

# Effectiveness of Competition Commission in Corporate Governance in Bangladesh

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## **Abstract**

Bangladesh has successfully resisted the globalization trend by liberalizing its economy and removing restrictions. Therefore, in order to attain the goal of maximizing economic efficiency, liberals should adopt a strong competition policy that forbids both needless government intervention and anti-competitive business practices. The majority of this paper is descriptive. The study has been carried out using secondary data. The Competition Act, 2012, which replaced the previous Monopolies and Restrictive Trade Practices-MRTP (Control and Prevention), Ordinance, 1970, aims to protect Bangladeshi markets from anti-competitive practices by businesses and promote competition in line with the principles of contemporary competition laws. The Act prohibits anti-competitive agreements, the misuse of a dominant position by companies, and the regulation of business combinations, including mergers, amalgamations, and acquisitions, in order to prevent any detrimental effects on competition in Bangladesh. Given this, the goal of this article is to highlight the challenges and issues that the Competition Act of 2012 brings with it when it comes to preserving a competitive business environment. To assist governments in addressing the challenges posed by globalization by enhancing competition in both domestic and international markets, public awareness campaigns and robust competition policies and laws are essential. These should promote competition, uphold consumer rights, fairly fix prices, distribute economic power, promote economic efficiency, maintain trade's independence, and reduce agency problems.

**Key words:** *Competition, Commission, Consumer's right, fair price, agency problem.*

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## **I. Introduction**

Bangladesh is a nation in development. It is now imperative to attain the targeted growth by reducing unfair competition and increasing investment in order to become a mid-income nation by 2021 and a developed nation by 2041. Ensuring that goods are affordable for the general public, have maximum utility, and foster innovation in production are all necessary to establish a competitive environment in the market. By fostering sustainable competition in the economy, the competition commission seeks to protect consumer interests and best practices while ensuring market equality.

In Bangladesh, the Competition Act was first introduced in 2012. The Competition Act has been prepared to ensure fair competition in the business environment and to eliminate certain activities, such as collusion among business concerns, control, dominant position, misuse, acquisition, merger, and activities that impede and resist competition within the nation. This Act is divided into 46 sections. Bangladesh implemented the MRTP (Control and Prevention) Ordinance, 1970 prior to the introduction of the Act. On October 23, 2007, SRO/075 (1)07 dt repealed this Act and Rep. through the Act's introduction (Ord. III of 07, s. 59). To fulfill the goals of the Competition Act, the Government of Bangladesh established the Competition Commission in accordance with section 5. The Commission consists of four members and one chairperson as per section 7 of this Act. On the other hand, to overcome the limitations of MRTP (Control and Prevention) Ordinance, 1970, introduction of competition commission had become essential for ensuring consumer's right, fair price fixing, resisting the abuse of power, dominant to the smaller company and reducing the agency problem. Through proper application of the laws, nation as well as the country will be benefited and ultimately policy makers will frame their policy for the economic development. This has imbued the researcher to undertake the research titled, "Effectiveness of Competition Commission in Corporate Governance in Bangladesh".

### **Objectives of the Study**

The study's main objective is to evaluate the Competition Commission's significance for corporate governance in Bangladesh. In addition to these, the study has the following particular objectives:

1. To investigate the emergence of Competition Commission.
2. To assess the role of the commission in meeting up the good Governance of corporations in Bangladesh.
3. To evaluate the area of application of the Commission.
4. To suggest some modest measures to overcome the weakness prevailing in the Commission.

### **Methodology of the study**

The work is primarily done using secondary data in order to carry out the research project successfully. The Competition Act of 2012 of the BCC and various records maintained by the Commission are the sources of the secondary data. The primary purpose of interviewing certain Commission executives is to obtain clarification on the information contained in the various maintained records. The researcher has read numerous publications and several pertinent books in order to comprehend and explain various study-related terminologies.

### **Scope of the study**

Nearly all financial activity related to the "Emergence of Competition Commission in Corporate Governance of Bangladesh" is covered by this research. Different parts of the records maintained by the Commission are considered for analysis during the study's conduct because some of them are audited and some are not. The Commission's functions, the Competition Act's application, the need to replace MRTP (control and prevention), and the 1970 Ordinance are all covered in the research project. The Repeal of MRTP (Control and Prevention), Ordinance 1970, Transfer of cases from MRTP (Control and Prevention), Ordinance, 1970 and Investigations/proceedings undertaken by MRTP (Control and Prevention), Ordinance, 1970.

### **Limitations of the study**

The researcher has encountered some adverse situations. The majority of the secondary data used in this work came from various records that the Commission maintained. However, not all the information required is provided by the records. In this instance, an alternate method of interviewing the Commission executives was necessary. However, the researcher has observed that they are not willing to provide the necessary data on their own because the Commission executives are unaware of this.

