COMPETITION SCENARIO IN BANGLADESH*

Introduction

Bangladesh, like many other developing and least-developed economies, has undergone a major shift in economic management and philosophy recently. Upon Independence in 1971, the country embraced an economic ideology with a dominant role for the public sector. Most of the industries and service sectors were nationalised. However, with a political change in 1975, there was a major change in economic thought. Bangladesh quickly undertook major restructuring towards establishing a market economy, with the major thrust coming from the private sector.

Since the mid-1980s, the policy was tuned towards opening the domestic market and making the economy outward oriented. A number of measures, such as trade liberalisation, privatisation, opening up sectors for both domestic and foreign private investment, regulatory reforms, etc., have been undertaken for restructuring the economy. It was hoped that at one level, these measures and incentives would gradually increase the number of players and firms operating in the market and, thus, introduce competition, which can be an important developmental tool that goes a long way towards addressing the various inefficiencies that otherwise exist, lead to optimal utilisation of scarce resources and help ensure fairness as to how the system operates, benefiting both the producers as well as the consumers. At another level, an added benefit of introducing competition into the domestic economy is that it would help the domestic producers meet the challenges of increased competition due to globalisation. Also, productivity gains due to these policy stimuli would help ensure the enhanced sustainability of the ensuing growth in the economy. As of the moment, Bangladesh does not have a formalised competition policy or competition law. Besides, the understanding of competition and demand for such a law or policy in the country is quite low. The absence of a functional competition policy and the apparent low demand for such a policy can be explained by examining the three key stakeholders in the process: the business community, the policy makers, and the consumers. First, the private sector, having experienced rebirth following privatisation and trade liberalisation, is still evolving and maturing. Second, the role of the government, over the decades, has also been evolving from that of a regulator to that of a catalyst and a facilitator. Third, the consumers, a majority of whom are below the poverty line, are hardly in a position to exercise their rights.

While the government has not been an effective facilitator in the process, sadly, neither of the other two stakeholders has developed the sophistication to realise the benefits available to them and the market from an effective competition policy. Had an effective competitive regime and policy been in place to complement the policy reforms undertaken by the government, the development goals and objectives of such measures would have materialised, as was hoped and desired.

This chapter looks at the existing state of competition, regulation and consumer protection in Bangladesh and how these relate to some of the country's economic development policies and challenges. More specifically, it analyses the implications of existing government policies and interventions on the markets in the absence of a competition policy and law in the country. It is argued that Bangladesh has a lot to gain from the implementation of such a law and policy, and that, without such a law and policy the country's long-term growth prospects as well as social welfare will be undermined.

The outline of the chapter is as follows. Section Two discusses the overall economic policy regime in Bangladesh to set the context for an evaluation of the competition scenario in general. Section Three provides an overview of the market structure and the nature of competition in some industries/sectors, where and when the scarce information and database in the country allows. Section Four explores the existing regulatory regime in some key sectors, such as telecommunications, electricity and financial services, while Section Five looks briefly at such regime *vis-à-vis* consumer protection. Section Six highlights the various anti-competitive practices and unfair trade practices observed during the process of field research undertaken under the 7Up2 project. In Section Seven, the results of a perspective survey, also administered under this project, regarding the desired competition regime, which should be built up for Bangladesh, are presented. An analysis of an existing competition statute, which has not been notified in Bangladesh, follows in Section Eight, with some concluding remarks and recommendations for the future.

The Existing Economic Policy Regime and its Implications on Competition

Overview of the Economy

Bangladesh belongs to the group of least-developed countries (LDCs). The performance of the economy, since the early 1990s, has been considered fairly good, with a Gross Domestic Product (GDP) of US$55.1bn in the financial year 2003-04, compared to only US$26bn in 1993-94. Substantial increases in the GDP are the outcome of the steady and fairly robust economic growth, at an average annual rate of about 5.0 percent, during the last decade (Table 2.1). The per capita GDP has increased from US$224 in 1993-94 to US$421 in 2003-04, due to the country's success in controlling the population growth. However, the growth rate falls short of the estimated 7.0 percent needed for significantly reducing the poverty that afflicts one-third of Bangladeshis, who live below the absolute poverty line.

A close look at the sectoral contribution to the GDP shows the decreasing role of agriculture in the country's economic activities, the contribution of which stood at 22.8 percent of the GDP in FY 2003-2004, down from 25.7 percent in 1995-96. However, agriculture still plays the most important role in the country's employment, engaging more than 60 percent of the total labour force. Service and manufacturing sectors should be given credit for the steady growth over the last decade, and their contributions to the GDP are increasing gradually. However, their contributions into employment are still low (Table 2.2).

Trends in investment in Bangladesh show a decline in public sector participation, compared to the private sector in the country's economic activities. This is a clear reflection of the Ggovernment's policy to gradually withdraw government intervention and encourage the private sector in all spheres of economic activity. The success of the Ggovernment in this area is reflected in the share of private sector investment in the GDP, which increased to 17.5 percent in 2003-04, from 10.3 percent in 1991-92.

Since 1990, successive governments have pursued a policy of trade liberalisation to make the economy outward-oriented. As a result, growth rates of export and import have always been higher than GDP growth, and the trade-GDP ratio has increased from 20.1 percent to 31.2 percent during the period between 1991-92 and 2003-04. A striking feature of Bangladesh's trade is the robust performance of the export sector, which has registered double digit growth since 1990, except in FY 1993-94, 1998-99, and 2001-02, when export growth was subdued due mainly to natural calamities and the worldwide recession in 2001.

The readymade garments sector should be given credit for such robust export performance, which constitutes more than 75 percent of the country's total exports. However, worker remittance from abroad also plays a very important role in stabilising the country's balance of payments position. It is noteworthy that, while export earning from merchandise goods increased from US$2,383mn to US$7,603mn between 1992-93 and 2003-04, worker remittance increased from US$944mn to US$3,372 mn during the same period.

Major Economic Policies and their Implication on Competition

Trade Policy

Since the early 1990s, the government of Bangladesh has been following an export-oriented growth strategy and progressively liberalising its import regime to make the economy outward-oriented. At present, Bangladesh's trade regime is characterised by a large-scale simplification and liberalisation of import and export regimes.

Table 2.1: Major Microeconomic Indicators of Bangladesh

Financial Year	GDP Growth	Inflation	Investment (GDP in percent) Public	Private	Consumption (GDP in percent) Govt.	Private	Export Growth	Import Growth
1993-94	4.1	3.3	6.6	11.8	4.9	82.0	6.3	2.9
1995-96	4.6	6.7	6.4	13.6	4.4	80.9	11.8	19.1
1997-98	5.2	8.7	6.4	15.3	4.7	77.9	16.8	5.1
99-2000	5.9	2.8	7.4	15.6	4.6	77.5	8.0	4.6
2001-02	4.4	2.8	6.4	16.8	5.0	76.8	-7.4	-8.5
2003-04	5.5	5.8	6.1	17.5	5.4	76.3	13.3	15.2

Source: *Bangladesh Economic Review, 2004*

Table 2.2: Sector-wise Contribution to GDP and Employment				
Sector	**Contribution to GDP**		**Share in Total Employment**	
	FY 1995-96	**FY 2003-04**	**FY 1995-96**	**FY 2003-04**
Agriculture	25.68	22.83	63.2	62.3
Mining	1.05	1.1		0.7
Manufacturing	15.43	16.25	7.5	7.4
Service	57.84	59.82	29.3	29.6

Source: *Compiled from Bangladesh Economic Review, 2001 and 2004.*

In liberalising the import regime, Bangladesh first moved from a positive-list approach to a negative-list approach in the mid-1980s. Since then, only the products listed in the negative list were subject to import ban or restrictions. Import policy was further liberalised by reducing the import restrictions gradually. The number of import restrictions came down from 315 in 1989-90 to 122 in 1997-2002. Most of the import restrictions are now imposed on non-trade grounds.

In the most recent period, the government has made the drastic move of withdrawing the restrictions on the import of all textile products. As on February 2005, there is no import restriction on textile products. At present, there are virtually no import restrictions on trade grounds, except in four cases, all of which will also be removed in 2009. Along with liberalising the trade regime, the government also abolished the import licensing system several years ago, in order to create a transparent and predictable import regime.

The liberalisation of the import policy regime was also followed by the process of reduction of import tariffs since the early 1990s. The tariff regime has been simplified, by abolishing multiple rates on the same products. The tariff policy has been streamlined, by reducing the number of tariff slabs, as well as the rate of import tariffs. Since 1992-93, customs tariffs have been brought down drastically, in order to promote competition in the internal market. As evident from Table 2.3, the maximum tariff rate has been brought down from 300 percent in 1992-93 to 25 percent in 2004-05, while the number of tariff bands has been reduced to just four in 2004-05 from 15 in 1992-93.

