
Will Bangladesh's New Competition Law Prove Effective?

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Introduction

In June 2012, the Bangladesh parliament passed the much awaited Competition Act, aimed at ensuring healthy competition in business practices. It is hoped that the law will improve production and pricing efficiency, benefiting both consumers and producers. To date, about 120 countries across the globe have enacted similar competition laws and many observers felt that it was high time for Bangladesh to follow suit, especially given the country's notorious record of anti-competitive cartels, hoarding, black marketing of commodities, and other unfair market practices. However, implementation and execution of laws have always been major challenges for Bangladesh and questions remain regarding how effective this law will actually prove to be.

Overview of the Competition Act

The competition regime in Bangladesh has traditionally been fairly weak. Before formulation of the Competition Act, there were hardly any specific policies or laws for governing the market practices and actions of market participants. While there did exist a Monopolies and Restrictive Trade Practice (Control and Prevention) Ordinance, it became law prior to Bangladeshi independence and has never been put to any practical use.¹

Partially as a result, the market has always been plagued with a number of distortions like market syndicates, cartels, abuse of dominant positions, unfair spiraling price hikes and so on, resulting in endless sufferings for the consumers and hampering overall market efficiency.

A competition law, therefore, has long been advocated to address all these issues and foster fair competition so that the public is offered quality goods and services at fair prices. A draft bill for such a law was first proposed in 1996; however, it took sixteen years to finally come to fruition.²

The new act seeks to ensure a competitive marketplace. It states, "...the law aims at preventing, controlling or eliminating anti competitive activities relating to collusion, situations of monopoly and oligopoly, combinations or abuse of dominant positions..." A summary of the main provisions under the law are as follows:

- **Outlawing anti-competitive agreements:** No person shall enter into any agreement/understanding/collusion, directly or indirectly, regarding the production, supply, distribution, storage, or acquisition of products, which may cause an adverse effect on competition or result in monopoly or oligopoly. An agreement shall be considered anti-competitive if it directly or indirectly:
 - Determines purchase or sale prices
 - Results in bid rigging or collusive bidding
 - Limits or controls production, supply, markets, technical development, etc.
 - Shares the market, source of production or provision of services
- **Outlawing abuse of dominant position:** No enterprise shall abuse its dominant position in the market. The following would qualify as an abuse of dominant position:
 - Direct or indirect imposition of unfair or discriminatory prices or purchase conditions
 - Limitation or restriction of production of goods and technical or scientific developments
 - Denial of market access
 - Imposition of acceptance of supplementary obligations at the time of purchase
 - Use of power to enter into or protect other relevant market(s)

The law mandates the creation of a **Bangladesh Competition Commission (BCC)**, which is to be responsible for the implementation of the law. The Commission will be comprise by a chairperson and a maximum of four members. Its main functions will include:

- Overseeing the market and taking necessary measures against unscrupulous businesses and organizations.
- Conducting inquiries -- upon receiving a complaint or on its own -- into anti-competitive agreements, abuse of dominant positions, collusive practices, etc.
- Framing rules, policies, and administrative orders relating to competition and advising and assisting the government in their implementation.
- Passing interim orders upon preliminary determination of anti-competitive behavior and final orders upon conclusive determination. Final orders might include:
 - Refraining from the anti-competitive behavior
 - Monetary penalty
 - Division of enterprises

Violation of any order of the Commission will be an offence entailing a jail term of one year or a fine of Tk 100,000 per day for every day of violation.