## **II. Vision, Mission and Functions of the Commission**

### **Vision**

To create a competitive market by raising awareness among all those involved in the market and enforcing the law with precision in order to foster a friendly business environment.

### **Mission**

- 1.. To identify and suppress anti-competitive practices such as business concern collusion, monopoly, oligopoly, control, abuse of dominant position, supremacy, acquisition, merger, and so forth.
2. To establish a commission focused on information-communication, technology, and advanced knowledge-based research.

### **Functions of Commission**

a) The commission's responsibilities, authority, and functions are as follows: a) To eradicate the culture that has a negative effect on the market, support competitors, and maintain and protect free trade when there is competition.

b) Investigating the anti-competition agreement, dominant position, and culture either independently or in response to a complaint.

c) To look into the offense and, based on the offense committed, file a lawsuit and maintain it under the Competition Act.

d) To find out about various matters concerning the approval or disapproval of the combination and to investigate the related matter and conditions of the combination.

e) To draft regulations, policies, announcements, and introductions of administrative instruction; to assist and counsel the government in putting them into effect.

f) To establish the proper standards for encouraging competitive activities and training that is competition-focused.

g) To implement the required course of action in order to raise people's consciousness among members of the various social classes by means of publications, publicity, and other channels.

- h) To execute, adhere to, and take into account any competitive matter that the government sends.
  - i) To assess the steps taken to protect and implement consumer rights under other Acts.
  - j) To carry out studies, seminars, symposiums, workshops, and other comparable events to inform the public about the anti-competition agreement and its operations. In addition, to set up the publication of these materials and to suggest the government, they may be implemented effectively.
  - k) To execute and sign any agreements and Memorandums of Understanding (MOUs) signed by foreign organizations with the government's prior consent.
  - l) To establish fees, charges, or other costs associated with implementing this Act's objectives, as well as to carry out any additional actions mandated by regulations in this regard.
2. The commission may look into any complaint filed under this Act, either on its own initiative or in response to any allegation.
  3. According to Act V of 1908, also known as the Code of Civil Procedure, the commission, or as the case may be, the chairperson or any Member, may practice the same authority as a civil court with regard to the following matters: a) notifying legally and ensuring that any person appears before the commission; b) discovering or producing any document; c) looking through and inspecting any information; d) seeking officially any necessary document from any office; e) notifying for the scrutiny of witness and document, f) taking any measure for the purposes of this subsection.
  4. The Commission may issue order anyone to present books, accounts, or other evidence that are in his custody or under his control and that are attached to any deal or transaction and whose scrutiny is necessary for the purposes of this Act before the Commission or an officer designated by it in that behalf. The person so directed is obligated to produce the requested data.
  5. Before the Commission or an officer it designates in that capacity, the Commission may require anyone to produce books, accounts, or other documents that are in his possession or under his control that are attached to any deal or transaction and whose scrutiny is necessary for the purposes of this Act. The individual giving the order will be required to provide the requested data.
  6. In order to conduct any investigation, the Commission may ask for help from specialists in the fields of accounting, economics, and commerce. The experts will respond suitably and assist the Commission in accordance with instructions.
  7. Under this Act, it shall be unlawful for any person to willfully refuse to comply with the order issued under sub-section (3) or to obstruct the chairperson or another individual duly authorized by the Commission from exercising the powers under said sub-section and he will be punished with a fine, a term of imprisonment not to exceed 03 (three) years, or both.

### **III. Composition of the Commission**

The commission is made up of one chairman and four members with a combined fifteen years of experience in public administration, economics, and market-related fields. They have a three-year appointment. Both the member and the chairperson cannot be older than 65. The commission's full-time members include the chairperson, who answers to the government for carrying out his responsibilities. The government may also appoint them to a second term. The senior-most member will assume the role of chairman until they resume it or until the newly appointed chairperson takes up their position, if the chairman's office becomes vacant for any reason—disease, absence, expiration of their tenure, or any other reason. It is worth- mentioning here that should the chairman or any member pass away or resign in accordance with subsection 7, the government will appoint a replacement within sixty days.

### **IV. Discussions and Analyses on the terms relevant to the effectiveness of the Commission**

A thorough grasp of the Competition Commission necessitates a discourse on the terms "competition," "competition policy," "competition law," "market governance" and "corporate governance." These terms primarily pertain to the commission's operations. In order to conveniently conduct its operations, the commission must have certain laws, and it will formulate policy while adhering to the law. Following is a discussion of the above-mentioned topics:

#### **Competition**

Due to the concept's broad nature, disciplines such as economics, management, sociology, and philosophy can all take a different tack when addressing it. In the fields of economics, competition is defined as more players in the market; in management, it's performance; in sociology, it's the struggle for resources; and in philosophy, it's knowledge. The philosophic idea of knowledge will be used in this work to explain why people and institutions behave competitively. There is still research to be done on the connection between competitiveness and knowledge (Chowdhury:2015:1).

