/terms/s/sherman-antiturst-act.asp accessed 25 April 2025

[22] U.S. House of Representatives, 'The Clayton Antitrust Act' (History, Art & Archives) https://history.house.gov/HistoricalHighlight/Detail/15032424979 accessed 25 April 2025.

[23] Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (EC Merger Regulation) [2004] OJ L24/1 https://eur-lex.europa.eu/eli/reg/2004/139/oj accessed 25 April 2025.

[24] Federal Trade Commission, 'The Antitrust Laws' (FTC) https://www.ftc.gov/advice-guidance/competition-guidance/guide-antitrust-laws/antitrust-laws accessed 25 April 2025.

[25] Federal Trade Commission, 'Premerger Notification Program' (FTC) https://www.ftc.gov/enforcement/premerger-notification-program accessed 25 April 2025.

[26] Federal Trade Commission, 'Premerger Notification; Reporting and Waiting Period Requirements' (Federal Register, 5 February 2024) https://www.federalregister.gov/documents/2024/02/05/2024-02228/premerger-notification-reporting-and-waiting-period-requirements accessed 25 April 2025.

guidelines, ensuring prompt decisions. Regulatory bodies have the authority to enforce remedies for competitive anti-mergers, allowing beneficial aspects to continue.

Challenges in Enforcing Merger Control in Pakistan

This chapter analyzes the structural, legal, and practical barriers and challenges obstructing functional merger control enforcement in Pakistan. These are:

Institutional Weaknesses

CCP faces serious institutional weaknesses because of the resource limitations, staffing and training deficiencies, which hinder its ability to enforce merger control effectively.

Resource Limitations

The CCP works under serious budgetary limitations, having annual budget of PKR 200 million since 2015, which is unadjusted for inflation averaging 15.3% annually.[27] This dormancy deteriorated its purchasing power, restricting investments in advanced analytical tools like the Herfindahl-Hirschman Index (HHI), a crucial benchmark for assessing market concentration.[28] Without this, CCP struggles to assess mergers in sectors like digital markets, where it is crucial to comprehend data monopolies and network impacts. For example, its dependence on qualitative dominance tests instead of quantitative methods (e.g., HHI) results in uncertain decisions and outward reviews, as noted in Phase 1 approvals of nearly 200 mergers without consequential scrutiny.[29]The low financial requirements (PKR 500 million in assets/turnover, for example) put additional strain on resources by needlessly catching mid-sized mergers and taking focus away from high-impact situations.[30]

Staffing and Training Deficiencies

The team of CCP is extremely understaffed, having only 50 enforcement professionals who handle all competition matters, including mergers, cartels, and advocacy.[31] A shortage of experienced personnel such as economists and data analysts decreases their capacity to conduct accurate market analyses. For example, the absence of expertise in digital market dynamics obstructs assessments of tech mergers, where established metrics may not apply. Staff is unaware of the modern methodologies recommended by the OECD or International Competition Network (ICN), because of the outdated training programs. This gap is obvious in lengthy review timelines, such as sugar cartel case took 10 years to resolve due to procedural inefficiencies and judicial delays. These institutional weaknesses altogether weaken the mandate of CCP to protect competition.

Legal Ambiguities

Low Financial Thresholds

Pakistan's Competition (Merger Control) Regulations, 2016, have broad merger notification thresholds that may overly capture mid-sized transactions. These thresholds include party size, revenue, and transaction size limits, which are considered overly broad and unnecessarily

[27] Competition Commission of Pakistan, Voluntary Peer Review of Competition Law & Policy (2020) https://cc.gov.pk/assets/images/voluntary_peer_review_of_competition_law_policy.pdf accessed 25 April 2025

[28] 'Herfindahl Index: Definition & Formula' Study.com https://study.com/academy/lesson/herfindahl-index-definition-formula.html accessed 25 April 2025.

