
COMPETITION LAW IN BANGLADESH: LAW AND REALITY

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ABSTRACT

Competition law is hugely inestimable for market competition-related stakeholders. Bangladesh is rapidly growing in South Asia and also referring as an upcoming 'Asian Tiger' with a gross domestic product (GDP) growth of more than 5% in the last six years. Bangladesh has enacted first the Monopolies and Restrictive Trade Practices (Control and Prevention) Ordinance, 1970 before the independence from Pakistan but the law has no practical implementation. So, the market has to deal with various anti-competitive wrongdoing such as- cartel, abuse of dominant position, syndicate for price manipulation, and so on, which leads to hampering market efficiency and consumer welfare. Bangladesh Parliament has passed the much-awaited Competition Act, 2012 by repealing the previous ordinance for ensuring a healthy and congenial market and the subsequent establishment of the Bangladesh Competition Commission (BCC). In this paper, the main focuses are trying to understand the present situation of competition, coverage of competition law, and necessary steps to improve from the present situation.

Keywords: competition, competition law, competition commission, anti-competitive agreement.

1. Prologue:

Competition law deals with promoting, sustain and maintain optimal market competition by regulating anti-competitive behaviors, works, and agreements by firms. Competition law is also known as antitrust and antimonopoly law in many countries. Bangladesh currently focusing on a knowledge-based economy. From last the decade, the development in the overall economy is remarkable with a huge amount of foreign and private investment here, so it demands better competition rights. New enactment has passed in 2012 and in the year 2016, the Bangladesh Competition Commission (BCC) came into existence. Bangladesh has been fairly very weak traditionally implementation of the competition law. This paper has twelve parts including prologue or introduction and conclusion portions. The second part is related to competition definition an economics perspective and competition law. Understanding the growth of competition history is essential to learn, the third part is related to the small but precise history of the competition law. The fourth part is related evolution of competition law in Bangladesh. The fifth part is related to understanding the competition authority in Bangladesh. Understanding salient features of the current competition law are related to the sixth part of the paper. Parts seventh and eight are related to economic and social growth by using competition law. Portion nine is related to challenges of the present time and for covering loopholes in part ten included learning from other countries like India, China, and Japan. Recommendations are in part eleven, trying to find out using the competition law and authority much effectively.

2. Competition and Competition Law:

Price, product, range of choice, promotion, and place plays a vital role in the competition. In classical economic thought, the competition promotes better services, new products, and innovation; so, it would lead to better pricing, good quality products, and a range of choices. Classical economic thought tries to promote perfect competition by functioning the market optimally of a lower price, good quality, and greater choice. Early economist focuses on pricing and non-pricing-based competition but modern economist has focused on general equilibrium on the many sellers, perfect competition, the concept of welfare and efficiency also. In the case of microeconomics of perspective, there are five major factors for competition: product feature/quality, the number of buyers, perfect information availability, entry or exit barrier, and place. Each factor is influential and gives better alternative options if alternatives are not available then monopoly exists and it is not a good sign for a healthy and congenial market. Competition law tries to ensure the free-market economy which promotes, sustains and

maintains optimal market competition, tries to block down anti-competitive work like a cartel, price-fixing, abuse of dominance position, etc.

3. History of Competition Law:

The *Lex Julia de Annona of Rome* is the ancient example of competition law in around 50 BC. In the 18th Century, Adam Smith's used different terms like the law of monopolies, combination acts, restrictive practices, and restraint of trade in his book *The Wealth of Nations*.¹ In modern times Canada enacted the Act for the Prevention and Suppression of Combinations Formed in Restraint of Trade, 1889 considered the first competition statute in modern times.² One year later, the United States of America enacted the Sherman Act, 1890 for comprehensive economic liberty to preserve free and unfettered competition; in the year 1914 the Congress passed the Clayton Act, 1914 and Federal Trade Commission Act, 1914 which created Federal Trade Commission (FTC).³ In modern times, United Kingdom enacted the Monopolies and Restrictive Practices (Inquiry and Control) Act, 1948; European Union signed the Treaty of Rome, 1957; Germany passed the Act Against Unfair Restraints of Competition, 1957; Japan enacted the Act Concerning Prohibition of Private Monopoly and Maintenance of Fair Trade, 1947. In the perspective of South Asia, India enacted the Competition Act, 2002 and amendment in 2007 by abolishing the Monopolies and Restrictive Trade Practices Act, 1969.⁴ At present time, mainland Chinese competition law becoming a very important issue in the evolution of competition law, because of being the second superpower of the world economy; the Anti-monopoly Law of the People's Republic of China adopted in the 29th Meeting of the Standing Committee of the Tenth National People's Congress on in the year of 2007, August 30.⁵ Bangladesh enacted the Competition Act, 2012 by abolishing the Monopolies and Restrictive Trade Practices (Control and Prevention) Ordinance, 1970.