In terms of economics, competition is the presence of numerous sellers and buyers in a market to prevent price gouging and ensure that everyone receives an equilibrium price. Being able to provide the right products and services at the right time and location constitutes competition for a business. Over time, society's consumers will be able to purchase goods at a cost that is exactly equal to their marginal cost of production, and the business will only realize a normal profit (Chowdhury:2015:99). According to Porter (1990), competition encourages innovation and productive activity within the company. The main anti-competitive policies are quotas, tariffs, market entry barriers, and concentration of power. Hart (1983) asserts that the labor, capital, and production markets are all competitive. A competitive environment promotes resource distribution based on ability, knowledge, and performance rather than concentrating power, self-interest, or ideology. Nowadays, the majority of corporate compensation plans are performance-based rather than fixed, and they are competitive. There is an increased level of competition on corporate boards these days. Nowadays, a board makes use of the independence, knowledge, and experience of individuals outside the company (Chowdhury 2015:99). It is undoubtedly corporate governance compliance, and when appropriately implemented, this standard should reduce executive directors' self-interest and greed-based knowledge. A share market needs to be well-informed in order to offer competitive pricing. The market is the one who needs to disseminate information. A competitive environment in business refers to one in which performance and merit determines how resources are used and distributed. Conversely, if there are any interpersonal ties between economic units, then economic relationships are never totally competitive. Banks grant loans to businesses based on their historical, current, and anticipated future performance. The basis for paying taxes, dividends, and wages is earned profit. In the context of management, competition entails decentralization of authority and committee decision-making. Economic interactions are hindered by syndicalism, relationships, and collusion between firms. Sociologists find it frustrating when a small number of people attempt to control the majority. Sociology competition requires empowerment. Ninety variables are listed by the World Economic Forum (2000) as indicators of the competitive environment. A few things to consider are transparent bureaucracy, low tariffs and taxes, ample infrastructure, stringent law and order, minimal regulation, and good governance. Competition facilitates: i) efficient resource utilization; ii) economic growth via increased productivity; and iii) a somewhat equitable income distribution through the elimination of monopolistic conditions. iv) cognitive growth through the assessment of potential behavioral paths; and v) the home environment (Chowdhury:2015:99-100).

The term "competition" describes the financial rivalry between suppliers and service providers operating in the relevant market who are involved in comparable business or service provision, as well as the government policies put in place to create a market structure that fosters this rivalry. These steps are taken methodically in order to create a level playing field that aids in market regulation and guarantees the availability of goods and services at prices that are competitive with current costs.

Professor J.M. Clark claims that competition is the type of market pressure that needs to be applied in order to reward the enterprising and penalize the laggards, ultimately fostering economic progress.

The definition of competition in a market is described as "a scenario where businesses or vendors independently aim to win over customers in order to accomplish a specific business goal, such as profit, sales, or market share."(<<http://elibrary.worldbank.org>> accessed on 5 January 2015)

A market that is focused on consumer rights, fair trade, efficient resource allocation, the growth of small businesses, incentives for innovation, and the distribution of economic power is the result of competition in the market, which involves competition for quality, price, and resources. It is because of the advantages that arise from competitive markets that they are thought to support economic growth. (<<http://www.indiajuris.com>>)

### **Competition and Corporate Governance**

Since management was unable to effectively utilize and allocate company resources, corporate governance has become a relatively new field of study, particularly in the 1980s. The corporate sector has evolved to separate ownership and management agency relationships as a result of the growth of corporate activities. Actually, because of their dispersed locations, owners or shareholders (principals) are unable to manage and control their business; instead, management acts on behalf of the shareholders. As a result, management does not always act in the shareholders' best interests. Instead, they put their own interests first. Thus, there is a possibility of shareholder money being misused in the corporate sector, a practice known as agency cost. Therefore, agency costs are the outflow or diversion of corporate resources to satisfy management's avarice and self-interest. The phrase "eclipse of modern corporations" was first used by Jensen (1986) to describe these agency costs brought on by the moral hazard issue. In addition, there is a greater knowledge and information asymmetry between shareholders and management in the corporate sector. Given their superior knowledge of the company compared to the owners, managers may have a monopolistic mindset. However, because the owner participates directly in day-to-day business operations, there is actually very little relationship or separation between ownership and management in sole proprietorships, partnerships, and private companies. Owners continue to have control over information and management. According to Chowdhury

(2015), small and medium-sized enterprises that have lower agency relations are considered more competitive than large corporations that have higher relations.

There is, however, hope. Institutional shareholders contribute to the competitiveness of corporate governance by lessening the monopolistic positions held by executives and directors. In order to keep an eye on management, they also designate independent nonexecutive directors as their representatives. The majority of board members in the United States and Britain are non-executive, including the chairman. There is some control over the financial executive remuneration due to large shareholders and concentrated ownership. (Chowdhury, 2004).