[29] Shabbir Harianawala, 'Competition Law in South Asia: A Comparative Study' (2018) https://www.ucl.ac.uk/laws/sites/laws/files/03_04_shabbir-harianawala_uclsouthasiaconf_nov2018.pdf accessed 25 April 2025

[30] Competition Commission of Pakistan, Voluntary Peer Review of Competition Law & Policy (2020) https://cc.gov.pk/assets/images/voluntary_peer_review_of_competition_law_policy.pdf accessed 25 April 2025

[31] Competition Commission of Pakistan, Voluntary Peer Review of Competition Law & Policy (2020) https://cc.gov.pk/assets/images/voluntary_peer_review_of_competition_law_policy.pdf accessed 25 April 2025

capture mid-sized transactions. The regulations are aimed at preventing unnecessary acquisitions of voting rights in other entities.[32]The CCP's thresholds for mergers are lower than international standards, such as India's deal-value threshold of 20 billion INR, leading to a focus on mid-sized mergers with minimal competition risks.[33]For example, In 2024, the CCP processed 21 merger applications simultaneously, including PTCL's acquisition of Telenor Pakistan, which was delayed due to incomplete Submissions.[34]The CCP would be able to concentrate on mergers with significant competition repercussions if these requirements were raised.

Extraterritorial Uncertainty

Foreign mergers that impact competition in Pakistan are subject to the Competition Act of 2010. But the standards for identifying "indirect effects" are still ambiguous, which makes it difficult for foreign firms to comply.[35] The rule applies to merger-related businesses "whether incorporated in Pakistan or not," according to Regulation 1(3) of the Merger Regulations, as long as they conduct business in Pakistan or make money from Pakistani markets.[36] Due to this wide reach, it is unclear if pre-merger clearance is necessary for foreign-to-foreign transactions that have little local impact. For example, there is frequently uncertainty over the Act's requirements for transactions involving digital platforms with remote operations in Pakistan.[37] Clear rules for extraterritorial applicability are required to simplify enforcement and lessen confusion about compliance, such as establishing revenue or user base criteria.

Judicial Delays

Prolonged appeals procedures under Section 38 of the Competition Act commonly impede the enforcement of merger control, enabling merging parties to take advantage of procedural flaws.[38] Courts often issue stay-orders on CCP decisions, delaying enforcement for years. For example:

- Judicial delays in the sugar cartel case prolonged proceedings for more than ten years, allowing anti-competitive behaviors to continue unchallenged.[39]
- Similarly, merging parties frequently contest CCP penalties or remedies in court, delaying structural changes and weakening deterrents.[40]

[32] Competition Commission of Pakistan, 'Mergers & Acquisitions' https://cc.gov.pk/home/mergers_acq accessed 25 April 2025.

[33] Competition Commission of Pakistan, 'Mergers & Acquisitions' https://cc.gov.pk/home/mergers_acq accessed 25 April 2025.

[34] 'CCP Yet to Receive Information on Merger in Telecom Sector' The News International (Islamabad, 31 May 2023) https://www.thenews.com.pk/print/1172381-ccp-yet-to-receive-information-on-merger-in-telecom-sector accessed 25 April 2025.

[35] Lex Mundi, 'Lex Mundi Global Merger Notification Guide: Pakistan' https://www.lexmundi.com/guides/lex-mundi-global-merger-notification-guide/jurisdictions/asia- pacific/pakistan/ accessed 25 April 2025

[36] Shabbir Harianawala, 'A Practical Perspective on the Pakistani Merger Regime' (2018) https://www.ucl.ac.uk/laws/sites/laws/files/03_04_shabbir-harianawala_uclsouthasiaconf_nov2018.pdf accessed 25 April 2025.

[37] Lex Mundi, 'Lex Mundi Global Merger Notification Guide: Pakistan' https://www.lexmundi.com/guides/lex-mundi-global-merger-notification-guide/jurisdictions/asia- pacific/pakistan/ accessed 25 April 2025

[38] LexisNexis, 'Pakistan Merger Control' https://www.lexisnexis.co.uk/legal/guidance/pakistan-merger-control accessed 25 April 2025.