While liberalising the import regime, the government also introduced the Customs Act in 1995, in order to protect the local industry from dumped and subsidised imports. The Bangladesh Tariff Commission has been given the authority to investigate matters related to dumping and subsidy and recommend government action for remedial measures. As of now, no investigation has been initiated, either on dumping or on subsidy, and no duties have been imposed on any imports. There is also provision in the Customs Act to protect the domestic industry from unforeseen increase of imports. However, no rules have been put in place as of now.

Investment Policy

In parallel with the liberalisation process of trade policy, since mid-1980s, the investment regime in Bangladesh has been gradually deregulated, towards maximising the participation of the private sector in the economy. Telecommunications, power generation, distribution, transmission, and distribution of electricity and air transport and railways are those sectors, which used to be kept exclusively reserved for the public sector. In the industrial policy of 1986, these restrictions were gradually withdrawn.

As of now, investment is allowed in all sectors, except for the four sectors, namely, arms and ammunition and sensitive defence equipment, security printing and minting, atomic energy and forest plantation and mechanised extraction within the bound of reserve forests, which are exclusively reserved for the public sector. In order to encourage investment, the provision of obtaining prior clearance for setting up new industries was abolished in 1991. However, at present, prior clearance is required for setting up readymade garment units, banks, insurance companies, and other financial institutions. Since 1999, the government has permitted the private sector to set up export processing zones and industrial parks.

The Foreign Private Investment (Promotion and Protection) Act, 1980, governs the legal framework for foreign investments in Bangladesh, providing for non-discriminatory treatment between local and foreign investments, protection of foreign investment from expropriation by the State and ensuring repatriation of profits and the proceeds from sales of shares. Foreign Direct Investment (FDI) is registered through the Board of Investment (BOI). This FDI registration procedure facilitates not only the acquisition of legal status but also entry to the support and incentives provided for FDI. BOI's one-stop service provides free investment counselling, utility service connections, solution of problems in case of any difficulties that may arise in the clearing of imported machinery under a concessional rate of import duty and obtaining bonded warehouse licences[1].

Bangladeshi law provides for non-discriminatory treatment between foreign and local investment, protection of foreign investment from expropriation by the State and ensured repatriation of proceeds from the sale of shares and profits. There are no restrictions on the repatriation of profits or dividends from either direct or portfolio investments or the repatriation of assets, when winding up the investment. Foreign companies must follow the national company law procedures, when winding up[2].

Foreign investment is open and encouraged in all activities in Bangladesh, with the exception of the four industrial sectors exclusively reserved for the public sector, with no limitation pertaining to equity participation by foreign investors. However, foreign direct investment is discouraged in the readymade garments, banking and insurance companies, and other financial institutions.

Table 2.3: Tariff Structure in Bangladesh, 1992-93 – 2002-2003

Fiscal Year	Number of Tariff Bands	Maximum Rate (%)
1992-93	15	300.0
1993-94	12	300.0
1994-95	6	60.0
1995-96	7	50.0
1996-97	7	45.0
1997-98	7	42.5
1998-99	7	40.0
1999-00	5	37.5
2000-01	5	37.5
2001-02	5	37.5
2002-03	5	32.5
2003-04	5	30.0
2004-05	4	25.0%

Source: *Bangladesh Customs Tariff for Various Years.*

Privatisation Policy

In Bangladesh, public enterprise reforms involve mainly denationalisation and/or privatisation. By 1975, the government began to reverse the policy of nationalisation, in place since Independence in 1971, and gradually encouraged the private sector to participate in all economic activities. At the same time, the government began the process of transferring the industries, which were nationalised in 1972 to private entrepreneurs, including the former owners. During the period 1976-1992, about 500 State-owned Enterprises (SOEs) were sold or returned to their former owners. The government later established the Privatisation Board, in 1993, and entrusted it with the overall responsibility for privatising selected SOEs that were identified for privatisation.

A Privatisation Law was enacted in July 2000 and the Privatisation Board was reconstituted as the Privatisation Commission. The process has evolved through many ups and downs. During 1993-95, the Board was able to privatise only 12 mills. Eight more enterprises were privatised between 1996-2000. The government handed over nine textile mills to the workers, employees and management of the concerned mills, as a new form of privatisation. Moreover, a decision to off-load the shares of nine public limited companies has been taken. However, progress on privatisation has been slow and difficult for political reasons, involving the general public and trade unions.

According to an economic policy paper by the Dhaka Chamber of Commerce and Industry (DCCI) and the Center for Private International Enterprise (CIPE), SOEs still control 40 percent of industrial capital and are estimated to account for 25 percent of the gross capital formation. However, the contribution of SOEs to the GDP is rather limited. Besides, their amounting losses continue to plague the Bangladesh economy, placing severe pressure on the budget and the banking system.

The experience of SOE privatisation in Bangladesh has been mixed. According to discussants at a seminar by the Centre for Policy Dialogue (CPD) on the same issue, "privatisation had not led to either efficiency gains or growths nor did it address equity issues, rather, the process has been accompanied by increasing unemployment and growing foreign dependence". Moreover, it was argued by some that instruments of privatisation focus mainly on sale of SOE assets, but not on the entrepreneurial role of the private investors[3].

The other pitfalls of privatisation highlighted at the same CPD discussion include non-transparent sales, non-competitive sales, overly generous sales terms, and reduced competition. A serious issue of concern noted as an outcome of the privatisation process in Bangladesh was the concentration of economic power in the hands of large diversified business groups[4].

Government Procurement Policy

Bangladesh's public sector procures about 300 crore *taka* worth of goods, works and services a year. Since 1977, individual government ministries/ organisations have been allowed to purchase directly from suppliers, usually through public tenders. A single guideline under the Public Procurement Regulations 2003 was prepared and adopted in 2004.

The purpose of the Public Procurement Regulations 2003 is to regulate procurement of goods, works and services for achieving the objectives of, among others, (a) optimising efficiency in procurement, (b) promoting competition among bidders, (c) promoting fairness in the procurement process, and (d) contributing to an improved business climate in the country. The Regulations are intended to ensure that public procurement methods are conducted in a fair, transparent, and non-discriminatory manner, thereby promoting economic and social development.

The Regulations stipulate that public procurement will be on the basis of fair and open competition and bidders shall not be excluded from the process of public procurement on grounds of nationality, race or any other criterion. It also stipulates that no bidders/suppliers shall engage in any corrupt, fraudulent, collusive or coercive practices that may, directly or indirectly, influence the procurement proceedings or affect the execution of a contract.

The regulation stipulates open tendering methods for public procurement, but it also permits the use of restricted tendering method for goods, works and services of specialised nature, e.g., when these are available from a limited number of suppliers and/or when the time and cost required to receive, examine and evaluate a large number of tenders would be disproportionate to the value of the goods, works or services to be procured.

In order to ensure fair competition among bidders, the regulations require all invitations to tender to be advertised in at least one Bengali newspaper and one English language newspaper, both of which have wide daily circulation in the country. When, in the absence of domestic capacity, effective competition cannot be obtained unless special efforts are made to attract international competition, the invitation to tender shall be placed in an English language newspaper of sufficient circulation, to attract foreign competition. In addition, a procuring entity may transmit such invitations to embassies and trade representatives of potential supplier countries. The time allowed for submission of tenders shall be sufficient for the invitation to reach international bidders and enable them to prepare and submit tenders, but in no case less than 42 days. Technical specifications shall be based on international standards or standards widely used in international trade.

Market Structure and Nature of Competition in the Markets

Agriculture

Agriculture remains the mainstay of Bangladesh's economy, contributing about 23 percent of the country's GDP and employing about 62 percent of the labour force. Agricultural production is dominated by crops, with rice covering about 75 percent of cultivated land and contributing 14 percent to the GDP. Fisheries contribute six percent of the GDP and inland culture fisheries (shrimps and pond fisheries) provide an important source of export earnings.

Despite a large population, Bangladesh is self-sufficient in food. Input market reforms, revised import and tax policies and strategic partnerships with NGOs have played a significant role in developing this sector. Bangladesh is among the few developing countries that have considerably liberalised seed policy. Since the mid-1980s, the private sector has been allowed to import seed. The Seed Act has been revised periodically over the last decade, to facilitate and ease the import of various varieties of seeds of crops and vegetables.

