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Financial Penalties in Competition Law Enforcement under the Competition Act 2010

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Abstract

Financial penalties for competition violations not only play a significant role in raising awareness of competition law and promoting a culture of compliance but also serve as a mechanism to prevent anti-competitive behavior. The article has assessed the state of competition law enforcement in Pakistan through financial penalties under the Competition Act 2010. The article employs the relevant European Union competition rules as a benchmark for comparison. Despite certain similarities, significant differences exist in the legal systems, approaches, and enforcement procedures of both jurisdictions. The article highlights the potential areas for improvement, notably the need to revise the Competition Commission of Pakistan's guidelines to incorporate a specific methodology for determining the amount of fines and strengthening its enforcement powers by introducing the provision to impose periodic penalty payments. The inclusion of such measures would not only enhance compliance with the Competition Commission of Pakistan's imposed obligations but also improve the transparency and impartiality of its decisions concerning the determination of fine amounts.

Keywords: Financial Penalties, State of Competition, Compliance, Amount of Fine, Periodic Penalty Payment, Enforcement Procedure

Introduction

Competition law and policy only produce the desired effects if they are effectively implemented. Effective competition law enforcement entails, *inter alia*, appropriate penalties and remedies. Competition laws worldwide empower the principal regulatory authority in competition matters to impose fines on law violators. Fines should not only seek specific deterrence objectives to penalize the undertakings concerned but also pursue general deterrent effects to prevent other undertakings from participating in/continuing the prohibited activities. The benefits of imposing fines also include raising awareness of competition rules among undertakings and enhancing their moral commitment to respect those rules. In this sense, the importance of building a competition culture and the role of penalties in encouraging compliance with the Competition Act 2010 (CA 2010) is significant. Anti-competitive activity under the CA 2010 is a civil/administrative offense. The penalties under CA 2010 are applicable to both substantive competition law infringements and non-compliance with procedural rules. An "undertaking-focused penalties" model is the salient feature of competition enforcement (Fatima, 2023). The penalties apply to both companies engaged in anti-competitive conduct and individuals, provided the individuals are acting as undertakings.

The article assesses the state of competition law enforcement in Pakistan, with a focus on financial penalties under the Competition Act 2010. In this regard, the article employs the relevant European Union competition rules as a benchmark for comparison. The article intends to address the following questions: What are the legal frameworks and methodologies for setting financial penalties under the

Competition Act 2010? How do financial penalties for competition law violations impact the behavior of undertakings in the context of the Competition Act 2010? How has the enforcement of competition law evolved over time in Pakistan, particularly in terms of financial penalties and the methodologies used to determine them? What can be learned from the experience of the European Commission in improving penalties structure and how could these lessons reshape the competition law enforcement in Pakistan?

The Competition Authority's Power to Impose Penalties

Penalties for Procedural Breaches

Under the CA 2010, a "failure to comply with procedural obligations" constitutes a "civil and administrative offense". The Competition Commission of Pakistan (CCP) may "impose fines" in such cases. These penalties are imposed on undertakings, defined as "any natural or legal person, governmental body (including regulatory authorities), body corporate, partnership, association, trust, or any other entity involved, directly or indirectly, in the production, supply, distribution of goods, or the provision and control of services. This definition also encompasses associations of undertakings" (CA, 2010: § 2(q)).

The CA 2010 outlines specific grounds that empower the CCP to impose penalties for procedural breaches. The criteria for determining sanctions are as follows: failure of an undertaking to provide the "required documents/information" under the CA 2010 or as "demanded by the CCP"; an undertaking providing information or making statements that it "knows or has reason to believe" are false, or the CCP found the information "inaccurate or false"; an undertaking "interfering with, impeding, endangering, or obstructing" the CCP's processes in any manner (CA, 2010: § 38 (1)). CA 2010 specifies a maximum fine in case of non-compliance with the CCP's order/notice/requisition. The maximum amount of up to PKR "one million" may be imposed in such cases. For intentionally abusing, interfering with/obstructing/endangering the process of the CCP, in any manner, a maximum amount of PKR one million may be imposed (CA, 2010: § 38 (2) (b) (c)). Should the breach of a CCP order persist, the CCP has the authority to direct the relevant undertaking to pay an additional penalty, which could amount to a "maximum of PKR one million" for each day following the initial violation (CA, 2010: § 38(3)).