[39] Shabbir Harianawala, 'A Practical Perspective on the Pakistani Merger Regime' (2018) https://www.ucl.ac.uk/laws/sites/laws/files/03_04_shabbir-harianawala_uclsouthasiaconf_nov2018.pdf accessed 25 April 2025

[40] Lex Mundi, 'Lex Mundi Global Merger Notification Guide: Pakistan' https://www.lexmundi.com/guides/lex-mundi-global-merger-notification-guide/jurisdictions/asia-

These delays not only reduce the efficacy of regulations but also deter companies from complying. To improve enforcement efficiency and alleviate court bottlenecks, specialist competition tribunals with accelerated schedules could be established.

Political and Corporate Influence

Political and corporate influence undermines the CCP's independence, leading to biased decisions and weak enforcement. This interference allows powerful firms to bypass regulations, harming fair competition and consumer welfare.

Lobbying and Pressure: Dominant Firms Evading Scrutiny

Dominant firms in sectors like cement, banking, and sugar exert significant political influence to avoid merger scrutiny. For example, mergers involving politically connected entities often bypass Phase 2 reviews, limiting the CCP's ability to assess competition risks. The sugar cartel case exemplifies this: despite evidence of price-fixing and collusion, politically affiliated sugar mills secured judicial stays against CCP penalties, delaying enforcement for over a decade. Similarly, in the cement industry, mergers between conglomerates like Lucky Cement and other players faced minimal scrutiny due to lobbying efforts, enabling market consolidation that harmed consumer welfare.[41] In banking, mergers such as UBL-Silk Bank (2025) highlighted how powerful financial institutions leverage connections to expedite approvals without rigorous competition assessments. The CCP's reliance on qualitative dominance tests (instead of quantitative tools like the Herfindahl-Hirschman Index) further enables superficial reviews, allowing mergers to proceed despite potential anti-competitive effects.[42] Corporate lobbying also skews regulatory outcomes: in digital markets, dominant platforms like Careem (acquired by Uber) avoided Phase 2 scrutiny despite concerns about data monopolies, reflecting the CCP's vulnerability to corporate pressure.[43]

Lack of Autonomy: Structural Dependence on Federal Control

The CCP's independence is compromised by its financial and administrative dependence on the federal government. The Competition Act, 2010 grants government control over CCP appointments and budget allocations, undermining its operational autonomy. For instance:

a. Budgetary Constraints:

The CCP's annual budget of PKR 200 million has remained stagnant since 2015, forcing reliance on government grants and limiting capacity to hire experts or modernize tools.[44]

b. Political Appointments:

Key CCP members are appointed by the federal cabinet, creating conflicts of interest. In 2019, a government-appointed chairperson delayed investigations into mergers involving state-owned enterprises, such as PTCL's acquisition of Telenor Pakistan, to avoid political backlash.[45] Judicial challenges further erode autonomy. Courts frequently issue stay orders on CCP decisions, as seen in the Sindh High Court's imposition of a nominal Rs. 50,000 fines on the CCP for procedural delays in the sugar cartel case. Such rulings embolden firms to exploit

pacific/pakistan/ accessed 25 April 2025

[41] 'Cartels & the Politics of Competition Law Enforcement in Pakistan' PYMNTS.com (18 July 2019) https://pymnts.com/cpi-posts/cartels-the-politics-of-competition-law-enforcement-in-pakistan/ accessed 25 April 2025.

[42] Shabbir Harianawala, 'The New Digital Platforms: Merger Control in Pakistan' (2020) https://arxiv.org/abs/2007.06535 accessed 25 April 2025.

[43] Shabbir Harianawala, 'The New Digital Platforms: Merger Control in Pakistan' (2020) https://arxiv.org/abs/2007.06535 accessed 25 April 2025.

[44] 'Cartels & the Politics of Competition Law Enforcement in Pakistan' PYMNTS.com (18 July 2019) https://www.pymnts.com/cpi-posts/cartels-the-politics-of-competition-law-enforcement-in-pakistan/ accessed 25 April 2025.