## **Necessity of Competition and Competition Law in Bangladesh**

### **Necessity of Competition**

Since competition serves as a means of displacing inefficient producers, it is crucial. In order to draw in customers, producers are forced by competition to either reduce prices or enhance their goods. In order to cut their prices even further, producers seek out ways to produce goods more cheaply when they are in competition. Since the good or service is a monopoly or almost one, prices will rise in the absence of competition. The low-cost producer will win in a competitive market, and the consumer will gain. Market efficiency is contingent upon the presence of competition. Customers gain significant advantages from it in that it promotes entrepreneurship, creativity, efficiency, and a greater variety of options, allowing them to purchase the products and services they desire at the most competitive prices. Businesses would disregard efforts to reduce costs and advance technology if there was no competition in the markets. Companies would benefit from price and service more than consumers would, with consumers losing out on benefits. Let's now examine what would occur in the event that there was no market competition. Prices are driven down in a market that is competitive. More people having the means to purchase goods benefits consumers as well as businesses by stimulating production and the economy as a whole. On the other hand competition in market also ensures the followings:

**a) Higher quality:** In order to gain more clients and increase their market share, companies are also motivated by competition to raise the caliber of the products and services they offer. Products that function better or last longer, better after-sales or technical support, or friendlier and better service are all examples of quality.

**b) More options:** Companies will make an effort to set their products apart from the competition in a market that is competitive. Customers now have more options, allowing them to choose the product that best strikes the ideal mix between cost and quality.

**c) Innovation:** Innovation: Businesses must be innovative in their product concepts, designs, production methods, services, and other areas in order to provide customers with this choice and generate better products. Certain policies that appear to limit competition can be justified as means of fostering competition. For instance, intellectual property rights may limit competition in certain areas, such as the use of trade names. However, the consensus is that antitrust laws and intellectual property laws support each other rather than working against each other to stifle competition and innovation. Similarly, the advantages of contractual non-compete agreements support their justification.

Courts and antitrust officials generally mistrust complaints about competition because they believe that it can heal. When trade associations or other governmental organizations criticize competition as damaging or disastrous, they have good reason to be cautious. First, there are less options and higher prices for lower-quality goods and services for consumers. Second, restrictions imposed by the public or private sectors may increase exit costs and stifle innovation. Third, economic regulation may draw special interest organizations that advocate for laws that advance their interests at the expense of the general public. When faced with fresh competitors or novel forms of competition, rivals may seek assistance from regulators. Under the pretense of protecting consumers, rival businesses may petition government bodies to forbid or restrict specific pro-competitive practices, like offering discounts to their customers. They might ask the government to impose more trade restrictions or take other protectionist actions. While it helps lawyers and lobbyists, this kind of rent-seeking activity can seriously waste limited resources. Lastly, serious anti-democratic effects like political instability, corruption, and a concentration of economic and political power can result from restricting competition.

### **Necessity of Competition Law**

Government monopolies and ineffective private enterprise business practices are prevalent in Bangladesh today. The creation of a national competition policy is promoted as a means of ending the present anti-competitive business practices that both public and private enterprises in Bangladesh are engaging in. While liberal FDI policies and privatization are regarded as sufficient measures to stop anti-competitive business

practices, a lax regulatory framework would make it difficult for Bangladesh to implement these policies and create a competitive business environment.

Consequently, creating a national competition policy may seem to be the only way to address these issues. However, from a different angle, this is unlikely to be successful unless Bangladesh modifies the corrupt and bureaucratic practices that are part of its regulatory framework.

Three primary components make up competition law, also known as antitrust law:

a) Outlawing contracts or other measures that limit open commerce and rivalry among companies. This includes, in particular, the cartel-caused suppression of free trade.

b) Prohibiting aggressive actions taken by a company that holds a monopoly in a market or anti-competitive actions that usually result in such a position. Predatory pricing, tying, price gouging, refusal to deal, and many other practices can be regulated in this way.

c) Overseeing joint ventures as well as large corporation mergers and acquisitions. Deals that are seen to jeopardize the process of competition may be completely outlawed or permitted with conditions attached, such as having to give up a portion of the combined company or grant licenses or access to facilities so that other companies may carry on competing.

Different jurisdictions have different competition laws in terms of both content and application. Consumer interest protection and giving entrepreneurs a chance to compete in the market economy are frequently regarded as crucial goals. In addition to other market-oriented supply-side policies, competition law is closely related to laws pertaining to the deregulation of market access, state aid and subsidies, the privatization of state-owned assets, and the creation of independent sector regulators. Competition law has been seen as a means of improving public services in the last few decades. According to Robert Bork, competition laws can have a negative impact on the market when they shield ineffective competitors from competition and when the expense of going to court outweighs the benefit to the consumer. A welfare state's obligation rests with the establishment of a competitive environment for doing business. (<<http://archive.thedailystar.net>>)

Prof. William Kovacic, a former commissioner of the US Federal Trade Commission, claims that increased productivity, innovation, and new business ventures require the application of competition law.