Similarly, in the European Union (EU), Regulation 1/2003 establishes a model of civil penalties centered on undertakings (Regulation 1, 2003: Art: 23 (5)). It applies exclusively to companies engaged in anticompetitive conduct and does not extend to individuals (Regulation 1, 2003: Art: 23 (1)(2)). Wills reiterated this point, emphasizing that Regulation 1/2003 exclusively prescribes "fines for undertakings", with no provisions for imposing fines on individuals for "refusal to answer or for providing incorrect, incomplete, or misleading answers" (Wills, 2008:167). For instance, the European Commission penalized "Suez Environment and Lyonnaise des Eaux €8 million" for tampering with a "seal during an inspection" (European Commission, IP/11/632, 2011). Similarly, in the "*E. ON Energie AG*" case, the Commission levied a "fine of €38 million" for breaching a seal (Case COMP/B-1/39.326, 2008: Artt: 1-2).

"Article 23(1) of Regulation 1/2003" permits the European Commission to inflict a maximum fine of "1% of the total turnover" in the previous financial year on an undertaking that responded to a request/decision of the European Commission by providing, whether knowingly or negligently, "incorrect, incomplete, or misleading information". A similar maximum fine may be imposed in case of failure to rectify the inaccurate, inadequate, or misleading information within a specified time limit. Additionally, presenting incomplete "business-related books or records" during inspections, "refusing to comply" with the Commission's "inspections Orders", and "breaching the seals" affixed by the Commission's authorized officials during an inspection can also result in such penalties. Fines

are imposed in cases when the staff of the concerned undertaking provides an "incorrect or misleading" answer to a question during an inspection, and that information is not rectified within a specified time limit. Fines are also imposed when there is a failure or refusal to "provide a complete answer" regarding relevant facts to fulfill the purpose of the European Commission's inspection (Regulation 1, 2003: Art: 23 (1)).

The European Commission, under Regulation 1/2003, is authorized to impose periodic penalty payments in certain cases. For example, when the Commission formally "requests information" and obliges undertakings to "submit to an inspection", it may compel compliance by imposing periodic penalties. The maximum amount for these penalties is set at "5% of the undertaking's average daily turnover" (Regulation 1, 2003: Art: 24 (1)(d)(e)). However, the authority to impose fines or periodic penalties is subject to a limitation period that varies depending on the type of infringement. For example, for breaches, like "non-compliance" with the Commission's "request for information" and obstructing inspections, the limitation period is three years (Regulation 1, 2003: Art: 25 (1)).

Both the CCP and the European Commission have the authority to impose penalties for procedural breaches. CA 2010 and Regulation 1/2003 provide similar frameworks and outline the circumstances under which these penalties can be imposed. However, the European Commission has additional power under Regulation 1/2003 to impose periodic penalty payments to compel undertakings to fulfill its orders. In Pakistan, CA 2010 and General Enforcement Regulations 2007 lack provisions for such penalties. Instead, CA 2010 elucidates that failure to comply with a CCP's order is a criminal offense punishable by imprisonment (CA, 2010: § 38 (5), read with General Enforcement Regulations 2007, Regulation 38 (6)). As mentioned elsewhere, there has been no official record of any individual being subjected to a sentence as of the year 2023 (Fatima, 2023).

Penalties for Substantive Breaches

As previously mentioned, under CA 2010, anti-competitive activities are considered civil and administrative offenses, and penalties imposed on parties concerned are administered through civil procedures. If an undertaking's participation in anti-competitive is established, the CCP is authorized to impose penalties based on the specific facts and circumstances of the case.

