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Analyzing Notions of Agreement, Collusion, and Concerted Practice: A Comparative Study of Pakistan's Competition Act 2010 and European Union Competition Rules

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A B S T R A C T

Cooperative activities among undertakings have the potential to disrupt fair competition, making it essential to delineate which agreements, practices, or arrangements fall under the purview of competition laws. This article aims to evaluate the existing provisions governing agreements and practices within the framework of the Competition Act 2010 (CA 2010) while drawing relevant comparisons with the provisions outlined in the Treaty on the Functioning of the European Union (TFEU). It endeavors to address specific questions and considerations. Firstly, it delves into the fundamental elements and definitions of agreements and practices as specified by the CA 2010. It then explores whether these provisions in CA 2010 align with or deviate from the corresponding articles within the TFEU, shedding light on potential convergences or divergences. Furthermore, this article examines whether there are notable resemblances or disparities between CA 2010 and TFEU in their definitions of agreements and practices related to competition. It scrutinizes the implications, if any, that arise from these disparities or similarities between CA 2010 and TFEU for undertakings operating within their respective jurisdictions. Finally, it highlights specific cases or instances, if any, where the interpretation of agreements and practices under CA 2010 significantly diverges from TFEU, potentially leading to legal challenges or uncertainties. Through this comprehensive analysis, the article aims to contribute to a nuanced understanding of competition laws in both Pakistan and the European Union contexts.

Keywords: Jurisdictions, Agreements, Practices, Competition Act 2010, Treaty on the Functioning of the European Union, Competition Law, Undertakings.

INTRODUCTION

Significance of Studying Competition Agreements and Practices

Not adhering to competition laws can lead to severe consequences. Undertakings operating globally should anticipate robust enforcement of competition rules resulting in substantial fines for breaches. Consequently, every business, regardless of its legal standing, size, or industry, must acquaint itself with the relevant competition laws to ensure compliance and prevent penalties. Collaborative actions among undertakings can disrupt fair competition. It is significant to comprehend which agreements, practices, or arrangements fall under the scope of competition laws.

RESEARCH OBJECTIVES, QUESTIONS, & METHODOLOGY

The objective of this article is to assess the current provisions delineating agreements and practices encompassed by the Competition Act 2010 (CA 2010) and to draw comparisons, where relevant, with the provisions outlined in the "Treaty on the Functioning of the European Union" (TFEU). In pursuit of this endeavor, the research delves into pertinent statutes, examines the enforcement practices of both the Competition Commission of Pakistan (CCP) and the European Commission, scrutinizes case law from European Union (EU) Courts that reviewed European Commission decisions, and analyzes relevant legal scholarship. The article intends to address the following questions: what

are the key elements and definitions of agreements and practices within the CA 2010? How do the provisions of CA 2010 align with or differ from the relevant sections of the TFEU? Are there any notable similarities or discrepancies between CA 2010 and TFEU in terms of defining competition-related agreements and practices? What implications, if any, do the differences or similarities between CA 2010 and TFEU have on undertakings operating within the respective jurisdictions? Are there specific cases or instances where the interpretation of agreements and practices under CA 2010 diverges significantly from TFEU, leading to potential legal challenges or ambiguities?

THE CONCEPT OF AGREEMENT, COLLUSION AND CONCERTED PRACTICE

Competition Act 2010

The term "agreement" as stipulated in Section 4 of CA 2010 is characterized by its broad and comprehensive scope. Section 2(1)(b) of CA 2010 furnishes a definition of "agreement" that encompasses a range of forms, including arrangements, understandings, or practices. This definition explicitly states that "agreement" includes any form of arrangement, understanding, or practice, regardless of whether it is documented in writing or intended to be legally binding (CA, 2010: § 2(1) (b); Guidelines: Section 4, 2016). The CCP scrutinized the standard dictionary definition of the term "arrangement", which is described as: "the action or process of organizing", or how an object or concept is organized or structured (Pakistan Banking Association Order, 2008:30). The term "understanding" refers to an agreement that is implicit or tacit. On the other hand, the term "practice" implies the repetitive occurrence of specific events (Pakistan Banking Association Order, 2008:30). In the case of Pakistan Jute Mills Association and Members Mills, the CCP made it clear that the broad scope of the definition implies that an agreement can manifest in diverse formats and is not obligated to adhere to the typical concept of a standardized, written, legally binding instrument (Pakistan Jute Mills Association Order, 2011: 12). Consequently, there is no mandate for the agreement to be documented in writing, and formalities are dispensable. Moreover, contractual penalties or enforcement mechanisms need not be present. The agreement can manifest either explicitly or implicitly through the conduct of the involved parties (Guidelines: Section 4, 2016).