### **Competition Policy**

Government initiatives that directly regulate business practices in the local market are known as competition policy. When competition laws are applied correctly, efficiency is promoted, which increases welfare. The combined surpluses of producers and consumers are implied by the term "welfare." Section 5 of Ordinance No. 5 of 1970, which deals with the Control and Prevention of MRTP.

A collection of statutes, executive orders, and case law known as the competition policy is used to discourage unfair business practices and preserve fair competition. It also contains guidelines and policies pertaining to acquisitions and mergers. Measures to remove obstacles and limitations on competitive transactions within a national market are part of the competition policy. Target groups include price discrimination, dominant positions and mergers, cartels and other horizontal restraints, vertical restraints, and multinational corporations. By enacting suitable measures to address business firms' anticompetitive behavior, competition policy seeks to foster a competitive market environment. Improving consumer welfare and resource allocation efficiency are the overarching objectives of both trade and competition policy. Their approaches are different, though, with trade policy emphasizing international cooperation while competition policy seeks to foster rivalry both within and between different national enterprises. (The Basics of Antitrust Policy: A Review of Ten Nations and the European Communities, the World Bank Technical Paper, World Bank, Washington. Pg-160)

However, competition law, also referred to as antitrust law, is a long-standing practice that was created to promote greater market fairness and better shield customers from corporate injustices. It dates back thousands of years.

Competition law and competition policy are not the same thing. All of the government's executive policies, guidelines, and approaches to competition-related issues in the relevant market are collectively referred to as competition policy. Contrarily, competition law is a legislative act that is enforceable in a court of law. Thus, competition law serves as an auxiliary framework to competition policy, which serves as its main framework. The trade policies that govern trade are heavily influenced by competition policy, which does not need legislative approval to be enforced. Nonetheless, these policies ought to be protected by the law, as there's a chance they could turn into discriminatory practices without it.

In summary, competition law is a component of competition policy, which serves as the framework for the legal enforcement of issues arising from the policy. Over time, it became apparent that one of the main tenets of a market economy is competition law. Due to this acknowledgement, about 120 countries—including developing ones—have passed laws pertaining to competition.

### **Controlling Current Business Practices and Regulations in Bangladesh**

An ordinance known as the "MRTP (Control and Prevention) Ordinance" was created in 1970 and was in effect in Bangladesh prior to its independence. It lasted until 2012. This Ordinance has very little impact on current business practices in Bangladesh, despite having explicit provisions for measures against the growth of unreasonable monopoly power, unreasonable restrictive trade practices, and undue concentration of economic power. The ordinance includes provisions for penalties and appeals in addition to due diligence and legal procedures to counter monopolies and constrictive business practices. However, the lack of a suitable policy based on the Ordinance law made the law's enactment extremely weak. Consequently, resistance to the monopoly that predominated the market.

In addition to impeding efficiency gains, the weak competition regime also disregards consumer interests. One of Bangladesh's most significant policy changes in the 1980s was trade liberalization. It has been put into practice as a component of the structural adjustment program (SAP), which was launched in 1987 as the overarching economic reform initiative.

The first attempt to enact a competition law was made in 1996, as was previously mentioned, but it was quickly shelved. The Ministry of Commerce has prepared a draft Competition Act 2008, which the government is presently debating. Business representatives, however, have voiced their concerns during the consultation process over the previous two years, stating that they believe it was written by foreign specialists. Business community concerns also include the proposed competition commission's lack of experience, knowledge, and institutional capacity. Bangladesh Country Report-2012 (<http://www.bti-project.org>.)

As the private sector is actually characterized by competition, the privatization of various state-owned businesses brought about a competitive environment in Bangladesh's market. The Privatization Act, 2000 was enacted to put an end to the anti-competitive business practices of state-owned industries. It also aimed to accelerate and enhance the privatization process by placing state-owned enterprise privatization within a legal framework. With increased power comes increased efforts to privatize the power, telecommunications, transportation, banking, insurance, port and container handling, natural gas and oil exploration sectors, as well as aviation and tourism. To eliminate inefficiencies and government monopolies, state-owned industries in the steel, sugar, chemical, jute, and textile sectors are also getting ready to be privatized through the Commission.

Prior to this, the Investment Board Act, 1989 was passed, creating a board to promote private sector investment and offer essential resources and support for the development of new industries.