The fines may be determined keeping in view various factors, as outlined in the "*Guidelines on Imposition of Financial Penalties*" (Fining Guidelines). The first factor considered by the CCP is the "seriousness of the infringement". During the assessment, the CCP considers a number of related factors, including the "nature of the product, market structure, and conditions" in the market, the "market share" of the involved undertaking, accessibility to the markets, impact on "competitors and third parties", as well as the "direct/indirect" impact on the market. The second factor entails the period of an infringement. The third factor pertains to the existence of aggravating circumstances associated with the infringement. The latter may include the undertaking's role as a "leader"/initiator of violation, participation of directors/senior management, measures against other undertakings to ensure the continuation of the violation, and continuity of the breach after the commencement of the investigation. The fourth factor is the presence of mitigating circumstances related to the infringement. These circumstances may include the undertaking's uncertainty to determine if the activity falls within the purview of law, the existence of "duress or pressure" to act, and the "deterrent value" of the infringement. (CCP, Fining Guidelines: points 4-8). The guidelines emphasize that the purpose of imposing a financial penalty is to achieve the goal of deterring anti-competitive practices and reflecting the "seriousness of the infringement" (CCP, Fining Guidelines: point 3). These guidelines highlight additional relevant circumstances that can impact the basic amount of the penalty. For example, the economic/financial benefit gained by the concerned undertaking due to the violation and the involved undertaking's decision not to contest the CCP's assertions. (CCP, Fining Guidelines: point 9).

The guidelines do not specify the CCP's methodology for calculating the basic fine amount. However, the maximum penalty for a contravention related to anti-competitive activities is either "PKR 75 million or 10% of the undertaking's annual turnover" (CA, 2010: § 38(2)(a)). The rate of penalties has been revised under CA 2010. Previously, under MRTPO 70, it was "PKR 50 million for businesses whose annual turnover could not be determined". For businesses with a "determinable annual turnover", the penalty rate was "15% of the turnover" of the concerned undertaking in the previous fiscal year.

In 2014-2015, the CCP initiated 10 inquiries on cartels and trade abuses, granted 24 exemptions to undertakings, allowed 16 pre-merger applications, and convened 14 hearings/public hearings (CCP-Press Release, 2015). Qureshi states that since 2007 (till 2015), total financial penalties of over PKR 26 billion were imposed on undertakings for various competition law breaches. The rationale behind financial liabilities was "consumer protection" and restoration of "free competition" in the economy (Qureshi, 2015). In 2016 (till April, self-calculated statistics), the CCP imposed total penalties of PKR 150 million on undertakings for various infringements of CA 2010. The "Audit Report of the Auditor General of Pakistan" 2014-15 states that the CCP failed to fully recover the penalties imposed on undertakings for violation of the law (Abrar, 2015). The report recommended that "rigorous efforts should be made for recovery of the outstanding amount". In 2019, the CCP imposed a PKR 75 million fine on the "Pakistan Flour Mills Association" over Price Fixing. (CCP-Annual Report, 2020:20) In 2021-2022, the CCP conducted around 20 searches and inspections, concluded 37 inquiries, initiated 38 new inquiries, issued 15 orders, and imposed a total of approximately PKR 45 billion in fines on 134 undertakings (CCP-Press Release, 2022).

In the EU, comprehensive details are outlined in Regulation 1/2003. Regulation 1/2003 specifies that financial penalties may be imposed on an entity that deliberately or recklessly infringes Article 101(1) TFEU, disregards an order for interim measures, and fails to fulfill a binding commitment (Regulation 1, 2003: Art: 23 (2); Bosch, 2014:53-62; Geradin a.o., 2013:328-361). When a fine is imposed on an insolvent association of undertakings, Article 23 (4) of Regulation 1/2003 stipulates that such an association is required to "seek contributions" from its members to settle the fine. In case of default, the fine can be imposed on the "members themselves" (Regulation 1, 2003:Art: 23 (4)).