CA 2010, therefore, assents that the CCP can take cognizance of an unwritten collusive arrangement because it falls within the definition of an 'agreement'. The cartel arrangements are typically established through verbal communication among cartel members, often during informal gatherings or meetings. Occasionally, members implicitly consent to designate one of them as a price leader, with the rest adhering to the pricing set by the designated leader (Dibadj, 2010:590). Hence, the presence of a written agreement is unnecessary to establish a violation (Van Bael, 2011:20). In the case of Dredging Companies, the CCP elucidated that often, there is minimal or even no direct evidence explicitly demonstrating illicit communication between businesses, such as comprehensive meeting records, which are typically incomplete and scarce. The CCP referred to the ruling of the European Court of Justice (ECJ) in Aalborg Portland and Others v Commission and concurred with the perspective endorsed by the ECJ. The ECJ established that "in the majority of instances, the presence of an anti-competitive practice or agreement should be deduced from various coinciding factors and indications that, when considered collectively, may, when no other plausible explanation is available, serve as evidence of a violation of competition rules" (Aalborg Portland Case, 2004: paras 55,57). This also implies that when the agreements or understandings prima facie indicate that their "object or effect is to restrict competition", they come within the scope of CA 2010.

In Dredging Companies, the CCP referenced the principle highlighted in Commission v Anic Partecipazioni SpA, (Anic Partecipazioni Case, 1999: para 81) which underscores that an "agreement" can encompass not only a solitary action but also a series of actions or a pattern of behavior (Dredging Companies Order, 2010:31). In the case of Pakistan Jute Mills Association and Members Mills, the CCP affirmed that a practice that endures over a specific duration within a particular market or industry meets the criteria for being regarded as an "agreement" as per Section 2(1)(b) of CA 2010. Such an agreement is subject to examination by the CCP. In Dredging Companies, it also referred to the principle elucidated in Hercules Chemicals v Commission, (Hercules Chemicals Case, 1991: para 256) which suggests that conduct can be deemed a concerted practice even when the involved parties have not expressly agreed to a "common plan" outlining their actions in the market. Instead, they knowingly adopt or conform to collusive methods that

enable the coordination of their business conduct (Dredging Companies Order, 2010: 32).

The burden of proving a "concerted practice" case falls upon the CCP. In the case of the All-Pakistan Cement Manufacturers Association, the CCP affirmed that this principle extends to the actions of an association of undertakings that deviate from the typical market conditions. The CCP emphasized that "any action taken by an association of undertakings, which signifies an agreement among its members, becomes an "agreement" between the association and the member when the member acts by it" (Pakistan Cement Manufacturers Order, 2009: 48-49).

Such collusive conduct not only fosters market inefficiencies but is also elucidated by the CCP. The CCP clarifies that "to establish an anti-competitive decision by an association, there is no requirement to demonstrate a sequence of individual decisions regarding prices or rates when the method for determining these prices or rates is evident. The presence of a mechanism, formula, or target price suffices as evidence of a price-fixing decision" (Pakistan Poultry Association Order, 2010: 26-27; Pakistan Cement Manufacturers Order, 2009: 57). In the case involving the All-Pakistan Cement Manufacturer Association (APCMA), the CCP addressed the same issue and cited the Austrian banks - Lombard's Club case as an example. In this instance, the European Commission noted that undertakings do not need to reach a precise price-fixing agreement. A cartel can exist even if there is only a conversation about target values or ideal prices among competing undertakings (Lombard Club Case, 2004: para 412).

