

POLICY BRIEF, MARCH 2024

Competition Law: Global Jurisprudence, Retail Pricing and Lessons for Pakistan

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Executive Summary

Issue

The issue stems from the existing competition law applicable in Pakistan. The main problem is the applicability of international competition law standards in Pakistan, which are not necessarily catered towards the local market. Analysis and research needs to be undertaken to understand the competition law landscape in Pakistan and internationally and find the optimal structure that is conducive to create a stable business environment in Pakistan.

Recommendations

- Pakistan needs to adopt Rule of Reason (RoR) for Retail Price Management (RPM) due to overall larger benefits of the RoR. However, to curtail the perils of RoR, there must be a caveat that RoR shall not apply in cases where the retailers and manufacturers are highly dominant in market or has a branded presence either online or in the form of stores. Similarly, RoR shall not apply if there is high entry and exit barriers in the market and the market is also very concentrated. In these cases, it is better to use the current system of Pakistani jurisprudence. In a way, mixed approach is advised.
- A policy analysis needs to be undertaken by the Competition Commission of Pakistan which provides the perspective of the Commission on the application of RoR in Pakistan. This paper shall function as soft law in the domestic context for future issues. This analysis needs to be developed through a consultation process of the retailers and manufacturers so that any local condition which shall require a nuanced input in legislation be specifically included in addition to the academic literature.
- The Amendment in Competition Act 2010 shall require a simple majority in Parliament. The Federal nature of the Competition Act 2010 shall only require the bill to be initiated in the Parliament rather than the Provincial Assemblies. The initiation and management of the policy paper and legal amendment bill shall be through a mutual consultation of the Ministry of Finance, Ministry of Law, and Competition Commission of Pakistan.

Overview

In Pakistan, Section 4 of the Competition Act ('CA') defines prohibited agreement and considers grounds of Section 4 as non-exhaustive. Section 4 (2) (a) of the CA further includes the agreements such as fixing the purchase price to be within the ambit of prohibited agreements. Prohibited Agreement is not necessarily to be written or be legally enforceable. It includes arrangements, understandings or practice. It can be any contract or arrangement between undertakings or corporations or trade union decisions and those agreements or decisions shall be considered void. The agreements should not decide in respect of production, supply and distribution, acquisition or control of goods and provision of services which have the effect or object of preventing or reducing competition within a relevant market. Section 2(j) of the CA determines the scope of the term relevant market which is crucial for determining the market power, determining the prohibited agreements and concerted practices. It includes geographical markets and product markets. Section 5 of the CA allows an exemption from the ambit of prohibited agreements if they improve production or distribution or promote technical progress or economic progress or the benefits clearly outweigh the adverse effects of seeking exemptions. In a way, Pakistan considers Retail Price Management ('RPM') as a prohibited agreement with some leeway for an exemption if the applicant is able to establish some benefits stipulated within Section 9 of the CA. However, it is essential to understand the global jurisprudence on this topic to rectify any legal policy issues within Pakistani laws which can deter business investment within the country.

Analysis

I) Jurisprudence in USA

In the United States of America (the "USA"), minimum Retail Price Management ("RPM") is not a hard – core cartel restriction. Unless it is an agency agreement, Rule of Reason ('RoR') is the principle for substantive assessment.¹ The RoR requires that the nature, scope, and effects of the agreement must be examined. Factors such as

¹ 'Vertical Agreements' (Sidley Austin LLP, 2008) <www.sidley.com/-/media/files/publications/2008/03/getting-the-deal-through--vertical-agreements-2008/files/view-united-states-chapter/fileattachment/united-states-21.pdf>

ease of entry into the relevant market; facts peculiar to the particular business; history of restraint; the intent of the agreement and the market power held in relevant market are essential for the analysis.² It is required that the complainant must show some kind of ‘unreasonable’ result which outweighs the potential benefits.³ It requires that there must be an agreement which is between at least two parties who are independent, and which does not exert control on each other so that are capable of making independent decisions. The effect of the agreement must be in relation to the relevant market. Threshold is not high enough that a particular activity can result in monopolization.⁴ In this context, the US Supreme Court decision in *Leegin* is the most important as it established a definite precedent for the application of RoR in the cases of minimum RPM as the effects of minimum RPM can result in either the increase or decrease of consumer welfare depending on the environment.⁵