4. Evolution of Competition Law in Bangladesh:

¹ Sankalp Jain, *Competition Law in the Western World: Legal Framework in European and American Jurisdictions*, SSRN 2-2 (2016). https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2776631

² COMPETITION BUREAU IS CELEBRATING 130 YEARS OF COMPETITION LAW IN CANADA (2019), <https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04427.html> (last visited Jul 29, 2021).

³ COMPETITION BUREAU IS CELEBRATING 130 YEARS OF COMPETITION LAW IN CANADA (2019), <https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04427.html> (last visited Jul 29, 2021)

⁴ ABOUT CCI, <http://www.cci.gov.in/about-cci> (last visited Jul 29, 2021).

⁵ ANTI-MONOPOLY LAW OF THE PEOPLE'S REPUBLIC OF CHINA (2008), <http://english.mofcom.gov.cn/article/policyrelease/Businessregulations/201303/20130300045909.shtml> (last visited Jul 29, 2021).

The Monopolies and Restrictive Trade Practices (Control and Prevention) Ordinance, 1970 is the first enactment in Bangladesh before the independence from Pakistan. This act focuses on preventing an undue concentration of economic power, unreasonable monopoly, and restrictive trade practices. After passing this ordinance in the year 1971, December 16 Bangladesh achieved independence from Pakistan. From that period the ordinance has had no legal implementation by the government or any other stakeholders. Due to the absence of proper regulatory bodies and policies many anti-competitive activities resulting in adverse welfare and inefficiency of the market.

In the year of 1996, a draft bill was proposed for the competition law, however, it took sixteen years to get the final enactment. The long-anticipated act passed in the year of 2012, June 21 for ensuring healthy and sustainable competition. The Competition Act, 2012 preamble shows the importance of competition law in Bangladesh, "...in the context of gradual economic development of the country, it is expedient and necessary to make provisions to promote, ensure and sustain congenial atmosphere for the competition in trade, and to prevent, control and eradicate collusion, monopoly, and oligopoly, combination or abuse of dominant position or activities adverse to the competition".⁶ The Competition Act, 2012 has 7 chapters and 46 sections. It is focusing on developing a sustainable competitive market by preventing anti-competitive works like collusion, monopoly, and oligopoly, abuse of dominant position, adverse effect, controlling merger and acquisition; any relevant wrongdoing which tries to defeat the intention of a congenial atmosphere for the competition. The primary intention of the Competition Act, 2012 is very clear- to ensure the availability of the products and services, competitive price, maximum utility of the product, and ensure a healthy competitive market.

5. Competition Authority in Bangladesh:

Bangladesh Competition Commission (BCC) is the Quasi-Judicial body of the Bangladesh government for encouraging healthy competition in the market. Establishment of the Bangladesh Competition Commission (BCC) under the provision of Section 5 of the Competition Act, 2012; one chairperson and four members shall consist in the Bangladesh Competition Commission (BCC). The vision of the Bangladesh Competition Commission (BCC) is to make the market competition through advocacy, engagement, and enforcement of the competition law trying to ensure a congenial business environment. The core responsibilities and missions of the Bangladesh Competition Commission (BCC) are

⁶ The Competition Act, 2012, § Preamble, Page No. 2, Acts of Parliament, 2012 (Bangladesh).

enumerated by Sections 15, 16, 21, and 22 of the Competition Act, 2012.⁷ According to Section 15 of the Competition Act, 2012, the commission can prevent all kinds of anti-competitive agreements by a natural or legal entity. Any kind of abuse of dominant position in the market Bangladesh Competition Commission (BCC) has the mandate to try to eradicate or prevent it, according to Section 16 of the Competition Act, 2012. Section 21 of the Competition Act is dealt with the prohibition of the combination through mergers and acquisitions. According to section 22 of the Competition Act, in case of the anti-competition act is committed outside of Bangladesh which has an adverse effect on the relevant market, the Bangladesh Competition Commission (BCC) has the mandate to inquiry about it in accordance with both countries laws and rules. Establishing an Information and Communication Technology (ICT) based organization with high competency is another mission of the Bangladesh Competition Commission (BCC). But the Bangladesh Competition Commission (BCC) came to the operation in the year 2016 appointing a chairperson and two members of the commission. The rules under the Competition Act, 2012 yet need to be formulated. The functions of the Bangladesh Competition Commission (BCC) are- eliminate adverse effect practices, promote and sustain the market, ensure freedom of trade, inquire about any complaint and offense, discourage and prevent anti-competitive agreements and abuse of dominant position, sue, and conduct in accordance law, to make policies advice and to assist the government, developing awareness and mass awareness, to follow government instruction, to follow consumers rights and other relevant law.⁸ Unfortunately, the Bangladesh Competition Commission (BCC) has not had a significant impact now in the market. Long procrastination was related to the law and its implements, it takes sixteen years to get the present shape of the Competition Act, 2012 and it took four more years to establish the first commission. Still, the commission not working in full swing for lack of resources. Lack of experience and knowledge gap is also a vital factor to determine anti-competitive market and functioning the market optimally.

