

Competition & Antitrust - Pakistan

Recent Competition Commission developments

Contributed by [Vellani & Vellani](#)

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Memorandum for sharing of information **Policy note on non-life insurance**

Memorandum for sharing of information

The Competition Commission and the Securities and Exchange Commission of Pakistan recently signed a memorandum of understanding for the sharing of information. The purpose of the memorandum is to establish a framework for sharing information which would help the commissions to discharge their respective statutory functions. According to a press release, a formal information sharing arrangement will allow both agencies to request and receive information in a timely manner, thereby making the process more efficient and enhancing cooperation and coordination between them. All information exchanged under the memorandum will be kept confidential unless disclosure is required by law. The aim is not only to enhance the agencies' enforcement capabilities, but also to aid their research and advocacy initiatives.

Policy note on non-life insurance

The commission is empowered under Section 29(b) of the Competition Act 2010 to review policy frameworks for fostering competition and make recommendations for amendments to laws that affect competition in the country.

In this regard, the commission recently issued a policy note that recommended amendments to Section 166 of the Insurance Ordinance 2000. Section 166(3) of the Insurance Ordinance provides that all insurance business that relates to public property, or to any risk or liability regarding public property, will be conducted with the National Insurance Company Limited only and not with any other insurer.

The National Co-Insurance Scheme – a pool of Pakistani insurance companies – was constituted in 1955 to help develop smaller companies. In 1973, following the government's decision to nationalise all types of industry, the National Co-Insurance Scheme was converted into the National Insurance Fund. Thereafter, under the National Insurance Corporation Act 1976, the National Insurance Fund was converted into the National Insurance Corporation and became the sole insurer of public sector enterprises. In December 1997, pursuant to financial service commitments under the World Trade Organisation, the government opened up the insurance market as one of its financial sector reforms. The impetus for the reform process came with the promulgation of the Insurance Ordinance. In 2001, under the National Insurance Corporation (Reorganisation) Ordinance, the government changed the legal status of the National Insurance Corporation to the National Insurance Company Limited. It is the only state-owned company under the administrative control of the Ministry of Commerce involved in non-life insurance business in the country. Approximately 39 private insurance companies are involved in non-life insurance business in Pakistan. However, the federal government permitted only the National Insurance Company to underwrite and insure public sector property and liability.

The commission is of the view that the National Insurance Company has a statutory monopoly under Section 166(3) of the Insurance Ordinance, and that this monopoly prevents competition in the non-life insurance market by extending exclusive rights to the National Insurance Company with respect to the insurance of public property. In particular, the commission has raised the following competition concerns:

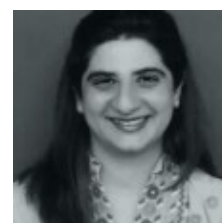
- Statutory protection defeats the tenets of the free market – the commission is of the view that where government generates statutory protection in the form of a monopoly, whether advertently or inadvertently, it reduces competition. The choice of creating a statutory monopoly over free competition may have a harmful effect on consumers, as it deprives them of the benefits of more choice, better quality and competitive prices. In the present case, where the National Insurance Company's statutory monopoly has been created to insure public property, the government is the direct consumer and is denying itself the benefits of competition, such as improved quality of service and competitive premiums.
- Unbridled discretion to monopolise and harm consumers – the commission has highlighted the

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fact that in the total gross written premium (GWP) of the non-life insurance sector, the National Insurance Company has an approximate market share of only 12%; whereas out of the total assets of the non-life insurance sector, the National Insurance Company has a share of 22%. Thus, the National Insurance Company's GWP is much lower than its asset worth. Further, the commission stated that the National Insurance Company's statutory monopoly can be distinguished from situations in which a business may have achieved a monopoly through organic growth or development as a consequence of a superior product, business acumen or historic accident. The National Insurance Company's monopoly emerged through the use of government power to monopolise through the creation of statutory barriers to reduce competition. In the commission's view, market power in conjunction with statutory protection allows for far-reaching negative effects on consumers in two ways:

- A monopolist undertaking may act anti-competitively in its own market, where it can restrict output or raise prices.
- A statutory monopoly for an undertaking can create distortions in another market by anti-competitively cross-subsidising into a product or service in which there is competition.
- Monopoly – the commission stated that the statutory monopoly created under Section 166(3) of the Insurance Ordinance in favour of the National Insurance Company distorts the competitive process in the non-life insurance sector. This preferential treatment creates *de facto* subsidies and reduces budgetary constraints on the National Insurance Company, leaving it no incentive to maximise its efficiency.
- Barrier to entry – the commission stated that the National Insurance Company's statutory monopoly limits opportunities for potential businesses to compete because legislative exclusive rights create barriers to entry for new entrants. The government-imposed entry barriers reduce market dynamism as they limit the market's effectiveness.

The commission strongly recommended that the federal government take measures to amend Section 166 of the Insurance Ordinance to open up the insurance of public property (excluding that relating to national security) to the private sector. In the commission's view, this would create a level playing field for all non-life insurers and would allow new entrants to enter the market, which would increase the choice of insurance products and reduce premium costs for the government. At the same time, the National Insurance Company would be incentivised to increase its operational efficiency in view of the increased competition. Sectors allied with the non-life insurance sector would also benefit from this increased competition.

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