

Industry Update: The Competition Act of Pakistan

During the fourth quarter of 2010, Pakistan enacted the Competition Act, 2010. The preamble of the Act states: “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.”

The Act applies to all undertakings and all actions or matters that take place in Pakistan and distort competition within the country. “Undertaking” encompasses natural or legal persons, government bodies, regulatory authorities, companies, partnerships and associations, trusts or any other bodies involved in production, supply or distribution of goods or services.

According to Mohammad Fazil Bharucha, partner at Bharucha & Co., various aspects of anti-competitive activity fall under the purview of the Act. “As for IP matters,” he said, “Section 10 of the Act deals with deceptive marketing practises and prohibits all undertakings from being involved in deceptive marketing practices.”

Mr. Bharucha said that distribution of false or misleading information – which is capable of affecting the business interest of another undertaking – as well as distribution of false or misleading information to consum-

ers related to price, character, method or place of production, properties, suitability for use or quality of goods, fall under the purview of deceptive marketing practise. False or misleading comparison of goods or fraudulent use of anyone else’s trademark, firm name or product labelling or packing is considered as deceptive marketing practice also.

As per the Act, any complaint constituting anti-comparative practise is to be lodged with the Commission, established under the Act, and has the same powers as those vested in a civil court under the Code of Civil Procedure, 1908. The Commission examines the complaint and conducts enquiry in relation thereto.

Mr. Bharucha added: “If it is satisfied that there has been a contravention of any of its provisions, it issues show cause notice to the undertaking against whom the complaint has been lodged. Upon receipt of response, the Commission fixes a hearing to give opportunity to both the parties to explain their position. During the proceeding, if the Commission deems necessary, an interim order in the interest of the public may be issued.”

He explained that upon conclusion of the proceeding, if the findings of the Commission are in favour of the complainant, the Commission may require the other party to take actions as specified in its order to restore the previous market conditions or confiscate, forfeit or destroy any goods having hazardous or harmful effect and may impose a penalty.

“Appeal from the order of the Commission, if passed by a single member of the Commission, lies to the Appellate Bench of the Commission,” said Mr. Bharucha. He concluded: “However appeal against the order of two or more Members of the Commission, or the Appellate Bench of the Commission, lies before the Competition Appellate Tribunal. Finally, appeal from the decision of the Competition Appellate Tribunal lies before the Supreme Court of Pakistan.”



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