The Treaty on the Functioning of the European Union

The European Commission has elucidated the term "agreement" as follows: an agreement, as per Article 101(1) TFEU, can be regarded as existing "when the undertakings have clearly indicated their intent to conduct themselves in the market according to a shared strategy, either by defining the parameters of their collective actions or by refraining from specific actions in the market that subsequently restricts or tends to restrict competition among them" (Zinc phosphate Case, 2003: para 196). This reflects that the notion of an "agreement" under Article 101(1) TFEU does not necessitate participants to have pre-established a "comprehensive common plan". Instead, it encompasses "incipient understandings and partial, as well as conditional agreements within the negotiation phase", which ultimately lead to the formation of a "conclusive agreement" (Graphite electrodes Case, 2002: para 105; Nitrile Butadiene Rubber Case, 2008: para 101). The term "agreement" encompasses not only written and legally binding agreements but also extends to informal arrangements and gentlemen's agreements, (ACF Chemiefarma Case, 1970; Toshiba Corporation, 2016: para 23) oral agreements, (Tepae Case, 1978: para 41) and to simple understandings, (Stichting Sigaretten industrie Case, 1982) regardless of whether they possess legal enforceability or if there exists any mechanism for enforcing violations (Soda-ash Case, 1991; Van Bael, 2011: 20; Whish, 2007: 8; Faul et. Al, 2014: 204). A similar interpretation is evident in numerous judgments of the European Courts (Limburgse Vinyl Maatschappij NV Case, 1999: para 715; ACF Chemiefarma Case, 1970: para 112; Sandoz Prodotti Farmaceutici Case, 1990: para 13; Bayer Case, 2000: paras 67, 173; Van Bael, 2011: 20). The assertion is made that "for an agreement to exist, it is enough for at least two undertakings to have jointly indicated their intent to behave in a particular manner within the market" (Bayer Case, 2000: para 67; ACF Chemiefarma Case, 1970: para 112; Heintz van Landewyck Case, 1980: para 86; Hercules Chemicals Case, 1991: para 256; Van Themaat, 2014: 50). As previously mentioned, the mode through which this joint intent is communicated, whether orally or in writing, is inconsequential. Undertakings cannot excuse a breach of competition rules by asserting that they were compelled into an agreement due to the actions of other traders (Cimenteries CBR Case, 2000:2557). If an undertaking has been coerced into an agreement against its will, the European Commission duly considers this situation, which could influence a decision to reduce the imposed fine, (Wood pulp Case, 1985: para 131) or not to impose a fine (Toyco Case, 1988: para 26) or not to institute proceedings (Wendt, 2012:198). The acknowledgment by one undertaking of the existence of an agreement and its admission as a participating party in it does not prevent other parties from contesting the existence of the same agreement, as all parties have the right to contest the facts before the Court (CD-Contact Data GmbH Case, 2009: para 51).

"Concerted practices" occur when the involved parties substitute actual competition with practical collaboration among themselves, mitigating the inherent competitive risks (Imperial Chemical Industries Case, 1972: para 64).

The notion of a "concerted practice" lacks all the fundamental elements of a formal contract but can, among other things, emerge from coordination that becomes evident through the "conduct of the participants" (Imperial Chemical Industries Case, 1972: para 65). It can also be described as a type of "coordination among undertakings that, without reaching the point of a formally concluded agreement, deliberately replaces competitive risks with practical collaboration" (Anic Partecipazioni Case, 1999: para 115; Hüls Case, 1999: para 158; Van Bael, 2011: 20). Whish highlights those actions undertaken by trade associations, which deviate from the typical market conditions, such as establishing rules for their members or issuing recommendations, are also subject to rules against anti-competitive agreements (Whish, 2007: 8).