Concerns Raised

Though the competition law has already been passed and although it creates a mechanism to ensure its implementation, much concern has been raised over its practical execution and potential effectiveness. The problems identified in this regard are:

- **Lack of clarity:** Perhaps understandably, the law is not able to clearly specify the precise line beyond which an agreement would become anti-competitive or an action an abuse of dominant position.
- **Time lag in establishing the Commission:** The Act will not be effective until the Commission is established, and past experience shows that such regulatory commissions usually take a long time to form, stretching from a few months to a couple of years.
- **Lack of market knowledge:** There is insufficient information and research/published materials on market behavior/practice in Bangladesh, which may hinder identification of anti-competitive practices.
- **Confidence:** In order to be effective, the Commission will need to overcome the common perception of regulatory authorities as slow, inefficient, and subject to influence. People are unlikely to lodge a complaint unless they are convinced of the standards of the Commission. In a recent panel discussion on the potential implementation problems, leading businessman Syed Manzur Elahi cited an example, stating that businesspeople are aware of the tax ombudsman but they do not go there due to a lack of confidence in that office.³
- **Misuse of the Act:** In a similar vein, past experiences demonstrate that regulatory bodies are often susceptible to political and economic influences. There is a fear that the Act might be misused.
- **Overlapping functions and conflict of interests:** As suggested by Pradeep S. Mehta, secretary general of Consumer Unity and Trust Society (CUTS) International, there are always some ambiguities in countries with multiple regulatory authorities.⁴ Giving an example, he said the Commission's functions may overlap with that of the power and energy regulatory commission or the telecom commission, potentially leading to conflicts over jurisdiction or turf wars.

Lessons from other countries

An article by Mitra and Mehta identifies experiences of other countries that Bangladesh can draw and learn from.⁵

India: India, for example, passed a similar law in 2002 to replace its outdated Monopolies and Restrictive Trade Practices Act. This early act penalized market dominance regardless of whether the cause was unfair practices or superior efficiency. The 2002 legislation corrected this problem by focusing on the abuse of such dominance, a model that Bangladesh has followed. Unfortunately, however, the competition commission established by the 2002 act was poorly-staffed and inadequately equipped. As a result, it was necessary to amend the law in 2007 to give the agency greater authority.

Pakistan: The writers feel that the Competition Commission of Pakistan (CCP) was able to set a better example by proving its neutrality and demonstrating political independence. For example, even though Pakistan Steel Mills was a state-owned company, the commission fined the steel producer 25 million for abusing its dominant position in the low carbon steel market.

Mauritius: The Competition Commission of Mauritius (CCM) has won praise for its strategic selection of cases and for its transparency in presenting the details of its investigative actions.

Egypt: The Egyptian Competition Agency (ECA) was recognized for its strong internal team of experts and for the ties it had built to the business community. The success of the agency was largely attributed to support from the highest level of the then Egyptian government.

Based on Mitra and Mehta's findings, we can see that a competition act can prove to be a useful tool for fostering healthy competition, but it is dependent on a strong, neutral, transparent, skilled, and committed oversight commission.

The Way Forward

For the time being it can be said that the passing of the Competition law is certainly a welcome move, but its success will depend on a strong Commission and proper implementation. For the way ahead, the following points should be given priority:

- Ensure coordination among the concerned ministries and organizations to make the law effective.⁶
- Establish as soon as possible, an independent, neutral, and transparent Commission with adequate authority and human and financial resources.
- Learn from the lessons provided by other countries.⁷
- Create awareness among the population and business community.

¹ Bertelsmann Stiftung, BTI 2012 — Bangladesh Country Report. Gütersloh: Bertelsmann Stiftung, 2012.

² *Ibid*

³ "Strong commission needed to implement competition law". Star Business Report. *The Daily Star*. July 3, 2012. Accessed at: <http://www.thedailystar.net/newDesign/news-details.php?nid=240661>

⁴ *Ibid*

⁵ Siddhartha Mitra and Udai S Mehta. "Competition enforcement in Bangladesh". *The Financial Express*. June 13, 2010 Accessed at: [http://www.cuts-ccier.org/ArticlesJune10-Competition enforcement in Bangladesh.htm](http://www.cuts-ccier.org/ArticlesJune10-Competition%20enforcement%20in%20Bangladesh.htm)

⁶ "DCCI holds seminar on Draft Competition Law". 01 Oct 2011.

Accessed at: http://www.datacraftbd.com/dcci/index.php/seminar/seminar_detail/18

⁷ "Strong commission needed to implement competition law."

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