The Foreign Private Investment (Promotion and Protection) Act of 1980, which guarantees nondiscriminatory treatment, protection against expropriation, and guarantees of repatriation, governs competition through foreign direct investment in Bangladesh. Bangladesh passed anti-dumping and countervailing laws in the middle of the 1990s to shield homegrown businesses from unfair competition brought on by subsidized and dumped imports. The inability of domestic industries to act in accordance with these laws and the lack of institutional capacity prevented any success in bringing complaints.

The Bangladesh Export-processing Zones Authority Act of 1980, the Industrial Policy of 1999, and the Companies Act of 1994 were developed as supplementary regulations to implement a methodical approach to implementing competitiveness in the business sector. However, in an effort to increase competition in the telecom industry, the Bangladesh Telecommunications Regulatory Commission was founded in 2002.

The Ministry of Commerce and Ministry of Industry are tasked with promoting and regulating private sector companies. The directors of several organizations carry out the Ministry of Commerce's regulatory program.

### **Reasons of Adopting New Competition Policy in Bangladesh**

Bangladesh needs to be ready to talk about global competition policy under the World Trade Organization's (WTO) rules, even though it doesn't seem like it is in a strong enough position to create a successful competition system through national competition policy just yet. Donor nations and organizations are putting a lot of pressure on developing a national competition policy in order to lay the groundwork for an international competition policy. Since the WTO's Doha round (November 2001), developing nations like Bangladesh have opposed the idea of competition policy because they lack confidence in having an effective competition authority that can correctly identify anticompetitive business practices and take appropriate judicial action. A system of international competition would be advantageous to all countries. To stop bare-welfare anticompetitive business practices within the nation, a national competition policy would be necessary, and any argument against global competition policy would never be accepted as justification.

### **Competition and Market Governance in Bangladesh**

Under the 2005 Industrial Policy, Bangladesh has essentially opened all sectors of the economy to private investment, with the exception of four reserved sectors. Private enterprises are prohibited from dealing in nuclear power, firearms, ammunition, and other military hardware, as well as in forestry and automated

extraction within the boundaries of reserved forests. Given that these areas are closely related to national security and that the Bangladeshi government is the only authority in them, these reservations are accepted.

But because of the existence of so-called natural monopolies, the government has control over some other industries. This is considered anti-competitive business conduct, according to many critics. The majority of utility services, including electricity, gas, oil, water, and telecommunications, as well as railway transportation, are regarded as natural monopolies. This is apparent from the government of Bangladesh's long-standing business policies. Cost effectiveness and competition may clash under this kind of monopoly, with more competitors potentially resulting in a reduction in scale efficiencies. Because of this, the government of Bangladesh inherent monopoly business practices frequently seems to beg to be stopped in order to promote competition. However, solutions to end the natural monopolies do not seem simple when the effectiveness and qualifications of potential rivals to the government are evaluated in the context of a least-developed country market.

Along with various anti-competitive practices like price fixing, supply manipulation, exclusive dealing arrangements, tying arrangements, unregulated retail prices, bid rigging, price discrimination, bribery, extortion, gifts, and market manipulation under the cover of physical violence, BTC also observed some other monopolistic business practices carried out by private businesses in Bangladesh. In Bangladesh, mafia dominance is also fairly common, particularly in the construction and public procurement sectors. This occurs occasionally under the cover of so-called trade unions, which significantly impedes the development of a competitive business environment.

### **Customary Business Practices**

True, there are certain customary business practices in Bangladesh that act as roadblocks to perfect competition. Certain medical professionals refer their patients to specific diagnostic centers where they get paid a commission. This is also the case for other educational establishments that mandate that students purchase study-related items from specific stores. Certain businesses have an unfair advantage over their rivals because of these exclusive dealing and tying arrangements. Offering free goods other than their own products is seen by some businesses as an anti-competitive tactics.

In Bangladesh, dumping is a frequent form of price discrimination. This happens when domestic importers and foreign exporters work together to artificially lower the prices of their products in an attempt to outcompete domestic rivals. In Bangladesh, it is also considered a customary anti-competitive business practice for foreign and local companies to assign sole dealers to sell their products instead of assigning dealerships based on a competitive basis. Numerous state-owned companies that produce sugar, jute, and textiles have been functioning as concerns anticipating losses over the years, which has significantly stifled competition.

### **Application of this Act**

- 1) All businesses engaged in the purchase, sale, production, supply, distribution, or shortage, as applicable, of goods and services for commercial purposes are subject to the Act.
- 2) Prohibition of agreements that hinder competition, misuse of a dominant position, etc.