By established case law, the terms "agreement" and "concerted practice" as defined in Article 101(1) TFEU are designed to categorize "types of collusion that share the same nature and are only differentiated by their degree of intensity and how they become evident" (Anic Partecipazioni Case, 1999: para 131; HFB Holding Case, 2002: para 120). Case law underscores that within the framework of a "complex violation that spans multiple years and involves numerous producers attempting to control the market among themselves", it is unrealistic to anticipate the European Commission to precisely categorize the infringement as either an agreement or a concerted practice, as both types of infringements fall within the scope of Article 101 TFEU in such cases (Anic Partecipazioni Case, 1999: para 111-114; Limburgse Vinyl Maatschappij Case, 1999: para 696). The Commission has affirmed that agreements and concerted practices are conceptually separate, yet situations can arise where collusion exhibits certain characteristics associated with both forms of prohibited cooperation (Polypropylene Case, 1986: para 86; Van Bael, 2011: 21). The Court of Justice, in Imperial Chemical Industries Ltd v. Commission, clarified that the purpose behind establishing a distinct concept of concerted practice is to encompass forms of collusion that do not meet the criteria of a formal agreement within the scope of the prohibition outlined in Article 101(1) TFEU (Imperial Chemical Industries, 1972: para 64). For example, where parties inform each other in advance of the stance they plan to take, allowing each to adjust their business actions based on knowledge of their competitors' behavior, the Court of Justice determined that these parties deliberately substitute "practical cooperation among themselves for the competitive risks" and aim to avoid being subject to the prohibition stated in Article 101(1) TFEU. In its judgement in Suiker Unie and others v. Commission, it established that "the criteria of coordination and cooperation, as established by the case law of the Court, do not necessitate the formulation of an explicit plan but should be interpreted within the context of the fundamental concept inherent in the Treaty's provisions related to competition, which asserts that each economic actor must independently determine the business strategy they intend to pursue within the [internal] market". The Court further clarified that this requirement for independent determination of commercial policy "does not negate the right of undertakings to intelligently adjust to the present or anticipated actions of their competitors". It emphasized that Article 101 TFEU "explicitly prohibits any direct or indirect communication between them, the purpose or result of which is either to influence the behavior of an actual or potential competitor in the market or to divulge to such a competitor the intended or contemplated course of action that they themselves have decided to undertake or are considering in the market" (Suiker Unie Case, 1975:paras 173-174; Dashwood et.al, 2011:39; Ezrachi, 2012:71).

The European Commission has provided the meaning of concerted practice in its "Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements". In the section addressing "fundamental principles regarding the competitive evaluation of information exchange", it clarifies that when competitors share information, it can constitute a concerted practice if it diminishes strategic uncertainty within the market, thus making collusion more feasible (Guidelines on horizontal co-operation agreements, 2011: point 61). Hence, the sharing of strategic information among competitors qualifies as concerted action since it diminishes the autonomy of competitors' market behavior and lessens their motivation to engage in competition (Guidelines on horizontal co-operation agreements, 2011: point 61). The significance of the "concept of a concerted practice" does not primarily stem from differentiating it from an agreement, but rather from distinguishing between collusive actions (covered by Article 101(1) TFEU) and non-collusive behavior (purely parallel conduct lacking any element of coordination) (Polypropylene Case, 1986:

para 87). In her opinion in the case of T-Mobile Netherlands BV and others v. Raad van bestuur van de Nederlandse Mededingingsautoriteit, Advocate General Kokott asserted that it does not matter "whether a single undertaking unilaterally informs its competitors of its planned market actions or if all participating undertakings share their respective considerations and intentions". Merely when a single undertaking discloses confidential information about its upcoming business strategy to its competitors, it diminishes uncertainty for all participants regarding the future dynamics of the market. This introduces the possibility of decreased competition and the potential for collusion among them (Mobile Netherlands Case, 2009: para 54). In its "Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements", the European Commission specifies that merely being present at a meeting in which an undertaking reveals its pricing strategies to its competitors is likely to fall within the scope of Article 101 TFEU. This holds even if there is no explicit agreement to increase prices (Guidelines on horizontal co-operation agreements, 2011: point 62). The Court, in Tate & Lyle plc and others v Commission, interprets that the mere circumstance that only one of the attendees at the meetings "discloses their intentions is insufficient to dismiss the potential existence of an agreement or concerted practice" (Tate & Lyle plc Case, 2001: para 54). In Hüls AG v Commission, it stated that when undertakings engage in concerted action and continue their operations in the market, the presumption should be that they "consider the information exchanged with their competitors when shaping their behavior in that market". In such instances, the economic entities involved must present evidence to prove otherwise (Hüls Case, 1999: para 162). The European Commission further clarifies that if an undertaking obtains "strategic information" from a competitor, whether through a meeting, mail, or electronic means, "it will be presumed to have accepted the information and adjusted its market behavior accordingly unless it explicitly communicates its desire not to receive such data" (Guidelines on horizontal co-operation agreements, 2011: point 62). Therefore, the nature of the information plays an important role in determining whether an information exchange qualifies as a concerted practice (Faul et. al, 2014: 221). Information exchange or disclosure is deemed a concerted practice only when it diminishes strategic uncertainty within the market. The burden of proving that the parallel conduct of two undertakings resulted from a concerted action lies with the Commission (Compagnie Royale Asturienne des Mines SA Case, 1984: para 20). Hence, the Commission is required to present evidence for three components to establish a "concerted practice" case: interactions among competitors and an agreement or consensus among them to collaborate instead of competing; a subsequent pattern of behavior in the market, and a causal connection between the interactions and the subsequent behavior (Ezrachi, 2012: 72; Blanco, 2011: 235). Interactions among competitors, as previously explained, can be substantiated through either direct means (such as phone calls, emails, meeting minutes) or indirect evidence (like travel records, agenda documentation, etc.) (Jones, 2014: 169-170). When strategic information is shared, or put differently, when the exchanged information pertains to business practices, the EU Courts typically assume that it is likely to lead to an agreement, with the involved parties factoring this information into their future business strategies. Consequently, it implies a mutual understanding or consensus among the parties to cooperate rather than compete (Jones, 2014: 169). In Hüls AG v Commission, the Court ruled that there was no need to demonstrate that the interactions had led to anti-competitive consequences. A concerted practice is proscribed under Article 101(1) TFEU "even if there are no anti-competitive impacts in the market". The Commission only needs to establish that the coordination aimed to achieve these objectives (Hüls Case, 1999: paras 163-165). The EU Courts have annulled decisions of the European Commission. They were unconvinced by the evidence that formed the basis of the Commission's conclusions (Suiker Unie Case, 1975; Società Italiana Vetro SpA Case, 1992: para 38). Nevertheless, the "evidentiary burden of proof can be shifted, such as when there is a presumption of a causal link between competitor interactions and market behavior". In such cases, the responsibility to present evidence to challenge the presumption would fall upon the parties involved (Hüls Case, 1999: para 167; Whish, 2015:120).

Analyzing Key Similarities and Discrepancies: Competition Act 2010 vs Treaty on the Functioning of the European Union

Similarities

Definition of Agreements: In both Pakistan and the EU,

competition law encompasses definitions for the term's "agreement", "concerted practice", and "collusion" that are quite similar. In both legal jurisdictions, the term "agreement" encompasses formal, written, and legally binding agreements and informal arrangements, oral understandings, and simple practices that may persist over time in a specific market or industry.

Prohibition of Collusion

Both jurisdictions prohibit collusion or concerted practices among undertakings. Both consider that undertakings engage in collusion when they knowingly cooperate, as evident from their conduct, to evade competitive risks. The concept of a "concerted practice" lacks the full characteristics of a formal contract. It can occur when undertakings, even without an explicit shared plan outlining their market actions, knowingly adopt collaborative methods that facilitate coordination in their business behavior. For instance, an exchange of information among competitors can qualify as a concerted practice if it diminishes strategic uncertainty in the market, thereby easing the path to collusion.

Under Pakistan's CA 2010, there is an all-inclusive definition for the term "agreement", which comprises any arrangement, understanding, or practice that may persist over a duration of time. An "agreement" can include an individual action, a series of actions, or a pattern of behavior. The CCP, in its orders, provides interpretations of the law and frequently aligns with the perspectives upheld by the European Court of Justice (ECJ) and the European Commission. Additionally, the CCP incorporates decisions issued by the European Commission and the EU Courts into its judgments. However, it remains to be seen whether the appellate courts in Pakistan will concur with the interpretations put forth by the CCP.

Discrepancies

Scope of Application: CA 2010 applies exclusively to Pakistan, while TFEU applies to all European Union member states. Therefore, the implications and consequences of competition-related agreements and practices under these legal frameworks are subject to the jurisdiction in which a business operates.

Language and Specificity

Articulated and unambiguous language in legal provisions aids in the interpretation of the essence of the provision, leading to transparency and predictability in procedures. Section 4(1) CA 2010 states that "no undertaking or association of undertakings shall enter into any agreement or, in the case of an association of undertakings, shall make a decision in respect of the production, supply, distribution, acquisition or control of goods or the provision of services…." (CA, 2010: 4 (emphasis added)).