⁷ Barrister Atmaja Bhattacharjee Swarna, MEET THE MAN IN CHARGE OF MARKET COMPETITION DHAKA TRIBUNE (2020), <https://www.dhakatribune.com/law-and-rights/2020/01/31/meet-the-man-in-charge-of-market-competition> (last visited Jul 29, 2021).

⁸ BANGLADESH COMPETITION COMMISSION (2019), <http://www.ccb.gov.bd/site/page/bab76c90-2146-48fc-82e7-51f6d7f6c383/> (last visited Jul 29, 2021).

6. Salient Features of the Bangladesh Competition Law, 2012:

Bangladesh has been fairly very weak traditionally implementation of the competition law. The Competition Act, 2012 is relatively new, implementation and execution of laws have always been a major issue for Bangladesh. The Competition Act, 2012 focuses on the competitive environment and tries to prevent, discourage and eradicate anti-competitive practices.

Prohibition of anti-competitive activities: The Competition Act, 2012 prohibits any kind of anti- competitive activities in the market. Directly and indirectly any collusion or agreement by a natural or legal entity, which would have an adverse effect on the competition and create monopoly and oligopoly. So, the following practices are prohibited under the Competition Act, 2012:

- Fraudulent practices like- cartels, fixing prices, determine the sale or purchase prices.
- Control or limits of the organizational unfair behavior like hampering- the manufacturing process, technical development, investment, and supply.
- Divides the market by wrongdoing like geographical location, number of consumers, class of products and services, or by any other means.

Abuse of dominant position: If any natural or legal entity holds such position as- the capability to work independently without competitors and customers, is known as the dominant position holder. The Competition Act, 2012 prohibits using dominant position by any natural or legal entity. So, the following practices will consider as an abuse of dominant position under the Competition Act, 2012:

- Involving directly or indirectly involved with purchase condition, unfair or discriminatory prices.
- Control or limits of technological advancement or goods or scientific development.
- Put limitation to enter other in the specific market.
- Implementing supplementary provision at the time of purchase.
- Give favorable condition to enter into or protect other relevant markets.

Prohibition on combination through mergers and acquisitions: Any combination like mergers and acquisitions which will cause or likely cause an adverse effect in the competitive market, the Bangladesh Competition Commission (BCC) has a mandate to prohibit it. If the Bangladesh Competition Commission (BCC) satisfied after inquire or investigation that mergers and acquisitions which will not cause or not likely to cause an adverse effect in the competition, the commission can approve such mergers or acquisition by an order.

The implication of the competition law for inquire relevant issue outside Bangladesh: If any anti-competitive practices happened outside Bangladesh any natural or legal entity which has an adverse effect in the relevant market then the Bangladesh Competition Commission (BCC) might inquire the matter in accordance with both countries law, rules and policies.

Punishment: In case of violation of any order of the Bangladesh Competition Commission (BCC) will count as an offense and it will be punishable by imprisonment for a term not exceeding one year or a fine not exceeding one (1,00,000) lac taka per day violation.

7. Competition Law and Economic Growth:

The competition authority tries to create pressure on anti-competitive activities and try to increase market efficiency. The government tries to take all the necessary steps to promote a healthy market that will effectively function for all the classes of people, which may lead to economic welfare and growth of the nation.

Productive efficiency: In economics, productive efficiency means is a situation when an economy cannot produce another product reducing the production of another product. Competition law leads a firm to use their product in the most efficient way so that better quality of goods and services at the lowest possible price. So, a productive efficient firm can sustain in the long run and it allows efficient companies to enter the market and sustain.

Dynamic efficiency: Dynamic is associated with the productive efficiency of a firm; the dynamically efficient firm will be reducing its cost curve by implementing a technology-based new production process. So, competition drives firms to innovate and create new products. Firms need to be more focused on innovation and investment which help to reduce the long-run cost curve.

Allocative efficiency: Allocative efficiency is related to when a product or service is optimally distributed on consumers' preferences.

So, competition leads a firm to always produce the products and services required by the consumers. In case of full from competitive efficiency which may expand the Gross Domestic Product (GDP) by two-three percent in the economy of Bangladesh.⁹

⁹ Abdur Abdur Rouf, COMPETITION LAW TO BOOST GDP THE FINANCIAL EXPRESS (2019), <https://thefinancialexpress.com.bd/economy/competition-law-to-boost-gdp-1568606642> (last visited Jul 29, 2021).