The fertiliser market was liberalised in the early '80s and the autonomy over all fertiliser-marketing activities were placed in the hand of the private sector. The production of urea and the pricing of urea at the factory gate, however, are in the public domain. According to a World Bank study, subsidies on urea distribution amount to almost seven billion *takas* annually and the brunt of this subsidy is borne by the gas sector. Maintaining gas subsidy for public sector urea factories prevents private sector entry into urea production. This entry, as well as private sector imports, is further blocked because of the government maintaining an administered price lower than the factory production cost or import price.

Along with the liberalisation of input markets, various fiscal measures are in place to facilitate the production process. Notably, the withdrawal of restrictions on the imports of irrigation equipments and pumping installations in the late '80s induced fast expansion of irrigated areas and eased the dependence of farmers on public irrigation facilities. Further, the elimination of duties on power tillers and engines in 1989 was instrumental in increasing their use, while the reduction in duties on equipment and raw materials for food processing helped develop the non-agricultural rural sector.

Challenges to the rural population in terms of access to credit and social services have been largely resolved through partnerships with various NGOs. Micro-credit programmes run by the government and NGOs have been successful in providing credit to millions of rural poor, from whom the formal credit lending institutions shy away.

Production in agriculture is carried out by a large number of small farmers. Hence, they have no influence in the agriculture market. The demand, and stable prices of agricultural products are essentially determined by the availability of products at the time of harvest. However, during the harvesting period, the Ministry of Food, or its sponsored organisations, procure food grains – rice and wheat – directly from the farmers at a price annually fixed by the government. This procurement is not compulsory and does not cover the entire production of rice and wheat. In effect, the middlemen, who procure the food grains

Table 2.4: Ranking of Industry Groups *(by number of firms and the percentage of total industrial output)*				
Industry Code and Sector	**No. of Firms**	**Rank**	**Industrial Production (In percent)**	**Rank**
321 Textiles	10794	1	11.0	3
311, 312 Food Manufacturing	6094	2	25.5	2
323 Apparel	2353	3	27.2	1
369 Non-metallic Mineral Products	2051	4	2.9	8
322 Knitwear	1263	5	2.9	9
342 Printing & Publishing	884	6	1.8	13
351 Drugs and Pharmaceuticals	267	7	3.3	7
385 Transport Equipment	213	8	2.3	12
324 Leather and Leather Products	205	9	2.5	11
371 Iron & Steel Basic Industries	195	10	3.7	6
325 Leather footwear	109	11	4.3	4
352 Industrial Chemicals	42	12	2.7	10
384 Electrical Machinery	27	13	4.0	5
Total			**84.1**	

from farmers and sell them in the market, are the price makers. However, procurement by the government stabilises the price of food grains at the level of the farmer and helps farmers get a fair price for their products.

On the other hand, the sale of food grains by the government during lean seasons seems to restrict the upward trend in the price of food grains, especially for the distressed people in society. The public sector is the largest buyer of sugar cane and jute, since the related industry is dominated by the public sector. However, the public sector seems to offer high prices for jute and sugar cane, which creates market distortion, acts as a barrier to the efficient functioning of markets and partly affects the competitive edge of state-owned enterprises producing jute goods and sugar.

According to the statistics provided by the Bangladesh Bureau of Statistics, there are 116 units engaged in tea production. However, in the tea sector, a few foreign companies, such as Duncan, Ispahani, Finlay, and Shaw Wallace, seem to dominate both production and marketing, as they control the major portion of tea production and market in the country.

Manufacturing

According to the latest information available, there were 29,573 manufacturing units in Bangladesh in 1997-98. Among them, 22,708 units were individually owned. On the other hand, 5,612 units were private limited companies and 446 were public limited companies. Only 158 manufacturing units, representing 0.54 percent of total manufacturing establishments, were in the public sector. In many industries, there is no presence of the public sector at all. However, even with a small presence, in terms of the number of establishments, the public sector's share in the total manufacturing production, in value terms, is still on the high side, representing 9.5 percent of the total production in the country.

Public sector presence in the total industry production is prominent in sugar (20 percent), beverages (38 percent), jute (19 percent), paper and paper products (50 percent), industrial chemicals, mainly fertilisers, (91 percent), petroleum refining, (100 percent), and electrical machinery (44 percent). Output pricing in petroleum refining and industrial chemicals has an element of subsidy to the consumers, as prices are set well below costs, but, with respect to all other products, the prices are market-determined.

Within the private sector, a large number of establishments are small-sized enterprises, which produce approximately 30 percent of manufactured goods. The prevalence of anti-competitive practices in the marketing of these products is very unlikely. However, theoretically at least, anti-competitive practices may prevail in sectors where large-scale industry is present, but there is, as yet, no evidence to indicate that large firms in any industry in Bangladesh do actually adopt such practices.

In Bangladesh, hardly any studies are available that detail the market concentration of individual firms within specific industries (industry concentration ratios), as well as the market share of imports in different products. In order to get an idea about market domination by individual firms, it will be necessary to know not only what has been happening to these industries now but also what has been happening over time – that is to say, whether industry concentration has been increasing or decreasing or remaining constant over the years.

A problem in gathering industrial statistics in Bangladesh is that the data is available for broad industry groups at 3-digit SIC level, where several sub-sectors are lumped together; for example, food manufacturing (SIC 311) includes dairy products, rice milling and vegetable oils; food manufacturing (SIC 312) includes sugar, tea, bakery products, etc.; textiles (SIC 321) include jute, cotton, silk, wool, and handloom, etc. Additional data needs to be obtained for specific sub-sectors of concerned industries, so that industry concentration ratios can be more meaningful. Attempts, without success, were also made to collect data on market shares captured by imports.

For the moment, however, some idea of the market structure, on the basis of the number firms in specific industries, can be obtained. Table 2.4 presents the ranking of industry groups by the number of firms and also by output, as a percentage of total industrial production. These industries account for some 84 percent of the country's total industrial output. Table 2.4 shows only the number of firms in each industry category. It does not show if any concentration exists in these industries. It is, however, commonly believed that only a small number of firms dominate the market in textiles, apparels, non-metallic mineral products, drugs and pharmaceuticals, leather and footwear, even though there is hardly any proof that any of these large firms exercise monopoly power.

Pharmaceutical Sector

The pharmaceutical sector is a high technology and knowledge-intensive industry. The industry has a two-tier structure. The largest firms account for the majority of the R&D investment in the industry and hold the majority of patents. There are a large number of smaller firms producing mostly for local markets. The pharmaceutical industry is heavily regulated.

The country has, at present, 194 operating pharmaceutical units of different sizes. In addition, by 1997, there were 244 *Unani*, 161 *Ayurvedic*, 74 Homeopathic and Biochemic system medicine manufacturers in the country. The industry employs 50,000 skilled and 15,000 unskilled people.

Once a product is brought to the market, pharmaceutical companies spend heavily on marketing and promotion. The larger drug companies maintain a large sales force, which makes direct regular contact with individuals prescribing physicians and other pharmaceutical decision-makers. The sums spent on marketing are large. Pharmaceutical marketing efforts are not only directed at physicians and consumers, but also drug companies who have sought to directly influence pharmacists, in some cases paying pharmacists to induce customers to change their drug consumption habits.

The nature of competition in this industry differs between the two sets of firms. The second tier of firms holds fewer patents and relies primarily on manufacturing off-patent generic medicines or patent medicines under licence. Competition between these firms takes the conventional form of competition on price, cost-efficiency, and quality. In contrast, a few large research-based pharmaceutical companies invest heavily in R&D and hold the bulk of the patents and can often enjoy substantial market power, while these patents are in force. For these companies, competition is not primarily on the basis of price, but rather on the basis of marketing and innovation. These companies compete to develop entirely new drugs, which treat new medical conditions, improve upon

Table 2.5: Market Share of Top Ten Companies during 1992-1997

Company	Share 1992 (%)	Company	Share 1994 (%)	Company	Share 1997 (%)
Square	11.83	Square	12.33	Square	13.93
Fisons	10.13	Beximco	11.59	Beximco	12.40
Beximco	8.56	Fisons	8.45	Fisons	7.17
Glaxo	7.44	Glaxo	6.89	Opsonin	6.99
Opsonin	6.86	Opsonin	6.7	Glaxo	5.90
Pfizer	4.82	Acme	5.27	Acme	4.60
Acme	4.72	Renata	4.24	RPR	4.12
RPR	4.62	RPR	4.09	ACI	3.94
Hoechst	3.82	ACI	3.82	Renata	3.52
Ciba Geigy	3.07	Hoechst	3.24	Eskayef	3.32

Source: Anwar, S.F. (2002).