II) Jurisprudence in European Union (‘EU’)

Investigations in European Commission (the ‘EC’) has wide – ranging powers to reach the bottom of the facts. It is empowered to detect any agreement or concerted activity prohibited under Article 101 of the Treaty on the Functioning of European Union (“TFEU”).⁶ In terms of substantive assessment, in line with the *Consten and Grundig* ruling, the ‘precautionary principle’ is given much priority in EU and even on supposed economic benefits, the EC is not willing to injure the consumers.⁷ The EC considers RPM as a serious restriction by object which violates the Article 101(1) of TFEU regardless of the fact that there is any actual effect on competition. A presumption is attached to the hard-core restrictions that they may impede competition unless they qualify for an exemption under article 101(3) of TFEU.

The Article 4(a) of 2010 EC Guidelines on Vertical Restraints 2010 states that a hard – core restraint means that minimum RPM agreement shall be considered to

² *Chicago Board of Trade v. United States* [1918] 246 U.S. 231, 243 - 244

³ David I. Gelfand and Linden Bernhardt, ‘Vertical Restraints: Evolution from Per Se to RoR Analysis’ (2017) ABA Antitrust Section Fall Forum < [Microsoft Word - RoR Article 10-5-17 \(clearlygottlieb.com\)](https://www.clearlygottlieb.com)>

⁴ Douglas Broder, *US Antitrust Law and Enforcement: A Practice Introduction* (2nd Edn, Oxford University Press 2011, 43,44, 51

⁵ *Leegin Creative Leather Products, Inc. v. PSKS, Inc.* (2007) 551 U.S. 877

⁶ ‘Implementing EU competition rules: application of Articles 101 and 102 of the TFEU - EUR-Lex’ (*EUR-Lex — Access to European Union law — choose your language*, 14 March 2011) <<https://eur-lex.europa.eu/summary/EN/legisum:l26092>>

⁷ S Bowman , D Auer and G Manner, ‘How US and EU Competition Law Differ’ (*Truth on the Market*, 9 August 2021) <<https://truthonthemarket.com/2021/08/09/how-us-and-eu-competition-law-differ/>>

fall within article 101(1), and that is unlikely to fall within article 101(3) of TFEU. The Vertical Block Exemption Regulations provides that some vertical agreements shall be exempted from hard – core restraints. However, the Block Exemption 330/2010 has also maintained that minimum RPM is a hard-core restriction which has a direct object of creating minimum RPM through an agreement.⁸ It does not matter whether the market share of a company rises above 30% in EU or not, as this percentage is only for the vertical agreement which are not within the hard-core restriction ambit.⁹ It is in line with the *GSK* case wherein it was held that vertical restraints could benefit from the exemptions where efficiencies can be proven under article 101(3) of the TFEU. However, this task is unsurmountable as EC has not considered a case yet where it was held that the hard-core restriction can result in efficiencies in the market.¹⁰ For this exception to be applicable, the vertical agreement must produce objective economic benefits and consumers must receive a fair share of the efficiency gains.