A maximum fine of "10% of the total turnover" of the undertaking concerned in the previous fiscal year (Regulation 1, 2003: Art: 23 (2)). The General Court, in "*Tokai Carbon Co. Ltd, Intech EDM BV, Intech EDM AG, and SGL Carbon AG v Commission*", highlighted the goal pursued by the induction of the "10% ceiling", referring to the preceding fiscal year from the date of the decision to impose the fine and stated that the "ceiling aims *inter alia* to protect undertakings against excessive fines which could destroy them commercially". Hence, it is reasonable that the limit pertains not to the duration of the infringements penalized, which could occur years before the fine is imposed, but rather to a timeframe nearer to the date of the fine (Joined Cases T-71/03, 2005: para 389). The Commission is required to adjust fines imposed on undertakings if the fine amount "exceeds 10% of their total turnover" in the previous financial year. For example, in the "*Sodium Chlorate*" case, the fines imposed on "Finnish Chemicals Oy and Erikem Luxembourg SA (ELSA)" exceeded 10% of their respective total turnovers for the preceding year (i.e., 2007). Therefore, the Commission adjusted the fines in line with Article 23(2) of Regulation 1/2003 (Case 38.695, 2008: paras 550-551). The "Commission's Cartel Statistics" from 2006 to 2021 (till 31 December 2021) show that the fines on 25 out of 471 (including immunity applicants) undertakings penalized for disregarding Article 101 TFEU denoted 9-10% of their "worldwide turnover" (European Cartel Statistics, Figure 1.16).

The European Commission considers the "gravity and the duration" of the breach in setting the quantum of the fine. (Regulation 1, 2003: Art: 23 (3)). The Court of Justice, in "*Musique Diffusion française and others v Commission*", stated that the Commission considers, among other factors, the "size and economic power" of the undertaking concerned when calculating the fine (Joined Cases

100/80, 1983: paras 119-121). The "*Guidelines on the Method of Setting Fines*" state that "reference to these factors provides a good indication of the order of magnitude of the fine and should not be regarded as the basis for an automatic and arithmetical calculation method" (EC, Guidelines on Setting Fines, 2006: point 6).

The Commission has significant discretion, as regulated by Regulation 1/2003, in setting the level of the fines (Regulation 1, 2003: Art: 23 (2), (3)). This discretion is endorsed by the EU Courts (Joined Cases C-189/02 P, 2005: para 172). However, in 1998, the Commission published guidelines regarding its fine-setting methodology, namely, the "*Guidelines on the Method of Setting Fines*" (EC, Guidelines on Setting Fines, 2006: point 3). In 2006, new guidelines were introduced, based on the Commission's experience in implementing those guidelines, replacing the previous guidelines (EC, Guidelines on Setting Fines, 2006). The principles set out in the Guidelines assist the Commission in exercising its discretion to decide the amount of fine. These Guidelines strengthen "transparency and impartiality" in determining the level of the fine. A two-step methodology is presented therein for setting fines, which involves the determination of the "basic amount of the fine and adjustments" of that amount. The Guidelines specify the methodology to determine the "basic amount of the fine" and various relevant circumstances that result in raising or lowering the basic amount. In deciding the basic amount of the fine, the undertaking's "sales value" to which the infringement relates and the sales during the last fiscal year are considered (EC, Guidelines on Setting Fines, 2006: para 13). Defining the "relevant market is not required" for this specific purpose. The basic fine amount is determined in relation to a "proportion of the sales value", which varies depending on the severity of the contravention and is then "multiplied by the number of years" during which the infringement persisted (EC, Guidelines on Setting Fines, 2006: para 19). The "gravity of the infringement" is evaluated on a case-by-case basis, considering all pertinent circumstances (EC, Guidelines on Setting Fines, 2006: para 20).