Table 2.6: Market Share of Major Toiletries and Cosmetic Firms of Bangladesh				
Sl. No.	**Company**	**Brand Name Soap**	**Yearly Market Share of Toilet**	
1	Unilever (BD). Ltd	Lux International Beauty SoapTk.	312 Core	43.33%
2	Square (Toiletries Division)	Meril Beauty Soap	48 Core	6.66%
3	Keya Cosmetics Ltd.	Keya Beauty Soap	72 Core	10.00%
4	Aromatic Cosmetics Ltd.	Aromatic Beauty Soap	48 Core	6.66%
5	Lily Cosmetics Ltd.	Lily Beauty Soap	72 Core	10.00%
6	Kohinoor Chemical Co.	Tibet Beauty Soap	72 Core	10.00%
7	Marks & Allys Ltd.	Camelia Beauty Soap	60 Core	8.35%
8	Others		36 Core	5.00%
		Total Market	**720 Core**	**100%**

Sl. No.	**Company**	**Brand Name**	**Yearly Market Share of Laundry Soap & Detergent**	
1	Unilever (BD). Ltd	Laundry Soap & Detergent	Tk.696 Core	60.42%
2	Square (Toiletries Division)	“	60 Core	5.21%
3	Keya Cosmetics Ltd.	“	96 Core	8.33%
4	Aromatic Cosmetics Ltd.	“	72 Core	6.25%
5	Lily Cosmetics Ltd.	“	60 Core	5.21%
6	Kohinoor Chemical Co.	“	84 Core	7.300%
7	Marks & Allys Ltd.	“	24 Core	2.08%
8	Others		60 Core	5.21%
		Total Market	**1152 Core**	**100%**

Source: *Maxwell Stamp PLC.*

existing drugs or serve as substitutes for existing patented drugs. Some large pharmaceutical companies in this tier export and compete in international markets.

Prior to independence, the pharmaceutical sector was dominated by multi-national companies (MNCs), which resulted in high prices and a scarcity of those drugs that were less commercially lucrative. A lack of technological know-how, skilled human resources, and huge capital investment cost served as barriers to entry for local producers.

The Drug Control Ordinance (1982) was enacted to address the situation through the introduction of control of manufacture, import, distribution, and sales of drugs. The Ordinance introduced cost-based pricing to guarantee a minimum profit to producers to attract more local firms. As a result of the Regulations, the market saw a massive redistribution. In 1982, the top ten companies included seven MNCs and three local companies. Of these, the top (six) were all MNCs, the major ones being Fisons, Pfizer, Rhone Poulenc Rorer (RPR), Glaxo, SK&F, and ICI. These companies controlled more than 50 percent of the market share and a major share of their earnings was drained out of the country through equity shares, compensation and benefits provided to expatriates and raw material purchases from their parent company. By 1994, three of the major players, Pfizer, SK&F, and ICI, sold out their operations to local entrepreneurs. Table 2.5 shows the market share of the top-ten companies in the pharmaceutical sector over a five-year period. The top-five companies control around 50 percent of the market share.

Toiletries Sector

Locally produced toiletries now play a significant role in a sector that has been dominated by imports in the past. Most of the products in this sector are common consumer goods, which have a large demand in the domestic market. Imports of cosmetics and toiletries are targeted mostly towards the middle and high-end segments of the market. Most of the local customers are quite happy with the domestic products, as long as product performance is satisfactory and the price is reasonable. While most of the manufacturers focus primarily on meeting the demands of the local market, some firms have started exporting cosmetics and toiletries from Bangladesh.

Table 2.7: Estimated Market Share of Five Major five Toiletries Firms		
Sl. No.	Name of Firm	Market Share in 2002 (%)
1	Unilever (BD) Ltd.	48
2	Kohinoor Chemicals Co. Ltd.	8
3	Square Toiletries Ltd.	8
4	ACI (Cosmetic) including Colgate	5
5	Keya Cosmetic Ltd.	5
Source: Square Toiletries Limited.		

International brands play a dominant role in the upper-end market of Bangladesh, where quality ranks above pricing among the factors affecting purchasing decisions. Most local manufacturers are producing lower-priced toiletries and perfumes with their own brands and focus on the middle-to-low price market segments. The production figures of major toiletries firms over a five-year period suggest that all the major firms have experienced steady growth.

Many domestic industries, long accustomed to tariff protection, are finding it difficult to adjust to the changed competitive situation resulting from the reduction/removal of tariff and other non-tariff barriers. Smuggled goods from neighbouring countries, through the long and porous borders, are adding to the difficulties of domestic producers. Moreover, some firms think that trade liberalisation has made them vulnerable to increasing competition from foreign firms. Competition from domestic firms has also increased substantially.

Although the toiletries industry consists of a large number of firms, Table 2.6 clearly shows that seven firms possess 95 percent of the market share for toilet soap, laundry soap, and detergent.

Unilever Bangladesh Ltd. is the market leader, with more than 43 percent of the yearly market share of toilet soaps and 60 percent of laundry soaps and detergent market. Table 2.7 shows the estimated combined market share of the total toiletries market of the five major toiletries firms. Approximately 50 percent of the toiletries sector is controlled by one company and, consequently, could have substantial market power.

Tobacco Sector

The tobacco sector highlighted in this section is essentially cigarette manufacturing. The tobacco industry is a small, yet significant group of producers in the Bangladeshi economy. Tobacco production remains an industry with high value-addition and high production per worker, relative to the rest of the manufacturing sector. The demand for tobacco is, in large part, determined by the demand for cigarettes. The volume of tobacco sold can be expected to closely follow increases (or decreases) in the demand for cigarettes. However, the demand for tobacco leaves does not necessarily increase at the same pace as that for cigarettes. Product demand is fairly inelastic, but is, in the long run, on a downward trend, as a result of the health concerns and legislation. There are 10 firms engaged in the manufacturing of cigarettes in Bangladesh. The production and sales of the three major firms are shown in Table 2.8.

Table 2.8: Sales Figure of Cigarettes in Bangladesh *(in millions of sticks)*				
Company	**2000**	**2001**	**2002**	**Average**
	Sales	**Sales**	**Sales**	**Growth**
British American Tobacco Bangladesh	12,339	14,002	16,722	36 %
Alpha Tobacco Manufacturing Co. Ltd.	693	887	Data not available	28 %
Dhaka Tobacco Industries	5,459	5,981	8,046	47 %

British American Tobacco Bangladesh (BAT) is the dominant player in this sector. It manufactures and markets major international cigarette brands like Benson & Hedges, State Express 555, John Player Gold Leaf and London, which are complemented by local brands such as Capstan, Star, and Scissors. By its own estimate, BAT controls around 50 percent of the Bangladeshi cigarette market.

Financial Services

The financial sector of Bangladesh comprises 49 banks and 28 non-banking financial institutions, two stock exchanges, 21 general insurance companies, six life insurance companies and a number of micro financial institutions.

In the banking sector, there are four nationalised commercial banks, five government-owned development financial institutions (DFIs), 30 private commercial banks and 10 foreign commercial banks. At the end of 2002, four nationalised banks with 3,496 branches held 45.6 percent of the assets, and 50.3 percent of the deposits. On the other hand, private

Table 2.9: Banking System Structure *(end of 2002)*						
Bank Type	**Number of Banks**	**Number of Branches**	**Net Assets (billion Taka)**	**Industry Assets (%)**	**Deposits (billions of Takas)**	**Industry Deposits (%)**
NCBs	4	3,496	662.08	45.6	515.06	50.3
DFIs	5	1,311	166.63	11.5	59.53	5.8
PCBs	30	1,398	525.46	36.2	377.08	36.8
FCBs	10	31	98.89	6.8	71.86	7.0
Total	**49**	**6,271**	**1453.06**	**100.0**	**1023.53**	**100.0**
Source: *Bangladesh Bank (2004), Annual Report 2002-2003.*						

commercial banks and foreign commercial banks with their limited branches held 36.2 percent and 6.8 percent of the assets and 36.8 percent and 7.0 percent of the deposits, respectively.

Out of the five specialised banks, two (Bangladesh Krishi Bank and Rajshahi Krishi Unnayan Bank) provide credit to the agricultural sector; one provides credit to small industries, while the other two (Bangladesh Shilpa Bank and Bangladesh Shilpa Rin Sangtha) extend term loans to the industrial sector. Out of the 28 financial institutions, one is owned by the Government, 15 are owned by the local private sector and the other 12 are joint ventures with foreign participation. The total amount of loans and lease of these institutions was 29,729 million *takas*, as of April 30, 2003.