In *Metro*, it was held that RPM imposed by distributors are treated as restrictive by object as price competition is so important that it can never be eliminated.¹¹ An agreement within the meaning of Article 101 of TEFU requires that parties have expressed their joint intention to follow a certain pattern of behaviour irrespective of the form in which it is conducted.¹²

III) Jurisprudence in China

In case of China, State Administration of Market Regulation (the “SAMR”) can take cognizance of the complaint. A complaint in such a case shall fall within the purview of public enforcement as SAMR can investigate, adjudicate and sanction violations of Antimonopoly Law (“AML”). Interim Provisions on the Prohibition of Monopoly Agreements of 2019 empowers SAMR to deal with AML enforcements. ¹³

⁸ European Commission, *Guidelines on Vertical Restraints* (Commission Notice, Sec 411, 2011), Para 47 - 50

⁹ Qingxiu Bu, 'Resale Price Maintenance (RPM) Agreements Under AML 2008 – Per Se Illegal Treatment vis-a`-vis the Rule-of-Reason Approach', (2015) 46 IIC, 565, 568 - 570; Commission Regulation (EU) No 330/2010 of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices (2010) L 102/1, art 1 -3

¹⁰ Akhtar Zia, " Anti – Competitive Effects of Vertical Restraints", (2018) 1 European Competition and Regulatory Law Review 24, 31 -31

¹¹ Akhtar Zia, " Anti – Competitive Effects of Vertical Restraints", (2018) 1 European Competition and Regulatory Law Review 24, 30

¹² European Commission, *Guidelines on Vertical Restraints* (Commission Notice, Sec 411, 2011), Para 55 - 56

¹³ 'NEW REGULATIONS ON MONOPOLY AGREEMENTS' (*CMS in Germany - International Law Firm*, 24 July 2019) <https://cms.law/en/chn/publication/node_519186>

Under the AML, monopoly agreements must be between business operators and eliminate or restrict competition.¹⁴ In case of minimum RPM, the enforcement does not require the examination of the effects of the agreements. The Chinese law does not require that an economic analysis is conducted in relation to the market share of undertakings, market entry barriers and buyer power. In *Bull*, RPM was monitored regularly for 3000 online shops, and such RPM was explicitly prohibited which manifested that SAMR doesn't seek to prove anti-competitive effects.¹⁵ The price-related monopoly agreements are governed by the Interim Provisions. According to these provisions, vertical monopoly agreements mentioned in the Article 14 of the *PRC* Anti-Monopoly Law are illegal *per se*. However, if a company can prove that Article 15 exemptions of the *PRC* Anti-Monopoly Law are complied, then an exemption can be made for the presumably anti – monopoly agreements. These situations *inter alia* include the monopoly agreement was sought for improving technology; enhancing efficiency, product quality and reducing product cost; providing energy conservation and increase the competitiveness between medium and small companies. However, it must be noted that the available data of the *PRC* Competition Authorities reflect that the Hard-core Monopoly Agreements are not generally exempted under Article 15 of the AML.

RoR analysis is generally provided for agreements which are not Hard-core Monopoly Agreements.¹⁶ In this regard, Article 14 of the AML is similar to the Article 101(1) of the TFEU while Article 101(3) of TFEU is similar to Article 15 of AML.¹⁷ The intricacies of these article are further reflected in the judgment of *Yutai v. Hainan Price Bureau*. The court reasoned that that RPM may be 'presumed' to violate the AML without evidence of actual anti - competitive effects. Moreover, it is the responsibility of the respondent parties to establish any exemptions. In a way, an exemption can be claimed, but the contours of proving this is fluid and the burden to prove is extremely high. In *Yangtze River*, though SAMR did go to the RoR analysis, but also maintained

¹⁴ CL Hannah, 'The Anti-Monopoly Law — A New Dawn for Antitrust in China | Perspectives & Events | Mayer Brown' (*Mayer Brown*, 17 October 2008) <www.mayerbrown.com/en/perspectives-events/publications/2008/10/the-antimonopoly-law--a-new-dawn-for-antitrust-in#:~:text=In%20terms%20of%20the%20law's%20scope,%20it%20is,that%20negatively%20impacts%20competition%20in%20a%20domestic-China%20market.>

¹⁵ 'China Antitrust Column – September 2021 | JD Supra' (*JD Supra*, 20 October 2021) <www.jdsupra.com/legalnews/china-antitrust-column-september-2021-1671312/>