As a general rule, the "proportion of the sales value" considered is set at a maximum of 30% of the total "sales value" (EC, Guidelines on Setting Fines, 2006: para 21). The value is generally set at the "higher end of the scale for hard-core cartel" breaches (EC, Guidelines on Setting Fines, 2006: para 23). The amount, calculated based on the sales value, is then multiplied by the number of years of participation in the infringement (EC, Guidelines on Setting Fines, 2006: para 24). Certain steps are designed to provide additional deterrence and have the potential to lead to significant fines. For instance, imposing an additional penalty "ranging from 15% to 25% of the sales value", added to the "basic amount" serves as both a corrective measure for involvement in a violation and a deterrent to discourage undertakings from participating in such practices (EC, Guidelines on Setting Fines, 2006: paras 7, 25). The Commission considers relevant circumstances that can result in an "increase or decrease of the basic amount of the fine". For instance, the basic amount may be increased when "aggravating circumstances" are present (EC, Guidelines on Setting Fines, 2006: Section 2(A)), such as a prior history of similar violations, refusal to cooperate, obstruction of the Commission's investigations, being the initiator or instigator of the violation, or coercing another undertaking into joining in the violation.

Mitigating circumstances may lead to a reduction in the "basic amount of fine" (EC, Guidelines on Setting Fines, 2006: Section 2(B)). For example, a reduction in the basic amount may occur in cases where the undertaking provides evidence that the infringement was terminated promptly after the Commission's intervention, the infringement was a result of negligence, the undertaking's involvement was "substantially limited", the company cooperated effectively with the Commission outside the scope of the Commission's leniency notice, or the infringement was "authorized or encouraged by public authorities or legislation"[i].

In each case, the Commission must ensure that fines have a sufficient deterrence effect on both the undertakings involved and other undertakings in similar positions to prevent future infringements

(EC, Guidelines on Setting Fines, 2006: Section 2(C)). The Court of Justice highlighted this principle in "*Musique Diffusion française and others v Commission*" (Joined Cases 100/80, 1983: paras105-106). The Court has repeatedly held that the need to "deter infringements" of competition rules is one of the factors considered when determining the level of fines. For instance, the Court, in "*Showa Denko KK v Commission*", highlighted this principle (Case C-289/04 P, 2006: para 16). In "*Archer Daniels Midland Co. and Archer Daniels Midland Ingredients Ltd v Commission*", it is established that the Commission has the authority to change its methodology for setting fines, including increasing fines when necessary to" deter infringements" and ensure "effective enforcement" of competition rules (Joined Cases 100/80, 1983: paras109; Case C-397/03 P, 2006: paras 21-22, 30).

The authority of the Commission to "impose fines" is subject to a "limitation period", which varies depending on the type of infringement. For example, in the case of substantive breaches, the "limitation period is five years" (Regulation 1, 2003: Art: 25 (1)). The limitation period usually begins on the day the infringement is committed (Regulation 1, 2003: Art: 25 (2)). The limitation period is considered "interrupted" if the Commission or a National Competition Authority takes any action related to an investigation or proceedings for an infringement and notifies the action to at least one undertaking concerned (Regulation 1, 2003: Art: 25 (3)). The period remains suspended as long as the Commission's decision is *sub judice* before the EU Courts (Regulation 1, 2003: Art: 25 (6)).

The limitation period for the "enforcement of penalties is 5 years" (Regulation 1, 2003: Art: 26) and begins from the date of the final decision (Regulation 1, 2003: Art: 26 (2)). This limitation period is interrupted when a decision regarding the variation/refusal to vary the original fine amount or periodic penalty payment is notified (Regulation 1, 2003: Art: 26 (3)(a)). Additionally, the limitation period is interrupted when the Commission takes action to enforce the payment of the fine or periodic penalty payment (Regulation 1, 2003: Art: 26 (3)(b)). The EU Courts review the Commission's decisions to "impose fines or periodic penalty payments" upon request.