There are two Stock Exchanges – the Dhaka Stock Exchange (DSE) and the Chittagong Stock Exchange (CSE) –, which deal in the secondary capital market. Both of them are public limited companies. The DSE was established in April 1954, while the CSE was established in April 1995. As on March 2004, the total number of enlisted securities with the DSE and the CSE were 267 and 200, respectively. Twenty-seven institutions have licences to act in the capital market. Of these, 19 institutions are Merchant Bankers and Portfolio Managers, while seven are Issue Managers and one acts as an Issue Manager and an Underwriter.

General insurance is provided by 21 companies and life insurance is provided by six companies. According to the latest information available, permission has been given to 43 private general and 17 life insurance companies to conduct insurance business in Bangladesh. The industry seems to be dominated by the two large state-owned companies — Sadharan Bima Corporation (SBC) for general insurance and Jiban Bima Corporation (JBC) for life insurance. As on 2004, no foreign insurance company is operating in general insurance and only one foreign company is operating in life insurance.

There are 134 micro-credit financial institutions (MFI) in the country, which are basically non-government organisations (NGOs) and provide credit facilities for explicit social agenda to cater to the needs of the poorest sections of the non-agricultural population. A rapidly growing segment of the Rural Financial Market (RFM) in Bangladesh is composed of member-based institutions. The largest member-based institution is the Grameen Bank, the only formal institution of its type. All others are NGOs. BRAC, ASA, and Proshika are large NGO-MFIs. Up to June 2002, all the reported NGO-MFIs had disbursed *Tk.* 187,339.24 million and the total loans outstanding were *Tk.* 29,297.05 million. The number of total active members was 12.70 million and net savings were *Tk.* 11,978.04 million.

Power

The power sector in Bangladesh has grown rapidly, with the growth of economic activities. With per capita electricity generation of 110kW per annum, power shortages are still among the most important bottlenecks for economic development. Only 30 percent of the population (80 percent urban and 20 percent rural) has access to electricity. In all stages of power supply – generation, transmission, and distribution – the state-owned enterprises are the dominant players. As on January 2004, the total installed capacity amounted to 4,710 MW, with the major share supplied by Bangladesh Power Development Board (BPDB), which accounted for more than 73 percent of total power generation.

Since 1996, private independent power producers (IPPs) and a mixed power company, owned by Palli Bidyut Samiti (PBS) and Rural Electrification Board (REB), have been engaged in power generation and accounted for about 27 percent of total installed capacity, contributing 1,290 MW to the national grid. Eighty-seven percent of total electricity generation is based on natural gas, which is supplied by the state-owned Petrobangla.

The Power Grid Corporation (PGCB), created in 1996 under the Company Act, with the major shareholder being BPDB, is now fully responsible for high voltage transmission as well as distribution. Since 1991, in greater Dhaka, electricity was distributed by the Dhaka Electric Supply Authority (DESA), a government-controlled body. Since 1990, the Dhaka

Electric Supply Company (DESCO) has been distributing electricity within a small area, covering the northern part of the capital. The REB has been co-ordinating and facilitating the development of distribution systems in rural areas since 1977, while PBS owns, operates, and maintains the rural distribution system. The BPDB handles electricity distribution in all urban areas, other than Dhaka. The BPDB is transferring the distribution of electricity in small semi-urban areas to the REB. It also recently separated distribution areas covering five towns, surrounding Khulna, into a new Western Zone, served by the Western Zone Distribution Corporation.

It is evident from the present structure of the power system in Bangladesh that state enterprises dominate this sector. Reforms, initiated in 1977, merely deregulated the sole authority of BPDB over the entire power system of Bangladesh. Although the power sector was opened for private investment in 1992, the presence of the private sector exists only in generation, with a selling arrangement to the BPDB, through long-term government-guaranteed Power Purchase Agreements.

Telecommunications

The telecommunications sector is characterised by a very low level of penetration, with a rate of 0.79 telephones per 100 people. Although private participation in the sector was allowed in 1989, and private provision of services commenced in 1993, the Bangladesh Telegraph and Telephone Board (BTTB) enjoys a monopoly in fixed line telecommunication services, representing more than 95 percent of the fixed lines in Bangladesh. There are only two private operators (one local and one local-foreign joint venture) allowed to provide fixed line services in rural areas and account for the remaining five percent. International telephone services are provided only by the BTTB. Facsimile and data transaction services are also provided only by the BTTB.

In contrast, in mobile services, four private operators have a 100-percent market share. Although the BTTB is the main fixed line service provider, with about 943,585 fixed telephone lines, the four private-sector cellular service providers reach over 3,409,281 subscribers, substituting the demand for fixed lines. Increased competition from private sector mobile operators has compelled the BTTB to reduce its tariff for local, NWD, and ISD calls. Also, the BTTB has recently entered the market as a mobile service operator.

The four private sector mobile operators service the entire market, which has a potential of 12-15 million users, worth about *Tk.* 108 billion . Table 2.10 shows the Bangladeshi mobile phone market structure. Grameen Phone dominates the market, having invested US$350mn since its inception in March 1997 till October 2004, to bring 45 percent of the country under its network coverage. It plans on investing another $240mn in 2005, to add another two million subscribers under its fold, and 60 percent of the country under its network coverage.

In August 2004, Orascom entered the mobile phone market, through acquisition, and has plans to invest an additional US$250mn to attract four million customers. Similarly, the other competitors have been infusing millions of dollars into the sector, to improve network coverage and thereby attract more clients. The sector is experiencing intense competition, a by-product of which has been improved services and better rates for the customers.

The private sector also provides Internet, paging and radio-tracking services. The Bangladesh Telecommunication Regulatory Commission (BTRC), which regulates the telecommunications operation in the country, has so far issued licences to 156 Internet Service Providers (ISPs), 18 nationwide ISPs, 72 VSAT users, 4 VSAT HUBs, 21 domestic data communication service providers and a few fixed line operators.

Table 2.10: Bangladesh Mobile Phone Market in October 2004

Rank	Company Name	Subscribers (in millions)	Foreign Partner	Market Share (in percent)
1	*Grameen*	2.2	Telenor	62
2	AkTel	0.85	TM (Malaysia)	24
3	Citycell	0.33	Singtel	11
4	Banglalink	0.06	Orascom	1

Source: *Bangladesh Enterprise Institute.*

Transportation

Bangladesh has developed a transport network that includes roads, railways, inland waterways, two maritime ports, and civil airports catering to both domestic and international traffic. The government's transport strategy aims to support economic development by expanding linkages in the internal transport system to promote local market integration, especially in rural areas. Bangladesh has an extensive road network and surpasses other South Asian countries in total road density.

Roads and highways are the fastest growing mode of internal transportation in Bangladesh, accounting for 73 percent of the passenger traffic and 63 percent of the cargo traffic. Among the four modes of internal transportation, road and inland water transport services are provided basically by the private sector, while railway transport services are provided only by the public sector, whose share in both passenger and cargo traffic has dropped substantially over the last few years. There is no evidence of monopoly practice in the road and inland waterway transport sector. However, collusive practices seem to be evident during the peak travel season. Apparently, there is no regulation to control such practices in the internal transport sector.

Until recently, there was no participation of the private sector in transport infrastructure and railway transport. In recent years, operation and maintenance of the Jamuna Bridge has been handed over to a private consortium. In the past month, work has been initiated to construct the first private sector-owned fly-over in the capital city. Also, the private sector has been invited to develop a container terminal in Narayanganj and is encouraged to participate in passenger train operations. Many of the intercity rail services are operated by the private sector. All these initiatives are likely to increase competition in the internal transport sector.

Since 1996, the government has allowed private-sector competition with the State airlines on all domestic passenger routes. As of now, one private airline operates regularly and another operates on seasonal basis. However, the state-owned Bangladesh Biman still dominates domestic air transport.

Until 2005, the State-owned Bangladesh Biman was the sole local airlines providing international air services linking Bangladesh to 26 international destinations. Although there is not much competition from domestic players, Biman is facing stiff competition from 17 foreign airlines, which operate in Bangladesh. Since 1996, the private sector has been allowed to operate on national and international cargo routes. Two private airlines are in operation in cargo routes.

Bangladesh has two seaports handling international cargo. The principal port – Chittagong , handles 80 percent of the sea borne trade. The remaining export and import freight is handled by the Mongla port. The two ports are administered by autonomous governmental bodies, the Chittagong Port Authority (CPA) and the Mongla Port Authority (MPA), under the Ministry of Shipping. They provide port facilities and regulate movements of vessels and navigation within the ports. They also construct and operate docks, moorings, piers, etc., and undertake work in connection with loading, unloading and storage of the goods in the ports. The Dock Workers Management Board at each port is responsible for the management of dockworkers for the turn-around of ships.