¹⁶ NEW REGULATIONS ON MONOPOLY AGREEMENTS' (*CMS in Germany - International Law Firm*, 24 July 2019) <https://cms.law/en/chn/publication/node_519186>

¹⁷ Qianlan Wu, 'Competition Laws, Globalization and Legal Pluralism: China's Experience' (Bloomsbury 2013) Chapter 5, Page 12.

that it does not need to establish any anti – competitive effects. In this judgment, SAMR considered the possibilities of incentives; the position and market share of the organization; concentration in the market; the effects of the activities of the organization.¹⁸

It must be noted that the position of SAMR is a little different as compared to the private enforcement in courts wherein the plaintiff has to establish the anti – competitive effects and analytical approach shall be considered to evaluate agreements which include factors such as defendant’s market power, market shares, power in price negotiations, influence of brands and control over distributors, etc.. Therefore, in eyes of Chinese court, RPM is held to be monopolistic only when it produces anti-competitive effects that cannot be offset.¹⁹

IV) Advantages of RoR Approach

There are many advantages of applying RoR approach towards minimum RPM. Interaction between the distributor and manufacturer is inherent in any efficient distribution system which will always prompt them to review their distribution structures to remain competitive. If there is a blanket ban on minimum RPM, manufacturers might resort to self – distribution; create agencies or consignment system or create a distribution subsidiary with their own effective control.²⁰

They might also adopt semantic evasions such as Manufacturer Suggested Retail Price (the “MRSP”) which under the guise of encouragement would create social pressure on retailer and will be effectively a minimum RPM. For instance, in the *Mitsubishi* case, MRSP was on the price tag of the merchandise itself. They can also create pricing devices such as Minimum Advertised Products (the “MAP”). MAPs are generally harmful to consumers since the advertisement of price is different which attracts the customer to the store, but the actual price in the store might be different.

¹⁸ Nathan Bush, Ray Xu and Della Ding, ‘Penalizing Resale Price Maintenance in China’s Pharmaceutical Industry (via Passle)’ (Passle, 30 April 2021) <<https://lifesciences.dlapiper.com/post/102gwvo/penalizing-resale-price-maintenance-in-chinas-pharmaceutical-industry>>

¹⁹ Susan Ning, **Liu Jia, Xiao Dasha and Hazel Yin**, ‘Chinese Court Rendered Final Judgment on Rainbow v. Johnson & Johnson – the First Antitrust Private Action of Vertical Monopolistic Agreement’ (*China Law Insight*, 5 August 2013) <www.chinalawinsight.com/2013/08/articles/compliance/chinese-court-rendered-final-judgment-on-rainbow-v-johnson-johnson-the-first-antitrust-private-action-of-vertical-monopolistic-agreement/> accessed 16 May 2022.

²⁰ *Simpson v. Union Oil Co.* (1964) 377 U.S. 13, 14–15, 24; *United States v. Gen. Elec. Co.* (1926) 272 U.S. 476, 485–86

Moreover, it is also observed that dealers can be paid rebates if they follow minimum RPM. Sufficient alternate tools are present to by – pass the blanket ban on minimum RPM.²¹

It is often the desire of the manufacturers to provide superior quality products to improve their market shares especially when the products are specialized, sophisticated and require extensive point of sale service. For instance, in sale of apparels, pre-sale services require private rooms and extensive sales staff.²² If there is no minimum RPM, many customers will use the retail services, but will then buy products from the discounted store. For many manufacturers, quality-certification argument is important, and they want their products to be displayed at high quality stores which attract high – income individuals. If there is no minimum RPM, discount stores will abuse this process by selling the same item.²³