The language used in Section 4 of CA 2010 indicates that the prohibition encompasses the "agreement/decision of an association of undertakings" which has the "object or effect of restricting competition". Section 2(1)(b) of CA 2010 defines the term "agreement", making it clear that it encompasses any arrangement, understanding, or practice, regardless of whether it is documented in writing or intended to have legal enforceability. In comparison to the Monopolies and Restrictive Trade Practices (Control and Prevention) Ordinance 1970 (MRTPO 70), CA 2010 signifies a significant shift in approach. While MRTPO 70 focused on "restrictive trade practices" that "unreasonably" diminished competition, CA 2010 prohibits "any agreement" that has the intent or impact of reducing competition within the relevant market. It is recommended that employing more precise language in the main provisions of CA 2010 that pertain to cartels will undeniably convey the specific intent and purpose of CA 2010 about cartels. The CCP should develop guidelines that offer general principles for evaluating agreements among undertakings, decisions made by associations of undertakings, and concerted practices.

Article 101(1) TFEU, which is the main provision dealing with cartels in the EU, uses clear wordings: "…all agreements between undertakings, decisions by associations of undertakings and concerted practices which have as their object or effect the prevention, restriction, or distortion of competition within the internal market …" (emphasis added).

The language used in Article 101 TFEU is not only clear but also certain. It clearly states that any agreement or decision among undertakings or concerted practices by undertakings is prohibited when their aim or effect is to hinder or distort competition instead of competing on a merit-based approach. This difference in language may have implications for the interpretation and enforcement of competition law.

Within the EU, the European Commission elaborates extensively on the conceptual differentiation between the terms "agreement and concerted practices" in its decisions. The EU Courts interpret these terms to enhance comprehension and to elucidate the purpose

behind introducing a distinct concept of "concerted practice" - to encompass anti-competitive collusion that falls short of meeting the criteria for a legally binding agreement, within the scope of Article 101(1) TFEU prohibition.

Enforcement and Guidance

The European Commission provides extensive guidance and interpretations of competition rules under TFEU. These interpretations assist economic operators in grasping the parameters set by competition rules, enabling them to operate within these limits without undermining market competitiveness. To uphold a competitive environment, it is crucial for economic operators to autonomously formulate their commercial strategies. Economic operators can astutely adjust to the actual or expected actions of their competitors, thereby distinguishing between collusive and non-collusive behavior. The European Commission's guidelines on the applicability of Article 101 TFEU offer main principles for evaluating agreements among undertakings, decisions made by associations of undertakings, and concerted practices.

IMPLICATIONS

The differences and similarities between CA 2010 and TFEU have significant implications for undertakings operating within their respective jurisdictions.

Legal Compliance

Businesses operating in Pakistan need to ensure compliance with CA 2010, while those operating within the EU member states must adhere to TFEU. Understanding the distinctions between these legal frameworks is essential to avoid legal consequences.

Enforcement and Penalties

The enforcement mechanisms and penalties for competition law violations differ between Pakistan and the EU. Businesses should be aware of the enforcement practices and penalties applicable in their jurisdiction.

Guidance and Transparency

Undertakings operating within the EU benefit from extensive guidance provided by the European Commission, enhancing transparency and predictability. In Pakistan, where competition law enforcement is evolving, businesses may need to rely on evolving CCP practices and interpretations.

International Operations

Businesses with international operations spanning both Pakistan and the EU must navigate the variances in competition law frameworks, which can be complex and challenging.

CONCLUDING REMARKS

The article described and analyzed the notions of 'agreement', 'collusion', and 'collusive practice'. In pursuit of this endeavor, it delved into the pertinent statutes, examined the enforcement practices of both the CCP and the European Commission, scrutinized case law from EU Courts that reviewed European Commission decisions and analyzed relevant legal scholarship. The CCP, through its orders, provides interpretations of the law and often aligns with the perspectives put forth by the European Commission and the EU Courts, encompassing their definitions of terms like "agreement, collusion, and collusive practice". Additionally, the CCP integrates decisions and judgments from the European Commission and the EU Courts into its Orders. Nevertheless, it remains uncertain whether Pakistan's appellate courts will concur with the interpretations adopted by the CCP.