Limited private-sector involvement exists in the provision of stevedoring and other cargo-handling services at Chittagong and Mongla ports and providing ancillary services, such as equipment maintenance. There is, so far, no foreign investment in port services; port activities in Bangladesh are managed entirely by the port authorities. Independent foreign and Bangladeshi operators provide container shipping on behalf of a variety of mainline carriers on a slot charter basis, serving the two major hubs of Singapore and Colombo.

Bangladesh's national flag fleet consists of 25 vessels, of which 13 vessels are owned by the Bangladesh Shipping Corporation (BSC), the national carrier, and the remainder by private operators. Currently, there is no foreign participation in the nationally owned or operated fleet. National flag carriers serve only 18 percent of the country's sea-borne trade. All the shipping services are being provided by foreign shipping lines, which serve 82 percent of Bangladesh's sea-borne trade.

Health Services

Taking into account the government's low level of resources devoted to health (US$3.60 per person per annum), the national health policy mainly focuses on primary health care of the rural areas, population control, and immunisation. The government provides health care services to the population through 13 Medical College Hospitals (MCHs), with 650 beds, six Post-graduate Hospitals, 25 Specialised Hospitals, 80 district hospitals, 460 Thana Health Complexes, with 50-250 beds and 3,275 Health and Family Welfare Centres.

Given the constraints of the government, the private sector plays a large role in the provision and financing of health services. The largest group of providers are qualified and unqualified drug retailers, who serve the dual purpose of prescribing and selling drugs, and who accounted for almost half of the value of all health services provided in 1997. According to latest information, 24 doctors were available for 100,000 people in 2000. Both the private sector and government clinics are involved in the provision of pharmaceutical and medical supplies. At present, 886 private clinics are providing health service.

In addition, some NGOs are also providing health services in close partnership with the government. The high technology services are provided by both the government and modern private clinics. The problem of huge investment and capital costs makes the sector highly monopolised in Bangladesh. Foreign investment is permitted in hospital/clinical and diagnostic services. However, foreign doctors are not permitted to provide health services in Bangladesh.

Sectoral Policies

Government measures that directly affect the competitive behaviour of enterprises and the structure of industry are generally defined as competition policy. Such a policy essentially includes three elements. The first involves a set of general policies that enhance competition in the market, including policies relating to trade, industry, investment, privatisation, etc. The second includes the sectoral policies, which regulate the performance of individual sectors. The third is the competition law that addresses the anti-competitive behaviour of enterprises, whether private or public. As discussed earlier, there is no effective competition policy in Bangladesh. Therefore, the first two sets of policies basically regulate the competitive behaviour in specific sectors. However, encouraging competition in the domestic market could be viewed from three perspectives.

First, it promotes competition through minimum intervention of the government in economic activities, whether in public or private sectors. As has been highlighted in the above discussion, much has been achieved in this direction and the private sector now plays a dominant role in many of the sectors. Second, it promotes competition among foreign and domestic suppliers. Substantial progress has been made in this direction by liberalising the trade regime. At present, almost all the sectors are open for import and investment. Third, it promotes competition with the players in all sectors. The competition law generally covers this specific aspect. Although there are no entry barriers in any sector, anti-competitive practices may be exercised due to the absence of an *effective* competition law. However, in the absence of a competition regime, the sectoral regulations that exist may regulate the performance of any sector.

Financial Services

The Banking Companies Act, 1991, and Bank Company (revised) Act are the principal legislations regulating the banking sector in Bangladesh. The enforcement of the Act, as well as supervision of the banking sector, is entrusted mainly to the Bangladesh Bank (the Central Bank). As envisaged in the legislation, the Ministry of Finance also takes charge of certain areas of banking regulation, including the appointment of the board of directors and the chief executives of the national commercial banks and specialised banks, in consultation with the Bangladesh Bank. Bangladesh Bank also supervises the non-banking financial institutions. The minimum capital adequacy requirement of scheduled banks is nine percent of the off-balance sheet risk and risk in different types of assets as capital. Presently, the commercial banks' deposits are subject to a statutory liquidity requirement (SLR) of 20 percent, of which 4.5 percent serves as the cash reserve requirement (CRR) with the Bangladesh Bank and the remainder as qualifying 'secure' assets under the SLRs, either in cash or government securities.

All deposits and interest rates (except export) are determined by the market. All prudential regulations apply equally to foreign and domestic banks. The Bangladesh Bank issues licences to carry out banking business upon fulfilment of certain conditions. For opening a branch of a foreign bank in Bangladesh, there is the requirement that the government, or the law, of the country in which the foreign bank is incorporated provides the same facilities to banking companies registered in Bangladesh.

However, according to the country's industrial policy, foreign investment in the banking sector is discouraged in Bangladesh. The Banking Act, 1991, does not contain any provisions regarding anti-competitive behaviour. However, it maintains that Bangladesh Bank has the authority to prevent the affairs of any banking company from being conducted in a manner detrimental to the interest of the depositors or in a manner prejudicial to the interest of the banking company. The Bangladesh Bank exercises powers under the Financial Institutions Act, 1993, and regulates institutions engaged in financing activities, including leasing companies and venture capital companies. Like the Banking Act, the Financial Institutions Act, 1993, does not contain any provision regarding anti-competitive practice of financial institutions. However, it maintains that the licence of a financial institution may be cancelled if it carries on its business in a manner detrimental to the interest of the depositors.

Financial liberalisation is intended to stimulate greater competition in banking markets through two channels: (i) new entry by private sector banks to challenge the oligopolistic market position of the established public sector and/or foreign banks; and, (ii) the removal of administrative barriers to competition, such as interest rate controls. This, in turn, should lead to an improvement in the quality and lower cost of services offered to the public, as banks compete for business. Competition may also encourage banks to provide a broader range of financial products, in an attempt to attract business.

In Bangladesh, the reforms facilitated new entry, mainly by the private sector, into banking markets. The number of banks and financial institutions increased and the dominant market share of the major banks eroded, although it still remains quite large.

Increased competition stimulated some improvements in financial services. Some of the new entrants introduced longer opening hours, cut queues in banks and provided more personalised services. A number of innovations occurred and new products were made available; these included credit and debit cards, automated teller machines, interest- bearing checking accounts, etc. Cheque clearing has been speeded up. Competition for deposits increased in the urban areas, with both price and non-price competition. There is more competition for corporate clients, especially from the entry of foreign banks, which focus on this sector. The government-owned banks are making efforts to improve services and provide services oriented towards client needs. However, the impact of new entrants on the cost, quality, and range of financial services has been limited for a number of reasons.

First, although the major government and/or foreign banks lost some of their market share to the new entrants, they still retain a large enough share to exercise considerable market power. This has enabled them to maintain large interest rate spreads, needed to cover the cost of their own efficiencies and non-performing loans. Second, the slow pace of reform of some of the government banks retarded improvements in the cost and quality of their services. Third, with few exceptions, the new entrants (both foreign and domestic) have avoided the rural areas. Hence, the benefits that have occurred have been confined to the urban areas. Some rural areas are likely to have suffered deterioration in the availability of financial services, as a result of branch closures by government banks. Fourth, competition had been impeded because banking markets, particularly credit markets, are segmented. The foreign banks serve large, and especially foreign, corporate customers, while the government-owned banks remained focused on SOEs or privatised SOEs, while the domestic private sector banks and NBFIs mainly lend to local urban-based SMEs.

The Securities and Exchange Commission (SEC) exercises powers under the Securities and Exchange Commission Act, 1993. It regulates institutions engaged in capital market activities. The SEC is empowered to prohibit fraudulent and unfair trade practices relating to securities or in any securities market. The capital markets are still at a nascent stage and continue to be plagued by structural weaknesses, regulatory inefficiencies, the absence of adequate transparency in market transactions, the flaws in disclosure and reporting standards, and the prevalence of many fraudulent practices and the absence of professionalism on the part of the market practitioners.

The insurance sector is regulated by the Insurance Act, 1938, with regulatory oversight provided by the Chief Controller of Insurance (CCI), on authority under the Ministry of Commerce (MoC). The establishment of an insurance company requires approval from the Cabinet, after examination by the CCI. Once permission is granted, the company must be registered under the Company Act, 1994. The CCI then issues a certificate for insurance business under the Insurance Act, 1938. A separate licence is required for each new branch. General and life insurers are required to confine their business to their respective fields and are not allowed to provide other financial services, such as banking. Public sector companies, or agencies, must have at least 50 percent of their insurance underwritten by the SBC. All private general insurers are required to place at least 50 percent of their reinsurance with the SBC, which, in turn, reinsures their entire surplus with foreign re-insurers abroad. The remaining 50 percent may be reinsured by other re-insurance companies, whether inside or outside Bangladesh. All insurance policies with regard to properties in Bangladesh, including all imports and exports under marine policies, must be insured with the local insurers, whether the SBC or private general insurers. As such, there is no restriction on operation of foreign insurance companies in Bangladesh.