Some technological products require highly sophisticated research. If certain assurances are not given to such developers in terms of RPM, they would have less incentive to develop such technologies.²⁴ There is also one big difference between horizontal agreements and vertical agreements. The former can create market power by collusion as seven firms with 10% market shares can join together to form 70% market share. In contrast, a vertical agreement does not intrinsically create market power. Therefore, an additional incidental is required to reflect the way minimum RPM vertical agreement has hampered competition.²⁵ Moreover, effect of market power is generally much less in the vertical relationships as the product of manufacturer is the input for the retailer. Thus, if one exercise the market power downstream, it hurts the demand of the other in a symbiotic way.²⁶

Minimum RPM is an important tool to create inter – brand competition by reducing intra – brand competition. This is not anti – competitive as it will end unnecessary competition between distributors of the same products but will not cause

²¹ Williard Tom, 'Vertical Price Restraints' (U.S. Department of Justice) <www.justice.gov/atr/speech/vertical-price-restraints#N_7>

²²Anthony J. Greco, 'The Resale Price Maintenance; Its Legislative Updating' (1992) 51 The American Journal of Economics and Sociology, 173, 177

²³ Williard Tom, 'Vertical Price Restraints' (U.S. Department of Justice) <www.justice.gov/atr/speech/vertical-price-restraints#N_7>

²⁴ S Bowman , D Auer and G Manner, 'How US and EU Competition Law Differ' (Truth on the Market, 9 August 2021) <<https://truthonthemarket.com/2021/08/09/how-us-and-eu-competition-law-differ/>>, Para 258 - 259

²⁵ Herbert Hovenkamp, 'The RoR', (2018) 70 Florida Law Review 81, 156 - 158

²⁶ European Commission, *Guidelines on Vertical Restraints* (Commission Notice, Sec 411, 2011), Para 98

problems between distributors in general.²⁷ Thus, minimum RPM will promote inter - brand competition as the manufacturers shall compete among themselves for better services.²⁸ If there is an intense inter - brand competition, it can result as a significant check on the exploitation of the dominant intra - brand market power holders automatically as the consumers can easily shift from one brand of products to the other brand products.²⁹ Moreover, to increase their sales, manufacturers might offer retailers a guaranteed margin by promulgating minimum RPM. This certainty will allow more profits to retailers as manufacturer will share more of their marginal profits to incentivize retailers to provide better service; consumers will benefit from better services and there would be increase in profits for manufacturers.³⁰ This will also allow new entrants in retail sector to enjoy a considerable amount of certainty in their operations and they can make investments in the efficiency of their distribution system.³¹

Moreover, there is a general impression that the RoR might encourage monopoly of manufacturer which is simply incorrect. If the RoR is applied in cases where there is a market which is relatively concentrated and the market has high entry / exit barriers, the RoR would itself prohibit the minimum RPM as the effects of the agreement would be anti – competitive.³² In such situations, if there is a monopolist manufacturer, the manufacturer would already reap wholesale profits and would not need to employ minimum RPM. A dominant manufacturer would always be benefitting all the stakeholders in the market.³³

Per se rule is generally applied to those horizontal agreements which fix prices. However, the *per se* rule is not sustainable even in these agreements and the court have to devise ‘quick look’ approach. In *National Collegiate Athletic Association v. Board of Regents*, ‘quick look analysis’ was applied to the broadcasting agreements between the NCAA and television networks to broadcast college football games. The

²⁷ European Commission, *Guidelines on Vertical Restraints* (Commission Notice, Sec 411, 2011), Para 102

²⁸ *Ibid* (n. 1), 55 – 57

²⁹ *Continental T. V., Inc. v. GTE Sylvania Inc.* (1977) 433 U.S. 36, 54

³⁰ Paul Gift, ‘Price Fixing and Minimum Resale Price Restrictions Are Two Different Animals - A Peer-Reviewed Academic Articles | GBR’ (*Graziadio Business Review | Graziadio School of Business and Management | Pepperdine University*) <<https://gbr.pepperdine.edu/2010/08/price-fixing-and-minimum-resale-price-restrictions-are-two-different-animals/>>