While CA 2010 and TFEU share similarities in their definitions of agreements and collusion, the discrepancies in scope, language, enforcement, and guidance have practical implications for businesses operating within these jurisdictions. Understanding these differences is crucial for ensuring compliance and making informed business decisions.

REFERENCES

Blanco, L.O. (2011). Market Power in EU Antitrust Law. Translated by Andrew Read. Oxford: Hart Publishing.

Case 28/77. Tepae v Commission. ECLI:EU: C:1978:133

Case 41/69. ACF Chemiefarma v Commission. ECLI:EU:C:1970:71

Case 48/69. Imperial Chemical Industries Ltd. v Commission. ECLI:EU:C:1972:70

Case C-199/92 P. Hüls v Commission. ECLI:EU:C:1999:358

Case C-277/87. Sandoz Prodotti Farmaceutici v Commission. ECLI:EU:C:1990:6

Case C-373/14 P. Toshiba Corporation v Commission. ECLI:EU:C:2016:26

Case C-49/92 P. Commission v Anic Partecipazioni. ECLI:EU:C:1999:356

Case C-8/08. T-Mobile Netherlands BV and others v Raad van bestuur van de Nederlandse Mededingingsautoriteit, ECLI:EU:C:2009:110

Case T 18/03. CD-Contact Data GmbH v Commission, ECLI:EU:T:2009:132

Case T-41/96. Bayer v Commission, ECLI:EU:T:2000:242

Case T-7/89. Hercules Chemicals v Commission. ECLI:EU:T:1991:75

Case T-9/99. HFB Holding and others v Commission. ECLI:EU:T:2002:70

Competition Act No. XIX of 2010 (Published in the Gazette of Pakistan, Extraordinary, 13 October 2010

Competition Commission of Pakistan. (2016). Guidelines: Section 4: Prohibited Agreements. https://cc.gov.pk/assets/images/guidlines/guidelines_section_4.pdf

Competition Commission of Pakistan Order. (2008). Pakistan Banking Association and Others. 10.4.2008. http://www.cc.gov.pk/images/Downloads/Order_of_Banks.pdf

Competition Commission of Pakistan Order. (2010). Pakistan Poultry Association. 16.8.2010. http://www.cc.gov.pk/images/Downloads/ppa_order_16_august_2010.pdf

Competition Commission of Pakistan Order. (2010). All Pakistan Cement Manufacturer Association (APCMA) and member undertakings Order. 27.8.2009. http://cc.gov.pk/images/Downloads/Cement%20(final%20order)%2027-08-2009.pdf

Competition Commission of Pakistan Order. (2010). Dredging Companies. 23.7.2010. http://www.cc.gov.pk/images/Downloads/dredging_finalized_order_23_07_10.pdf

Competition Commission of Pakistan Order. (2011). Pakistan Jute Mills Association and Members Mills. 3.2.2011. http://www.cc.gov.pk/images/Downloads/pjma_order_3%20feb_2011.pdf

Dashwood, A., Dougan, M., Rodger, B., Spaventa, E. and Wyatt, D. (2011). Wyatt and Dashwood's European Union Law. 6th Edition. London: Bloomsbury Publishing

Dibadj, R. (2010). "Conscious Parallelism Revisited". San Diego Law Review 47: 590-639

European Commission. (1982). Decision of 15 July 1982 relating to a proceeding under Article 85 of the EEC Treaty. Case 82/506/EEC - Stichting Sigarettenindustrie. OJ L 232, 6.08.1982, p. 1

European Commission. (1985). Decision of 19 December 1984 relating to a proceeding under Article 85 of the EEC Treaty. Case IV/29.725 - Wood pulp. OJ L 85, 26.3.1985, p. 1

European Commission. (1988). Decision of 18 December 1987 relating to a proceeding under Article 85 of the EEC Treaty. Case IV/31.017 - Fisher-Price v Quaker Oats Ltd – Toyco. OJ L 49, 23.2.1988, p. 19

European Commission. (1986). Decision of 23 April 1986 relating to a proceeding under Article 85 of the EEC Treaty. Case IV/31.149 – Polypropylene. OJ L 230, 18.8.1986, p. 1

European Commission. (1991). Decision of 19 December 1990 relating to a proceeding under Article 85 of the EEC Treaty. Case IV/33.133-B - Soda-ash - Solvay, CFK. OJ L 152, 15.6.1991, p. 16