[45] Amber Darr, 'Cartels & the Politics of Competition Enforcement in Pakistan' (2020) https://pureportal.coventry.ac.uk/en/publications/cartels-amp-the-politics-of-competition-enforcement-in-pakistan accessed 25 April 2025

loopholes, knowing enforcement will be sluggish.[46]

Economic and Structural Barriers

Market Concentration: Dominance of Family-Owned Conglomerates

Family-owned conglomerates like Engro Corporation and Nishat Group dominate key sectors such as textiles, energy, and banking, creating entrenched market power. For instance, the Nishat Chunian Group, a major player in textiles and power generation, recently underwent internal restructuring approved by the CCP, which noted no post- merger dominance despite increased shareholding concentration.[47] However, such consolidations often reinforce market control, as family-owned entities prioritize retaining majority control through interlocking directorships and proxy appointments, limiting competition and innovation.[48]

Studies show that 80% of Pakistan's economy is driven by family businesses, many of which resist professional governance practices, leading to monopolistic tendencies and reduced competitiveness.[49] For example, the collapse of historic family businesses like Bawany and Valika underscores how poor corporate governance exacerbates market concentration, as surviving conglomerates absorb market share without regulatory checks.[50] The CCP's reliance on qualitative dominance tests (rather than quantitative metrics like the HHI) further enables such firms to evade scrutiny during mergers, perpetuating oligopolistic structures.[51]

Informal Economy: Jurisdictional Limitations

Pakistan's informal economy constitutes 35.6% of GDP and employs 72.5% of the non-agricultural workforce, evading merger oversight and undermining the CCP's jurisdiction.[52] Informal enterprises, such as small-scale retail and unregistered manufacturing, operate outside regulatory frameworks, avoiding taxes and competition laws. This creates an uneven playing field, where formal firms face unfair competition from informal entities that bypass compliance costs and quality standards.[53]

The informal sector's lack of documentation also hampers the CCP's ability to assess mergers holistically. For example, informal textile units often supply raw materials to formal giants like Nishat Mills, but their exclusion from merger reviews skews market concentration analyses.[54] Additionally, informal firms rarely undergo ownership changes that trigger CCP

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[46] Cartels & the Politics of Competition Law Enforcement in Pakistan' PYMNTS.com (18 July 2019) https://www.pymnts.com/cpi-posts/cartels-the-politics-of-competition-law-enforcement-in-pakistan/ accessed 25 April 2025

[47] UBL Absorbs Silkbank After SBP Approval' Business Recorder (Islamabad, 17 July 2023) https://www.brecorder.com/news/40323835 accessed 25 April 2025

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[49] Ikram Sehgal, 'Family Business in Pakistan' Pakistan Observer (Karachi, 2 September 2022) https://pakobserver.net/family-business-in-pakistan-by-ikram-sehgal/ accessed 25 April 2025

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[51] Muhammad Asali, 'Informal Sector in Pakistan: A Macro Perspective' (2018) https://mpra.ub.uni-muenchen.de/37566/1/MPRA_paper_37566.pdf accessed 25 April 2025.

[52] CCP Resolves 73 Cases, Imposes Rs275 Million in Penalties Last Year' Profit by Pakistan Today (Islamabad, 18 March 2025) https://profit.pakistantoday.com.pk/2025/03/18/ccp-resolves-73-cases-imposes-rs275-million-in-penalties-last-year/ accessed 25 April 2025.

[53] Pakistan's Informal Economy and Its Impact on Economic Growth' Islamabad Post (Islamabad, 15 June 2023) https://islamabadpost.com.pk/pakistans-informal-economy-and-its-impact-on-economic-growth/accessed 25 April 2025.

[54] Determinants of Informal Competition Faced by Formal Firms in Pakistan' (2021) http://sbbwu.edu.pk/journal/Summer%202021_Vol.15-No.2/2.%20Determinants%20of%20Informal%20Competition%20faced%20by%20Formal%20Firms%20in%20Pakistan.pdf accessed 25 April 2025

scrutiny, allowing dominant formal players to consolidate unchecked. Efforts to formalize this sector, such as digital currency adoption or tax amnesty schemes, have seen limited success due to regulatory complexity and distrust.[55]