³¹ John Austin Moore, ‘Resale Price Maintenance After Leegin: Why Treating Vertical Price-Fixing As “Inherently Suspect” Is the Only Viable Alternative to the Traditional RoR’ (2011) 36 Washington University of Journal of Law and Policy 289, 314

³² *Simpson v. Union Oil Co.* (1964) 377 U.S. 13, 14–15, 24; *United States v. Gen. Elec. Co.* (1926) 272 U.S. 476, 485–86

³³ George P Kyprianides, ‘Should Resale Price Maintenance be per se illegal?’ (2012) 33(8) European Competition Law Review 376, 381

Court observed that NCAA and the member schools have almost created a horizontal agreement which basically limited output and restricted price. However, the court noted that such horizontal agreements were required for the existence of college football as the member schools defined the rules of sports. In order to combat such a situation, the court applied the RoR 'in a twinkling of eye' without extensive market analysis.³⁴

It must also be noted that restriction by an object does not mean that exemptions under article 101(3) for pro – competitive consequences cannot be claimed. In this regard, prohibition by an object is quite different from *per se* rule as it does allow exceptions to be claimed under article 101(3) of TFEU if they fulfil all tests although it can become quite difficult to claim. In a way, the litigation can still occur.

V) Advantages of Chinese and EU Approach

On the other hand, the Chinese and the EU approach have considerable wisdom. It is generally observed that the downstream firms have an incentive to make the upstream firms comply with a policy of the RPM. They want this system as it softens the competition between them and restricts the cut – price entrants to capture the market by providing low price products. They deliberately cause the price to increase. The presence of minimum RPM can also decrease the incentive of the retailers to negotiate with manufacturers to provide low wholesale prices.³⁵ Thus, Minimum RPM can increase price and that is most obvious harm to consumers.³⁶

The use of the RoR for treating minimum RPM can encourage creation of manufacturer cartels or retailer cartels to capture those members which deviate from the minimum RPM agreement. It can be used by the dominant retailer to protect itself from retailers who have more efficient distribution system which allows those distributors to sell things at a lower cost. In this regard, it is important to consider the source of the restraint as if the restraint came from the retailers, it is much more

³⁴ David I. Gelfand and Linden Bernhardt, 'Vertical Restraints: Evolution from Per Se to RoR Analysis' (2017) ABA Antitrust Section Fall Forum < [Microsoft Word - RoR Article 10-5-17 \(clearygottlieb.com\)](#)>

³⁵ George P Kyprianides, 'Should Resale Price Maintenance be per se illegal?' (2012) 33(8) European Competition Law Review 376, 380

³⁶ *Leegin Creative Leather Products, Inc. v. PSKS, Inc.* (2007) 551 U.S. 877

probable that the restraint has anti – competitive effects as most of the pro – competitive benefits of minimum RPM are when it comes from the manufactures` demands.

Generally, it is observed that the manufacturing and distributors interests are aligned when the manufacturers provide minimum RPM to the distributors as they share profits. However, if one of them is dominant then they do not cause such a sharing of profits as one of them can extract the surplus profit. Dominant manufacturers can cause severe damage to the competitors with manufacturers making the distributors sign a minimum RPM or colluding with it so that consumers are charged more price.³⁷ Dominant manufactures can also use the incentive of minimum RPM over retailers to not sell the products of smaller rivals which have the capability to threaten them in future.³⁸ The system of minimum RPM does provide attractive mark-ups to the retailers, and this can allow manufacturers to induce retailers not to sell the products of rival manufacturers. It is generally only possible when the manufacturer has considerable market power.³⁹ Moreover, such collusions cause barriers to entry more difficult in a market especially if there is a collusion either at the manufacturer or distributor level. Both of these collusions cause increase in prices, limiting the choices and innovation of the product.⁴⁰