European Commission. (2002). Decision of 18 July 2001 relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement. Case COMP/E-1/36.490 - Graphite electrodes. OJ L 100, 16.4.2002, p. 1

European Commission. (2003). Decision of 11 December 2001 relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement. Case COMP/E-1/37.027 - Zinc phosphate. OJ L 153, 20.6.2003, p. 1

European Commission. (2004). Decision of 11 June 2002 relating to a proceeding under Article 81 of the EC Treaty. Case COMP/36.571/D-1- Austrian banks - Lombard Club. OJ L 56, 24.2.2004, p. 1

European Commission. (2008). Decision of 23 January 2008 relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement. Case COMP/38.628 - Nitrile Butadiene Rubber. C (2008)282 final, 23.1.2008, p. 12

European Commission. (2011). Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements. OJ C 11, 14.1.2011, p. 1

Ezrachi, A. (2012). EU Competition Law: An Analytical Guide to the Leading Cases. Oxford: Hart Publishing

Faull, J., Kjølbye, L., Leupold, H. and Nikpay, A. (2014). "Article 101", in The EU Law of Competition. 3rd Edition. Edited by Jonathan Faull and Ali Nikpay. Oxford: Oxford University Press: 183-328

Joined Cases 209/78 to 215/78 and 218/78. Heintz van Landewyck and others v Commission. ECLI:EU:C:1980:248

Joined Cases 29/83 and 30/83. Compagnie Royale Asturienne des Mines SA and Rheinzink GmbH v Commission. ECLI:EU:C:1984:130

Joined Cases 40/73-48/73, 50, 54 to 56, 111, 113 and 114/73. Suiker Unie and others v. Commission. ECLI:EU:C:1975:174

Joined Cases C 204/00 P, C 205/00 P, C 211/00 P, C 213/00 P, C 217/00 P and C 219/00 P. Aalborg Portland and others v Commission. ECLI:EU:C:2004:6

Joined Cases T 305/94 to T 307/94, T 313/94 to T 316/94, T 318/94, T 325/94, T 328/94, T 329/94 and T 335/94. Limburgse Vinyl Maatschappij and others v Commission. ECLI:EU:T:1999:80

Joined Cases T-202/98, T-204/98 and T-207/98. Tate & Lyle plc and others v Commission. ECLI:EU: T: 2001: 185

Joined Cases T-25/95, T-26/95, T-30/95, T-31/95, T-32/95, T-34/95, T-35/95, T-36/95, T-37/95, T-38/95, T-39/95, T-42/95, T-43/95, T-44/95, T-45/95, T-46/95, T-48/95, T-50/95, T-51/95, T-52/95, T-53/95, T-54/95, T-55/95, T-56/95, T-57/95, T-58/95, T-59/95, T-60/95, T-61/95, T-62/95, T-63/95, T-64/95, T-65/95, T-68/95, T-69/95, T-70/95, T-71/95, T-87/95, T-88/95, T-103/95 and T-104/95.

Cimenteries CBR and others v Commission. ECLI:EU:T:2000:77

Joined Cases T-305/94, T-306/94, T-307/94, T-313/94 to T-316/94, T-318/94, T-325/94, T-328/94, T-329/94 and T-335/94. Limburgse Vinyl Maatschappij NV and others v Commission. ECLI:EU: T:1999:80

Jones, A. and Sufrin, B. (2014). EU Competition Law: Text, Cases and Materials. 5th Edition. Oxford: Oxford University Press.

Van Bael, I. (2011). Due Process in EU Competition Proceedings. Alphen aan den Rijn: Kluwer Law International

Van Themaat, W.V. and Reuder, B. (2014). European Competition Law: A Case Commentary. Cheltenham: Edward Elgar Publishing

Wendt, I.E. (2012). EU Competition Law and Liberal Professions: An Uneasy Relationship? Leiden: Martinus Nijhoff Publishers

Whish, R. (2007). "Control of Cartels and other Anti-Competitive Agreements", in Competition Law Today: Concepts, Issues and the Law in Practice. Edited by Vinod Dhall. Oxford: Oxford University Press: 39-58

Whish, R. and Bailey, D. (2015). Competition Law. 8th Edition. Oxford: Oxford University Press.