### **Agreement to Prevent Competition**

1) Any agreement or collusion pertaining to the production, supply, distribution, storage, or acquisition of any goods and services that could adversely affect competition or result in the monopolization or oligopoly of the market is forbidden, whether made directly or indirectly.

a) Any action taken by an individual or group involved in a contract, the trading of comparable or identical goods, or the provision of services will be considered detrimental to competition in the market for goods and services if it:

Either directly or indirectly

- i) Sets abnormal prices for purchases or sales, or
- ii) Establishes a misleading price in any process, including bid-rigging.

b. Restricts or manages markets, production, supply, distribution, technical advancement, investment, or service delivery. Segment the markets according to the kinds of goods and services offered, where the goods are produced or provided, the market's geographic location, the number of consumers, or any other comparable factor.

### **Abuse of Dominant Position**

- 1) No business may misuse its position of dominance.
- 2) An enterprise shall be considered to have abused its dominant position for the purposes of subclause (1) if it:



a. Establishes predatory or discriminatory prices for such purchases or sales, or applies unfair or discriminatory conditions, either directly or indirectly, to the buying or selling of goods or services.

b. Restrains or limits the supply of goods, the market for them, the production of goods, or the development of technical or scientific knowledge pertaining to goods or services, all to the detriment of consumers.

c. Engages in or maintains practices that bar others from accessing the market; d. conditions the conclusion of contracts on the acceptance of additional information by other parties

#### **Ignorance of Combinations**

1) It is forbidden to combine products or services in a way that would hurt competition in the market for those goods or services.

With the caveat that the commission may, upon application and investigation, approve any combination that will not cause or is likely to cause a negative effect on competition; the combination for which the commission's approval is necessary will be specified by regulations.

2) For the purposes of sub-section (1) In the event that any combination listed in that subsection is present, the Commission may, upon application and in compliance with any procedure that may be prescribed by regulation, inquire into or investigate the matter. After conducting such an inquiry or investigation, the Commission will determine whether any combination of

The Commission may approve a combination by order if it: a) doesn't or isn't likely to have a negative impact on competition; if it does or is likely to have a negative impact on competition, the Commission won't approve it.

#### **Initiatives of Competition Commission to prevent malpractices in market**

The BCC strives to protect the interests of consumers by stopping different kinds of unfair business practices. The commission works to protect consumer interests, foster best practices in the industry, and foster an atmosphere of fair and sustainable competition in order to guarantee equal opportunity in the market. The Competition Act of 2012 established the BCC, which is currently tasked with fostering a healthy competitive environment in the market to enable consumers to purchase goods and services at reasonable, competitive prices. (Chowdhury:2015) mentioned the government's goal of having Bangladesh become a developed nation by 2041 and a middle-income nation by 2021, and stated that in order to accelerate investment, unfair trade and business competition must be lessened. The BCC was established in 2016 with the goal of fostering and ensuring fair competition in trade through the regulation and elimination of oligopolies, monopolies, collusion, abuses of dominant positions, and other practices that are detrimental to fair competition. According to him, any person or company that discovers anti-competitive behavior in the market may file a complaint with the commission. But, he continued, the commission may also take suo-moto action against any person or business if it believes that the latter is engaged in anti-competition activities. Regarding the commission's role in an unusual price increase in the market, he stated that while it has no control over abnormal price increases for goods and services, it does have the authority to take legal action to stop anti-competitive business practices. The Competition Act grants the commission the authority to approve or disapprove business mergers after taking the state of the market and the intended merger's effects on consumers into account, he said, Chowdhury pointed out that the commission functions as a civil court and that it has the authority to fine anyone up to 10% of their average turnover over the previous three fiscal years if it discovers that they have engaged in anti-competitive behavior or have abused a dominant position. Nonetheless, he stated that in order for the commission to begin operations in earnest, it needs additional employees.

#### **Need for substitution of MRTP (Control and Prevention), Ordinance, 1970.**

Since the functions of MRTP (Control and Prevention), Ordinance, 1970 is not sufficient to make the business and market competitive as well as resist malpractice of the business and in open market economy, to protect the consumer's right or to control the different problems and limitations prevailed in the market has been the responsibility and civic right of the citizen of the country. So, to form an effective competition commission has also been a crying need in Bangladesh.

Wide-ranging economic reforms were started in 1991, which accelerated the transition from a command-and-control economy to one that was more based on free market principles. Bangladesh has experienced economic liberalization, as many other nations have, and it is now acknowledged that an efficient competition law is necessary. Bangladesh's foreign trade policy, which had previously been extremely restrictive, underwent a noticeable shift after it joined the World Trade Organization. The Bangladeshi government began taking steps to integrate the country's economy with the global economy in the early 1990s after realizing the significant connections between trade and economic growth. As a result, it increased its push for globalization and opened up its economy by doing away with restrictions and turning to liberalization. In order to combat this, the Government of Pakistan passed the MRTP (Control and Prevention) Ordinance in

1970, which became a crucial aspect of the nation's economic system. This law was enforced by the establishment of the Monopoly Control Authority. The Government of Pakistan, however, completely rewrote its competition regime in 2007 by passing new legislation, the Competition Ordinance, 2007—a contemporary competition law that is primarily based on the European Legal Principles—in response to the evolving economic landscape and several shortcomings of the previous legislation. In order to carry out the new competition law, the ordinance also established the Competition Commission of Pakistan, also known as the Commission. In October 2010, the Ordinance of 2007 was passed into law as an Act of Parliament.