In 2010, the Commission adopted 7 cartel decisions and imposed a total fine of over €3 billion upon 70 undertakings (Competition Policy report, 2011:16). In the period 2010-2014, the Commission, in cartel cases, imposed a total fine of almost € 7 917 218 674 (EC, Cartel Statistics: Figure 1.2). In 2015-2019, it imposed a total fine of € 8 274 222 000. In 2020-2013 (till October), the Commission imposed a total amount of fine of € 2 237 514 000 (EC, Cartel Statistics: Figure 1.2).

Challenges and Limitations

Both the CCP and the European Commission have the authority to "impose financial penalties" for violation of competition law and enjoy a wide margin of discretion. In Pakistan, the financial penalties recovered are credited to the "Public Account of the Federation" under Section 30 of CA 2010. The allocation of funds by the "Federal Government" is one of the main financial sources of the CCP. In contrast, in the EU, the amount received by way of fines and penalties for breaching competition rules is recorded as "EU budgetary revenue" (following the exhaustion of all remedies against the decision) (Regulation 966, 2012: Art:83). Based on the above discussion, certain similarities can be identified, such as the types of penalties and model followed in both jurisdictions. Despite these similarities, certain differences exist in the legal systems, approaches, and enforcement procedures of both jurisdictions. The CCP needs to take a few steps to enhance transparency, predictability, and efficiency in the implementation procedures.

Introducing a Methodology to Calculate the Basic Amount of Fine

The European Commission, in 1998, published "*Guidelines on the Method of Setting Fines*". It has sufficient experience to implement guidelines on methods for the setting of fines. On the basis of its experience, it initiated to develop further and refine its policy on fines. As a result, in September

2006, the Commission introduced revised "*Guidelines on the Method of Setting Fines*" which ensure the transparency and impartiality of the Commission's decisions to fix the amount of a fine.

Similar to the European Commission, the CCP introduced "*Guidelines on Imposition of Financial Penalties*" (Fining Guidelines) under the Competition Ordinance 2007, these guidelines remain valid under CA 2010. These Guidelines are illustrative in nature and not exhaustive. The Guidelines do not place a limit on the investigation and enforcement powers of the CCP. They specify factors for determining the basic fine amount and circumstances that can lead to an increase or decrease in that amount. The Guidelines do not serve as a substitute for CA 2010, the rules, regulations, and orders of the CCP. The CCP is not obligated to consider the financial position of an undertaking when setting fines (CCP, Fining Guidelines: point 9.3).

In contrast, the "European Commission Guidelines" provide a detailed methodology for setting fines for undertakings that have violated the law. Initially, the "basic amount" is determined, and adjustments are made to it. To calculate the basic amount, the Guidelines specify the method for determining the "value of sales" of the concerned undertaking (EC, Guidelines on Setting Fines, 2006: points 13-18) as well as the method for determining the "basic amount", which is based on the "value of sales", the "degree of gravity" of the contravention, and the "a number of years" of persistent violation (EC, Guidelines on Setting Fines, 2006: points 19-28). The next stage involves adjusting the basic fine amount that has been determined. The Guidelines explain the process highlighting the key factors for adjustments, including aggravating circumstances, mitigating circumstances, and the deterrence factor (EC, Guidelines on Setting Fines, 2006: points 28-30). The undertaking's inability to pay may be considered in specific "social and economic contexts" in exceptional cases (EC, Guidelines on Setting Fines, 2006: point 36).

While the CCP's "*Guidelines on Imposition of Financial Penalties*" do not specify the methodology for calculating the "basic amount of the fine", they do provide details about the factors considered during the determination of the penalty amount (CCP, Fining Guidelines: point 4.1), such as the seriousness of the infringement, its duration, aggravating, mitigating factors and its deterrent value (CCP, Fining Guidelines: points 5-9). It is advisable that the CCP, based on its experience, consider revising its guidelines and incorporate a specific methodology for calculating the basic amount of the fine, by drawing inspiration from the European Commission's guidelines. This revision would enhance the transparency and impartiality of the CCP's decisions when determining fine amounts

Introducing Periodic Penalty Payments

Under CA 2010, the maximum penalty for a contravention related to anti-competitive conduct is fixed both for substantive and procedural breaches. CA 2010 grants the CCP the authority to impose a maximum penalty of "PKR 1 million" per day on undertakings that persist in violating the CCP's orders. CA 2010 lacks provisions for periodic penalties in cases of non-compliance with commitments made binding by the CCP, inadequate responses to formal requests for information, or refusal to submit to inspections.