Compliance and Awareness

Weak Penalties: Limited Deterrence Mechanisms

The Competition Act, 2010 empowers the CCP to impose fines of up to 10% of annual turnover or PKR 75 million for anti-competitive mergers, with additional daily penalties for non-compliance.[56] However, enforcement often falls short of these limits. For instance, in 2024–2025, the CCP imposed Rs275 million in fines across 73 cases but recovered only Rs100 million, reflecting challenges in enforcing penalties fully.[57] While the CCP has streamlined its legal team to expedite proceedings, fines are frequently reduced or stayed through judicial appeals, undermining deterrence. For example, in mergers involving politically connected entities, penalties are rarely applied at maximum levels, and Phase 2 reviews often conclude without sanctions. This leniency emboldens firms to bypass merger notifications, as seen in sectors like pharmaceuticals and telecommunications, where non-compliance remains widespread despite CCP scrutiny.[58]

Low Public Awareness: Regulatory Advocacy Gaps

Many businesses, particularly small and medium enterprises (SMEs), remain unaware of merger control obligations under the Competition (Merger Control) Regulations, 2016. CCP's advocacy efforts, such as issuing guidelines on retail price maintenance (RPM) and deceptive marketing, have had limited reach.[59] For example, CCP's whistleblower reward program (2025) incentivizes reporting of anti-competitive practices, but low participation suggests poor awareness among stakeholders.[60] Similarly, mandatory pre-merger notifications are often ignored due to misconceptions about thresholds, especially in cross-border transactions. The Norton Rose Fulbright Report (2025) highlights jurisdictional uncertainty in Pakistan's merger control, where firms struggle to determine if their transactions meet criteria like "indirect effects" on local markets.[61] This confusion is exacerbated by insufficient outreach to informal sectors, which account for 40% of Pakistan's GDP and often evade oversight entirely.[62]

Conclusion

In conclusion, the enforcement of merger control in Pakistan is hindered by a combination of

[55] The Impact of Pakistan's Informal Economy on Its Overall Economic Development' Modern Diplomacy (2 May 2023) https://moderndiplomacy.eu/2023/05/02/the-impact-of-pakistans-informal-economy-on-its-overall-economic-development/ accessed 25 April 2025.

[56] Commission Proceedings' Competition Commission of Pakistan https://cc.gov.pk/home/commission_proceedings accessed 25 April 2025.

[57] CCP Resolves 73 Cases, Imposes Rs275 Million in Penalties Last Year' Profit by Pakistan Today (Islamabad, 18 March 2025) https://profit.pakistantoday.com.pk/2025/03/18/ccp-resolves-73-cases-imposes-rs275-million-in-penalties-last-year/ accessed 25 April 2025.

[58] Govt to Extend Measures for Controlling Inflation' Business Recorder (Karachi, 18 January 2023) https://www.brecorder.com/news/amp/3678656 accessed 25 April 2025.

[59] CCP Terms Retail Price Maintenance Anti-Competition' The News (Karachi, 10 April 2023) https://www.thenews.com.pk/print/1007077-ccp-terms-retail-price-maintenance-anti-competition accessed 25 April 2025.

[60] CCP Resolves 73 Cases, Imposes Rs275 Million in Penalties Last Year' Profit by Pakistan Today (Islamabad, 18 March 2025) https://profit.pakistantoday.com.pk/2025/03/18/ccp-resolves-73-cases-imposes-rs275-million-in-penalties-last-year/ accessed 25 April 2025.

[61] Merger Control and Jurisdictional Creep' Norton Rose Fulbright (Karachi, 2 June 2023) https://www.nortonrosefulbright.com/en-pk/knowledge/publications/502bc473/merger-control-and- jurisdictional-creep accessed 25 April 2025.

[62] Govt to Extend Measures for Controlling Inflation' Business Recorder (Karachi, 18 January 2023) https://www.brecorder.com/news/amp/3678656 accessed 25 April 2025.

institutional weaknesses, legal ambiguities, political and corporate interference, structural market barriers, and low compliance awareness. These challenges reduce the CCP's capacity to protect competitive markets and guarantee consumer protection. Addressing them requires comprehensive policy reforms, including enhanced financial and technical capacity, clearer legal frameworks, greater autonomy from political influence, and robust public awareness initiatives. Strengthening the CCP through these measures is essential to promote fair competition, attract responsible investment, and support sustainable economic growth in Pakistan.

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