8. Competition Law and Social Growth:

Economic growth is related to social growth also. Competition law promotes fair competition which allows sustaining competitors and new entrepreneurs. It creates an opportunity for investment, innovation, and employment which promote directly social growth. Bangladesh gradually developing in many social indicators. It is high time for the Bangladesh Competition Commission (BCC) to direct the market efficiently, which will promote better competition, consumer protection, allow new entrepreneurs, promote innovation, etc. Bangladesh dealing with unhealthy business practices and unfair price raises for a long time, which create a bad impact on society, the Bangladesh Competition Commission (BCC) needs to adopt the necessary step to improve the market condition and aware the stakeholder related to competition in the market. Competition health-check for the whole market has become urgent needed for the Bangladesh Competition Commission (BCC) authority.

9. Lacking:

Bangladesh always faces challenges to implement the existing laws. There is some other lacking to implement the competition law by competition authority also. Distribution of power is not completely described in some conditions, some anti-competitive work is also punishable in other acts: the Essential Articles (Price Control and Anti-Hoarding) Act, 1953 and the Special Powers Act, 1974. The Bangladesh Competition Commission (BCC) will face problems working with other organs of the government such as the Security and Exchange Commission, Bangladesh Energy Commission, Safe Food Authority, and any other relevant authority to overlapping or similar jurisdiction and it may hamper the purpose of the law. Bangladesh has a lack of standard regulations and a vast area of competition law is still not protected. Absent of the impartial investigating organ of the Bangladesh Competition Commission (BCC) will hamper the progress of the commission. The Bangladesh Competition Commission (BCC) has the big challenges forward to set up parameters for investigation, decision making, and offense dealing. Determination of adverse effects on the competition by the Bangladesh Competition Commission (BCC) may face criticism, an adverse effect is not well defined in the act. Absent leniency in the law may create an obstacle for getting proper market information. Limited knowledge and skills for implementing competition law is a major issue for Bangladesh. It is a very big challenge for the Bangladesh Competition Commission (BCC) to work independently in case of extra- territorial application because of limited power.

10. Lessons from other Countries:

Many competition authorities have many successful events in dealing with competition authorities. The competition law concept in Bangladesh still growing, so learning from successful competition authorities from around the world would help the Bangladesh Competition Commission (BCC).

India: The Competition Act, 2002 tries to block the horizontal agreements, including cartels such as fixed prices, limit or control anything relevant to the market, bid rigging or collusive bidding, and vertical agreements including abuse of dominant position. The Competition Commission of India was established in October 2003; the law gives heavy power to the commission and in the year 2007 the amendment to give more authority to the commission.

China: According to Chapter 1, Article 1 of the Chinese Antimonopoly Law focuses on:

- Preventing and restraining monopolistic conducts;
- Protecting fair competition in the market;
- Enhancing economic efficiency;
- Safeguarding the interests of consumers and social public interest;
- Promoting the healthy development of the socialist market economy.

So, the act tries to prohibit the anti-competitive agreement, anti-competitive merge/acquisition, and abuse of dominance position. China has been shown to protect the domestic brand by understanding the future approach of foreign merge/acquisition and their pros and cons in the internal market.

Japan: Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (Act No. 54 of April 14, 1947) has no particular provisions about extra-territorial applicability. In 2002, the new amendment gives Japan Fair Trade Commission now able to issue service by publication against foreign companies if it has substantial effects on the internal market.

11. Recommendations:

Bangladesh has enacted the competition act, which is a very bold move but success much depends on the proper implementation of the act and strong commission, some recommendations are given below:

- Make a good governing system that promotes the interests of the consumer and national welfare.

- Capacity and efficiency should be improved by the Bangladesh Competition Commission (BCC) body.
- Try to improve dispute resolution situations to ensure fast and cost-effectiveness.
- Try to build up a strong, transparent, and neutral commission.
- Try to find out the loopholes and inefficiency of the act by way of research and survey.
- Ensure coordination between the government organs.
- Install and adopt the good practices from the important countries.
- Create promotion and mass awareness.
- Try to find out to better implement the current enactment for ensuring better competition and consumers' welfare.

12. Conclusion:

Bangladesh is developing day by day as well as our economy. In the year 2024, Bangladesh will graduate from Least Development Country (LDC) category, so collective responsibilities are essential to improve the present situation. Bangladesh should implement the laws and policies properly for better market conditions, competitive lower product prices, and quality products. The government should take proper steps by way of up-gradation and enactment of the necessary provisions; strengthen the competition authority services and enhance them. The stakeholders related to competition law need to play a vital role also.