In 1996, there was an initial attempt to enact a competition law, but it was quickly shelved. The Ministry of Commerce and Industry has been drafting the Competition Act, 2008. Some business representatives expressed concerns about the proposed competition bill's adoption during the 2008/2009 stakeholder consultations, which were organized by the Ministry of Commerce and Industry. The draft bill's foreign experts raised concerns that it was a clone of the Indian competition law, so the consultants looked for impose a plan that is universally applicable, disregarding Bangladesh's degree of development, legal system, or business practices. The stakeholders expressed concern regarding the lack of capacity and skilled technical staff to implement the previous bill, MRTP (Control and Prevention), Ordinance, 1970. As a result, there was no guarantee that the law would be implemented effectively. What would also stop any new competition authority from using its authority to further pursue government rent-seeking? Some even viewed the bill as a government ploy meant to scare and pressure business owners. These worries are valid, but they are largely unfounded. Just four years have passed since the Competition Act of 2012, our new competition law, went into effect. The operating law that governed some aspects of competition was the MRTP (Control and Prevention), Ordinance, 1970, until the Competition Act was passed in June 2012.

## **V. Findings, Recommendations and Conclusions of the Study**

### **Findings**

Numerous findings have been drawn from the study's above discussion, which are listed below:

- i) The competition law can only be implemented by a strong, independent commission, and the government must have a strong political will in order to appoint the commission's members and grant them the authority to operate independently.
- ii) The law also seeks to support the nation's economic growth by improving the private sector's environment with regard to production efficiency and pricing decisions that benefit both producers and consumers.
- iii) Syndicates and cartels frequently stifle free market competition and manipulate markets.
- iv) Although businesspeople are aware of the tax ombudsman, they do not visit the office because they lack trust in it.
- v) The public's awareness is necessary for the laws to be put into effect. The regulations that apply to the Competition Commission are easy to understand, pro-business and pro-people.
- vi) The creation of a business environment that is competitive is the duty of a welfare government.

### **Recommendations**

Recommendations are drawn on the basis of findings of the study. Following recommendations may be helpful to make effective the competition Commission in compliance with corporate governance:

- i) The law requires the government to establish the BCC in order to guarantee a competitive environment in the market.
- ii) The commission needs to have sufficient authority in order to compel someone to abstain from signing such a document or abusing any authority. In the event that someone is found guilty, they might also be fined. If someone disobeys any commission order, they risk jail time or other penalties.
- iii) The telecommunication and Regulatory commission and the power and energy regulatory commission's duties may intersect with those of the competition commission. Bangladesh must, if necessary, obtain information about how the law is being applied from other experienced nations or from nearby nations where there hasn't been any overlap of interests.
- iv) The law prohibits anyone from entering into a contract with a manufacturer of a good or service that might have a negative effect or establish a monopoly or oligopoly.
- v) Dismantling cartels and syndicates that frequently manipulate markets in order to ensure a healthy level of competition in business.
- vi) To increase productivity, innovation, and new entrepreneurship, competition law is required.
- vii) In order to foster confidence among stakeholders, the right people must be placed in the right positions.

### **Conclusions**

To address issues with the existence and control of monopolies and competition, the Competition Act was created as an all-inclusive code. Its goals are high and include safeguarding consumer interests, fostering

market competition, and preserving the freedom of other market participants to engage in business, all against the backdrop of the nation's economic growth. Nevertheless, with just 46 sections, the Competition Act is surprisingly small. The legislation has a straightforward structure but is heavy on procedures. Under the revised plan, Bangladesh wants a completely new competition law and a new regulatory body, the BCC. Only if the law is less expensive, operates independently, and is made independently will it accomplish its goals. Companies, their delegates and directors, and important corporate executives must all steer clear of the dire repercussions of monetary penalties and civil jail, not to mention the ruin of their well-earned reputation in the event that the Competition Authorities, the media, and others make public their wrongdoings. The takeaway is clear and simple: all businesses, regardless of size, industry, region of operation, or type of goods or services offered, can greatly benefit from an extensive and well-thought-out competition compliance program. It is highly desirable that the CCI publish comprehensive procedural and substantive guidelines to establish the new regime as soon as the Act's implementation has become more stable. To assist governments in addressing the challenges posed by globalization, public awareness campaigns and robust competition policies and laws are essential. These should promote competition, uphold consumer rights, fairly fix prices, distribute economic power, promote economic efficiency, maintain trade's independence, and reduce agency problems.

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