

An interview with Joseph Wilson

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Joseph Wilson is a commissioner at Pakistan's Competition Commission. Emily Gray spoke to him about the challenges of enforcing and promoting effective competition in Pakistan.



Joseph Wilson

What is your role and background?

When I did my PhD in 2002, my thesis was on merger control laws. I was fortunate to work with Bill Kovacic and Richard Janda who were my supervisors at McGill University in Montreal. In 2004, I went back to Pakistan and taught various law courses at the Lahore University of Management Sciences. During this time, Pakistan was working on formulating a new competition law. The World Bank approached me in 2006 to help as a consultant on the drafting of the new law. When the law was passed in October 2007, the chairman of what was then the Monopoly Control Authority asked if I was willing to join the new Competition Commission. I accepted and joined as a commissioner in December 2007.

Does competition have a high profile in Pakistan?

It has a much higher profile now than in the past. Before the competition law passed, we had a monopoly control law passed in 1970. It was under the remit of a somewhat dormant agency and the law wasn't enforced at all for various reasons. Since the new law was enacted, we have been quite active and successful in raising the importance of competition in the country, given our relative youth and the

number of officials and resources we have. We have handled a number of material cases in the first year of our existence. For example, we took action against the cement cartel. We have also handled a number of cases dealing with professionals, ranging from chartered accountants to stock exchanges, banks and universities.

What challenges have you faced?

The biggest challenge was that for the first year, the government didn't give any money to the commission. The law said that there would be some percentage of funds that the commission should receive from all regulators. The legislation from the government about how to receive the funds and at what percentage wasn't set until December 2008, one year after the commission came into existence. So our main constraint for the first year was that there were no funds for operations and activities. The commissioners didn't know what their salary would be. That caused a sense of uncertainty. But recently the government took decisions on pending matters and things are much better.

What accounted for that resistance from the government? Did they prioritise other areas?

It's hard to say what it was. A new government had come into office, the global financial crisis had its impact on the economy, the security situation...I'm not sure exactly what it was. Suffice to say, the government had its hands full.

Has the political upheaval in Pakistan affected competition policy?

Yes, but even without that, there is a sheer lack of a "competition culture". Talking to one's competitors is the norm. For example, in the banking case, several banks agreed under the aegis of the Pakistan Banking Association to set the interest rate at a certain percentage, which is an obvious cartel violation. Changing that mindset was one of the greatest challenges. Similarly, the newspaper association also agreed to set prices, which again showed a lack of understanding of competition law.

So people are simply not aware that these laws exist?

I would say so. Some are not aware and some are just reluctant to follow the rules. For example, with mergers, we have a mandatory filing regime and those who meet the notification thresholds have to comply, but the parties don't want to pay the fee

and stridently try not to. Sometimes they'll even abandon the merger or acquisition so they don't have to pay the fee.

Have you ever blocked a merger or imposed conditions on a deal?

To date, one merger has gone to second phase, but none have been blocked or had conditions imposed.

Do you take into account anything other than competition considerations when issuing a decision, such as public interest concerns or the views of other regulators?

Formally, they are not a part of the decision-making process but as a courtesy we do take into account the remit of other regulators. The remit of the Competition Commission is quite broad, because we can regulate any undertaking and the word "undertaking" is defined to include any governmental body as well. So other regulators are also undertakings that we can review under our mandate. As to the public interest concerns, the commission has taken a view that ensuring competitive markets is in itself a public interest.

Does the government have any influence on the cases that you take? Can the government override your decisions?

No. There is no formal place for the government to intervene in the agency. We have an investigative team, which looks into the case and decides whether there is a violation of the competition provisions, and if so, a single member of the commission hears that case. That decision can then be appealed to an appellate bench of the Competition Commission, which is composed of no less than two members of the commission, not including the one who was originally reviewing the case. From there, if a party still wants to appeal against a decision, they can go before the Supreme Court of Pakistan.