At present, the activities of micro-financing institutions are not regulated or supervised or monitored by any single authority in Bangladesh. Considering the need to develop an appropriate regulatory and supervisory system for these institutions, the Government of Bangladesh has formed a committee, under the chairmanship of the Governor of Bangladesh Bank, to formulate a uniform guideline and the legal framework of a regulatory body for this rapidly growing financial sector. Recently, the Committee has submitted a report to the government with some recommendations. The Committee has formulated some guidelines and reporting formats to collect direct information from these institutions.

Power

The Power Division of the Ministry of Power, Energy and Mineral Resources is responsible for policy-making and regulation. It approves investment programmes, monitors performance of the public sector entities/utilities, approves tariff and appoints electrical advisers.

On July 24, 2003, the Government of Bangladesh enacted the Bangladesh Energy Regulatory Commission Act, 2003, in order to create an atmosphere conducive to private investment in generation and transmission of electricity and transportation and the marketing of gas resources and petroleum products, to ensure transparency in the management, operation, and tariff determination in these sectors, to protect consumers' interest and promote the creation of a competitive market. The Act empowers the Commission to encourage the creation of a congenial atmosphere for promoting competition amongst the licensees and to ensure appropriate remedies for consumer disputes, dishonest business practices or monopolies. In order to safeguard the interest of consumers, the Act also gives authority to the Commission to frame codes and standards and make these compulsory, with a view to ensuring the quality of service.

Power generation is dominated by SOEs. According to a World Bank study, annual cash shortfalls in the power sector are around US$180mn. Consequently, these companies are unable to operate, maintain and expand their grids in line with the requirements of the market. Strong opposition by various stakeholders, and an absence of a coherent strategy, remain as entry barriers to more private sector participation. Various studies have attributed the failure in the sector over the years to high system losses, poor financial management, (inadequate pricing, poor billing, and collection) and ineffective or unresponsive governance.

Telecommunications

Until 2001, the telecommunication service was regulated by the Ministry of Post and Telecommunications under the Telegraph Act, 1985, and the Wireless Act, 1993, which have been repealed by the Telecommunication Act, 2001. The Bangladesh Telecommunication Regulatory Commission (BTRC) was established in 2002 and is now responsible for spectrum management and the licensing and regulation of all telecommunication providers, both public and private.

The function of the Commission is to maintain and improve competition among the service providers, in order to ensure high quality telecommunication services. In doing so, the Commission will have to protect an operator of a telecommunication system or a service provider from anti-competitive behaviour of other operators or service providers, which may damage competition, and facilitate the access of a person intending to participate as an operator or service provider in the system.

The functions of the Commission also include the protection of the interest of local consumers with respect to charges; their access to telecommunication services; and the quality and variety of such services. The Act empowers the Commission to discharge these functions. However, while elaborating the power of the Commission, the Act does not include any of the aforementioned functions, except in respect of tariffs, and call charges and other charges.

The Act addresses subsidy provided by the same operator from the earnings of one service to another and maintains that subsidies from the earnings of services, subject to competition, shall not be allowed for other services, which are not subject to competition. It implies that subsidy to the competitive services is allowed from the earnings of the services which are not subject to competition. The Act does not differentiate between local and foreign investment. However, it maintains that the government will identify the fields of public and private sector investment. In practice, there are no restrictions with regard to equity shareholding for foreign participation in a telecom company and foreign investors receive national treatment.

In brief, it is evident from the review of sectoral policies that none of the policies contain specific provisions on competition. Although the Acts promulgated in recent years, such as the Bangladesh Energy Regulatory Commission Act and Bangladesh Telecommunications Regulatory Commission Act, contain some provisions to address the issue of competition, they do not provide any specific mechanism to address anti-competitive behaviour. However, all the policies recognise the importance of a free market economy, in which an effective competition regime is necessary, with a view to making markets work well for consumers.

A key feature of the competition environment is easy entry and easy exit. However, an analysis of existing policies indicates deliberate measures are in effect restricting entry into certain 'reserved, regulated or over-saturated' sectors. Rather than let the markets regulate the existence of over-saturated sectors, the government decided to stepped in and, in the process, at the loss of consumer welfare, created a barrier to the entry of potentially more efficient firms that could be more productive and technologically sophisticated (Rahman 2003). Similarly, the state-owned industries are characterised by strong unionised labour and other vested interest groups that make it extremely difficult to exit from these industries – a feature that has set-back the privatisation process, as it discourages private entrepreneurs from stepping into these industries.

A cornerstone of any competition policy is enhanced protection for consumer interests. However, a review of existing legal instruments reveals very little legal provision that effectively protects the interests of consumers. Bangladesh introduced Anti-dumping Act and Rules in 1995 and Countervailing Act in 1995 and Rules in 1996. Bangladesh introduced Safeguard Act in 1995, by amendments to Section 18 of the Customs Act, 1969. However, rules regarding imposition of safeguard measures have not yet been made.

Even if legislation were in place to ensure fair competition, inefficiencies, due to an overburdened judicial system, often raise the cost of doing business in Bangladesh. Also, in general, the legal system and the government lack the capacity to enforce the rule of law. Therefore, poor implementation of the rule of law leads to a failure to guarantee property rights and enforcement of contracts and seriously undermines the interests of the consumers.

Interest groups that can voice the concerns of consumers are weak and/or absent in Bangladesh. Lack of representation and lack of an effective mechanism through which their concerns can be voiced puts the consumers at a disadvantage. Policies are the result of the influence of interest groups. Not surprisingly, the policy trend in Bangladesh is disproportionately biased against the interests of the consumers. Only through changing the sphere of interest can policies be expected that will favour consumers.

Consumer Policy

The consumer protection movement around the world is of relatively recent origin. The US was the first among the nations to take steps to protect consumers. In 1906, the US Federal Government established the Pure Food and Drug Administration (which later became the FDA) to protect consumers from unsafe drugs and adulterated foods and a variety of Federal and State laws aimed at maintaining the purity of food and drug products were passed. A second thrust of consumer protection in the US developed in the 1930s, with the passage of 'disclosure legislation', which was intended to protect consumers from mislabelled or fraudulently labelled merchandise and false advertising. In the late 1960s and throughout the 1970s, consumer protection developed along a third line, specifying product standards for the purpose of making all consumer products safer.

At present, most countries have rules and regulations in their statute books to protect consumers, believing that an active consumer-protection effort by their governments is proper public policy. As such, consumer policy is a set of measures that takes into account consumers' concerns, ranging from product quality and safety issues, availability of choice in the markets to fair prices of products. An effective consumer policy is a key ingredient to an effective competition policy. It ensures that the benefits of a competitive market are shared equitably with the consumers and introduces balance and accountability within the system.

In addition to benefiting consumers, a consumer policy is beneficial to business houses as well. At one level, it helps reduce unfair competition in the markets and, therefore, ensures an even playing field in which businesses can operate. At another level, it enables consumers to be an effective pressure group and, thereby, encourage businesses to self-regulate themselves, which, in turn, does away with the need for more regulations to monitor and control the behaviour of firms.

Despite repeated and continual demands, Bangladesh is yet to legislate a Consumer Protection Act (CPA). There are, however, a number of ordinances and laws in specific areas, which are directed towards protection of consumers. Notable among them are:

a. Bangladesh Food Ordinance, 1959;
b. Bangladesh Pure Food Rules, 1967;
c. Bangladesh Essential Commodity Act, 1978;
d. Bangladesh Drug Control Ordinance, 1982;
e. Bangladesh Standard and Testing Institute Ordinance 1984; and
f. The Breast Milk Substitute (Regulation of Marketing) Ordinance, 1984.

These laws are reportedly outdated and fail to protect the interests of consumers against unfair practices. First, these laws do not permit aggrieved consumers to directly litigate against the violators of the provisions, but, instead, empower the government to initiate proceedings. Therefore, the scope for compensation is rather limited. Second, the laws fail to act as significant deterrents to wilful violators. The provision of penalty or punishment under these laws is so negligible that everybody ignores these rules. Third, enforcement of these laws is extremely poor. Poor governance and lack of necessary infrastructure makes it extremely unlikely that the laws are well implemented. Finally, ignorance of the laws is another reason for poor implementation. In general, consumers in Bangladesh are seldom aware of their rights and entitlements.