Compliance with competition rules in the EU, as outlined in the "Treaty on the Functioning of the European Union" and Regulation 1/2003, can be enforced through fines and periodic penalties. Regulation 1/2003 establishes suitable fine levels for violations of both substantive and procedural rules. The Commission, under Regulation 1/2003, has the authority to impose periodic penalty payments on undertakings and associations of undertakings for various purposes related to violation of competition rules. These reasons include compelling an undertaking to end the violation, responding adequately to formal requests, submitting to an inspection, complying with decisions regarding interim measures, and complying with binding commitments.

The "*Glossary of Competition Terms*", provides a similar explanation in the following terms: "the Commission may by decision impose periodic penalty payments in order to compel an undertaking to stop an infringement of competition rules in accordance with an earlier decision". It further elaborates that "a daily amount is fixed which must be paid for each day the violation persists beyond the specified date in that decision. The Commission holds the same authority in cases where an undertaking or an association of undertakings declines to provide accurate and complete information as requested by a decision or to cooperate with an investigation ordered by a decision" (Institute of Competition Law, Antitrust Databases and Resources, *s.v* "Periodic penalty payment"). The procedure under Article 24 of Regulation 1/2003 consists of two stages. Firstly, the Commission adopts an "Article 24(1) decision under Regulation 1/2003", threatening to impose "periodic daily penalty payments" on an undertaking/association of undertakings if they continue to default beyond a specified date. Secondly, if the undertaking/association continues to default, the Commission, after consulting the "Advisory Committee", adopts an "Article 24(2) decision under Regulation 1/2003". This decision fixes the definitive amount of the "periodic penalty payment" and determines the "duration of non-compliance" with the Commission's decision. However, the Commission is authorized to impose a penalty that is lower in comparison to the original decision's amount.

It is recommended to supplement the CCP's enforcement powers by granting it the authority to impose "periodic penalty payments" on concerned undertakings. These penalties will not only guarantee adherence to CA 2010 but also the fulfillment of the obligations imposed by the CCP on undertakings.

Conclusion

Financial penalties for competition violations not only play a significant role in raising awareness of competition law and promoting a culture of compliance but also serve as a mechanism to prevent anti-competitive behavior. The article has assessed the state of competition law enforcement in Pakistan through financial penalties under CA 2010. The article employs the relevant EU competition rules as a benchmark for comparison. Under CA 2010, the CCP issued a set of illustrative guidelines. These guidelines fail to present a specific methodology for calculating the basic amount of fines. In contrast, the European Commission has well-established guidelines on the method of setting fines, which provide transparency and impartiality in determining financial penalties under Regulation 1/2003. Both jurisdictions consider various aggravating and mitigating circumstances in calculating the amount of fine. Despite the similarities, significant differences exist in their legal systems, approaches, and enforcement procedures. For instance, the use of periodic penalty payments in the EU and the varying maximum penalty limits. Additionally, the article highlights the potential areas for improvement, such as revising the CCP's guidelines to include a specific methodology and enhancing enforcement powers with the ability to impose periodic penalty payments. In conclusion, the effective enforcement of competition law through financial penalties is essential for maintaining fair and competitive markets. While Pakistan and the EU competition jurisdictions employ different methodologies, both share the same objective whereby deterring anti-competitive behavior remains at the core of their enforcement efforts. Addressing challenges and adopting best practices can enhance competition law enforcement in Pakistan.

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