Vertical restraints such as minimum RPM can cause more problems for the branded goods as their demand gradually becomes inelastic with more differentiation between them and other products. As a result, they increase price with more harm to consumer.⁴¹ Similarly, in terms of online markets, many of the online platforms have considerable power in terms of distribution or manufacturer (depending on their role) in terms of the data and visibility which only comes with enough time and experience in market due to the concept of zero pricing. Thus, they can show consumers the product of someone who signs a minimum RPM with them at much preference as compared to their rivals and provide much more efficiency. ⁴²

³⁷ European Commission, *Guidelines on Vertical Restraints* (Commission Notice, Sec 411, 2011),, Para 99

³⁸ 'Antitrust Alert: DOJ AAG Varney Provides Guidance on Vertical Price Fixing/Resale Price Maintenance (RPM) | Insights' (Home | Jones Day, October 2009) <www.jonesday.com/en/insights/2009/10/antitrust-alert--doj-aag-varney-provides-guidance-on-vertical-price-fixingresale-price-maintenance-rpm>

³⁹ Ibid (n. 44)

⁴⁰ Ibid (n.15), Para 100

⁴¹ Ibid (n. 37), 104

⁴² European Commission, *Competition Policy for the Digital Era* (Final Report), 62, 63, 94, 95

VI) Recommendations

- Pakistan need to adopt RoR for RPM due to overall larger benefits of the RoR. However, to curtail the perils of RoR, there must be a caveat that RoR shall not apply in cases where the retailers and manufacturers are highly dominant in market or has a branded presence either online or in the form of stores. Similarly, RoR shall not apply if there is high entry and exit barriers in market and the market is also very concentrated. In these cases, it is better to create use the current system of Pakistani jurisprudence. In a way, mixed approach is advised.
- A policy paper needs to be established under aegis of the Competition Commission of Pakistan which provides the perspective of the Commission on the application of RoR in Pakistan. This policy paper needs to be developed through a consultation process of the retailers and manufacturers so that any local condition which shall require a nuanced input in legislation be specifically included in addition to the academic literature.
- The Amendment in Competition Act 2010 shall require a simple majority in Parliament. The Federal nature of the Competition Act 2010 shall only require the bill to be initiated in the Parliament rather than the Provincial Assemblies. The initiation and management of the policy paper and legal amendment bill shall be through a mutual consultation of the Ministry of Finance, Ministry of Law, and Competition Commission of Pakistan.

Recommendations and Action Matrix

Legal Options for Government

| Recommendations | Pathways to Solution | Implementation of Solution | Actors Responsible | Implementation Timelines |
|----------------------|---|---|--|---|
| Policy Paper | Consultation process from Competition Commission, local judges and corporate sector to discuss the RoR. | Drafting of a comprehensive policy paper on State position on the adoption of RoR as a soft law especially in relation to RPM. | <ol style="list-style-type: none"> 1. Competition Commission of Pakistan 2. Ministry of Law 3. Ministry of Commerce 4. Ministry of Finance | <p>1-2 Months for Consultation</p> <p>3-6 Months for a Policy Paper</p> |
| Legal Amendments | A need to shift that soft law policy into black letter law with perusal of relevant academic debates. | Amendment in Section 4 (2) (a) of the CA to omit the sub – section. A new section to be added which require the CCP to apply RoR in case of RPM provided the manufacturers or retailers applying it are not highly dominant or the market is exclusive in nature. | <ol style="list-style-type: none"> 1. Competition Commission of Pakistan 2. Ministry of Law 3. Ministry of Commerce 4. Ministry of Finance | 3 - 6 Months to formulate the Amendments. |
| Process of Amendment | The consultation of the legal amendment shall require inputs from all relevant ministries including law, finance, and commerce. | An initiation of the bill shall be through ministry of finance and law in the Parliament. Simple majority shall be required to amend CCA. | <ol style="list-style-type: none"> 1. Competition Commission of Pakistan 2. Ministry of Law 3. Ministry of Commerce 4. Ministry of Finance | 3 Months tentatively for the approval of legal amendment in the Act. |