How many members of the commission are there?

The law states that we must have a minimum of five, and a maximum of seven. Right now, we have five members. No more than two members can be from the government. At present we have one person from the government and the rest are from the private sector.

How does the structure of the commission work?

There is a separation of duties and responsibilities. The chairman is responsible for the administration of the commission - more of a managerial position - but he also oversees all of the different departments. Then we have four members and each of them is responsible for a different area: legal, cartels and mergers, advocacy and research, and trade abuses, such as abuse of dominance and prohibited agreements.

How do you set your priorities?

Our enforcement priorities are determined by complaints from companies. Once we receive a complaint, we are duty bound to look at it. We can use our discretion to decide how many resources we will devote to it. Then, if we come across a case like the Pakistan banking case where the information is in the public domain, we can initiate proceedings. We can also act on anonymous information about competition concerns and launch an inquiry. That's the enforcement side.

Then on the other side, we research different markets and industries to see what the state of the competition is. We have decided to initiate at least 12 studies, depending on the funding, looking into aviation, energy, and financial services and then, down the list we have fertilisers, the water market and the automotive industry. These are the priorities for research. The research will then highlight any competition concerns and we can take appropriate corrective actions within our mandate.

Do you have a leniency policy?

Yes.

Has that brought in a lot of cases?

I don't remember if anyone has sought leniency so far, but yes we have a programme in place.

Are companies afraid of the consequences of non-compliance?

Initially, lawyers gave the impression to their clients that the law was unconstitutional and they didn't have to worry about it. But now more cases are being adjudicated and people are seeing the commission in action, with the result that people are

becoming more and more concerned and increasingly compliant with competition law.

How is Pakistan's competition regime likely to evolve?

We have an important case against the Institute of Chartered Accountants, which is accused of fixing the minimum fee for audit services. That case is before the Supreme Court of Pakistan. It has gone through the regular channels and a lot will now depend on the outcome of that case. I am hopeful that the court will uphold the case. If the Supreme Court upholds the decision, then that will send a very strong signal to the business community in Pakistan to comply with competition law. That will strengthen the commission and enlarge the role of the commission, so in years to come, I think the commission will become more active, with more cases, and take on dominant companies.

Right now, rivals are afraid of the dominant companies. They are not sure that the commission can take effective action. Once the parties know that it can, I think it will bring all kinds of cases and the "competition culture" will evolve.

What enforcement tools would you like, to make life easier for you?

The most important thing is human resources, people who are conversant in competition law and economics. What lack funds to get them training, and capacity building, but I hope that competition will become more familiar to the public.

What's the highest fine you've ever imposed?

So far, the highest fine we've imposed was against the Pakistan Banking Association and the seven banks involved. Each was fined 25 million rupees (€375,000), and the Pakistan Banking Association was fined 30 million (€450,000). After that large penalty, we have deliberately kept the fines low to show people that we are not just here to impose fines, we are here to solve the country's competition problems, such as in the matter of the stock exchanges. That was a cartel case in which the value of the stocks were coming down, and many executives had invested personally in the stocks, so they decided that the stocks could not come any further down in price and agreed to essentially set a minimum price. The Competition Commission initiated proceedings and condemned the action by the stock exchanges, but imposed a nominal penalty.

Are there any other competition agencies you particularly admire or have exchange programmes with?

We don't have any exchange programmes right now. Our law is modelled on the Treaty of Rome, so the European Commission is an agency that we watch very closely and we'd like to have exchange programmes with them - we're trying! We also follow the US Federal Trade Commission and Department of Justice's antitrust division. But we'd like to set up a forum for developing countries in our region as well, as there are some issues peculiar to developing countries that are more applicable to us than what's happening in the developed world. The message that I'd like to give to the international community is that we are out there, working hard, although we are very young. We would like to have exchange programmes with mature competition agencies for mutual benefit!

Thank you