It is reported that, in the absence of effective implementation of existing laws, consumers in Bangladesh are deprived of their right to have adequate protection from food adulteration, cheating in weights and measures, artificial price hiking, etc. In the wake of the poor scenario in the protection of consumers' rights, the Consumer Association of Bangladesh (CAB) was formed in February 1978. It is the only social group in the country that advocates for consumer protection, through consumer education, monitoring of prices, ensuring quality of essential commodities and services, legal support, and lobbying with the policy makers for the enactment of a Consumer Protection Act.

A number of surveys conducted by the CAB reveal that consumers are cheated more often than not. Many products sold in Bangladesh do not have dates of production and expiry, weights, name of the ingredients, or BSTI certification marks on the label. There are also evidences of poor service in transportation and health sectors, even after paying the increased costs associated with better quality.

The CAB drafted a consumer protection bill in 1998, which has, since then, been under consideration of the Ministry of Commerce. Available information suggests that a draft consumer protection bill has been placed before the cabinet, but the fate of the Bill since then is not yet known.

Anti-competitive Practices Prevailing in Bangladesh

Anti-competitive actions occur when business enterprises try to (i) reach agreements with their competitors to fix prices, restrict output or divide markets; (ii) resort to predatory pricing; (iii) merge operations with their closest competitors; (iv) enter into *tying contracts*; (v) resort to *price discrimination*; and (vi) force exclusive contracts on their suppliers or distributors that protect their own dominant position in a particular market.

Reports documenting the anti-competitive behaviour of business companies operating in Bangladesh are not available. Most of the newspapers occasionally report on price hiking of essential commodities such as rice, edible oils, vegetables, and cereals in the country. However, these reports fail to provide any evidence of anti-competitive behaviour by the suppliers of these commodities. While the sellers of essential commodities say that the price hike is due to short supply of these commodities and also increased prices in the international market, many consumers complain that price hikes are artificial and are caused by a group of traders, through collusion.

There are reports of anti-competitive behaviour in the internal transport sector. As mentioned earlier, internal road and waterway transport is run by a large group of private entrepreneurs. However, an increase in transport fare prior to religious festivals is a common phenomenon in Bangladesh and the government has no control over this price increase. One may argue that the increase in transport fare during the festival time is the result of the gap between supply and demand. However, one incidence, reported in the Daily Star on June 1, 2003, clearly indicated that transporters associations influence the transport fare in Bangladesh, because of the absence of any competition law in the country (Box 2.1).

There are widespread complaints about anti-competitive practices in the health sector. Apart from the poor quality of service in the health sector, there are reports that consumers are cheated in diagnostic services. Contractual arrangements are reported to exist between diagnostic centres and unscrupulous doctors for sharing the price paid for diagnostic analysis by the patient. This type of unfair arrangement increases the cost of diagnosis, which is borne by the consumers. Moreover, due to the poor service provided by the government health care centres, the patients are enticed by agents to go to private clinics. A report published in the Daily Star reveals that, despite the warning from the hospital authority about negligence of duties in Sirajganj Sadar Hospital, agents, in connivance with a section of doctors, who maintain links with the clinics, motivated the patients to have services in private clinics, most of which lack proper equipment and efficient doctors.

There are also allegations that pharmaceutical companies often resort to unfair means to sell their products, through bribing the doctors to ensure that they prescribe the medicine produced by the companies. (Box 2.3)

Traces of anti-competitive practices in certain sectors, other than manufacturing, can also be discerned in the preceding parts of the paper. In the banking sector, for example, nationalised commercial banks (NCBs) are the market leaders and the price-setters. However, the NCBs are characterised by bad loans and a history of loan defaulters, resulting in a high cost of funds, and therefore, a high price of funds to its clients. The private banks set their rates in accordance with the rate of the NCBs and, therefore, price-fixing is common in this sector. That anti-competitive behaviour is prevalent in this sector is evident from the fact that, following the entry of new entrants in this sector, the spread between the borrowers' and lenders' rates has actually increased rather than decreased.

Perspectives on Competition Policy

A survey was administered over a three-month period under the framework of the 7Up2 project, with a view to gauging the perceptions of three key stakeholder groups on competition-related issues in Bangladesh, using separate sets of structured questionnaires for each group. The three stakeholder groups sampled were policy makers (PM), business community (BC) and consumers (CC). Each questionnaire contained around thirty questions, many of which were

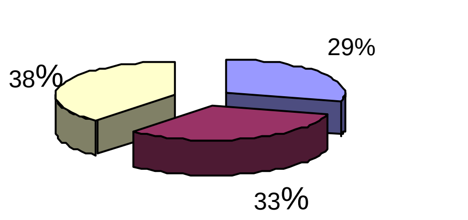
Box 2.1: Bus Operators Threatened for Reducing Fare

The Rajshahi Sarak Paribahan Owners' Group (RSPOG) has threatened to shut down bus operators on the Rajshahi-Dhaka route, if they reduce fares. The threat came when a section of private transport owners were thinking of reducing the bus fare on the route after the opening of the 55-kilometre Bonpara-Hatikumrul link road to Bangabandhu Jamuna Bridge. The link road reduced the distance by over 85 kilometres.

The RSPOG directed the Rajshahi-Dhaka bus operators to charge at least *Tk* 200 for a ticket. "If less than *Tk* 200 is charged, a fine of *Tk* 500 will be realised for each ticket and for non-payment, the bus counter will be kept shut for seven days", said a RSPOG notice hung at the bus stand. Nazrul Islam, Joint Secretary of the RSPOG, signed the notice.

Source: *Staff Correspondent, Rajshahi, Daily Star, June 1, 2003*

Figure 2.1: Profile of Interviewees



responses were obtained from a small group of business community (26), consumers (31) and policy makers (23). Figure 2.1 details the profile of the respondents. It may be mentioned that, given the relatively small sample size, any conclusions that are drawn should be interpreted as being indicative, rather than representative.

multiple-choice ones, with an option for the respondents to select more than one response. In instances where multiple responses were received, the respondents were asked to rank their responses.

Although the respondents within each stakeholder group were chosen partly at random, a notion of purposive sample was also there. Respondents who were assumed to be knowledgeable on competition-related issues were targeted. Despite optimum efforts,

Understanding Competition

In general, the survey confirmed the need for more understanding, building and raising awareness on competition-related issues within the stakeholder groups. As can be seen from Figure 2.2, the stakeholders' understanding of the benefits of competition needs further clarification. Only a small group of respondents, BC (15 percent), CC (23 percent) and PM (35 percent), indicated competition leads to optimal utilisation of resources. The consumers' understanding of the term competition is that it is a

Box 2.2: Coaxing Patients into Treatment Trap: Law Enforcers Detect 15 Dishonest Physicians, 24 Clinics and Labs

A law-enforcement agency is making a list of unscrupulous physicians involved in luring patients from public hospitals at Sher-e-Bangla Nagar to private clinics and laboratories to make money. About 24 private clinics and pathological labs have also been bracketed for being the lynchpin of such organised crime. "We've so far detected about 15 such dishonest physicians and nearly 24 clinics and labs", confirmed a senior official in that agency, seeking anonymity.

The owners of the clinics and labs, in collusion with brokers and certain amoral physicians, lab technicians and the staff of the Pangu (orthopaedic) Hospital, the Suhrawardy Hospital and the National Institute of Cardiovascular Diseases (NICVD), compel helpless patients to take treatment outside public hospitals, at exorbitant prices. Though government hospitals are equipped with pathological facilities, some doctors send patients to get tests done in the labs of their choices. The physicians reportedly get commission, ranging from 40 percent to 60 percent of the total costs, from these medical outfits. Investigators have already gathered enough evidence against the already bracketed doctors and owners of the clinics and labs. "We are still trying to find out if some others were involved in the nexus", said the official.

Most of the private clinics and labs in question are located at Mirpur Road, Babar Road, Humayun Road, and Ring Road and are within two km sphere of the government hospitals at Sher-e-Bangla Nagar. Ideally, private clinics should be located where government healthcare facilities are not available, but that is not the case here. Private clinics and labs have mushroomed in the area and are doing booming business.
Patients from rural areas are the easy preys of brokers. The Rapid Action Team arrested 10 people from the Pangu hospital and the NICVD premises on May 14, on the charge of alluring patients to the private clinics. "A broker gets *Tk* 1,500 to *Tk* 2,000 from private clinic owners, if he / she can hook a patient", an employee of a private clinic near Pangu hospital told The Daily Star. "Like us, most of the clinics have their paid people at Pangu, NICVD and Suhrawardy hospitals to trap patients", he confided.

Momin Uddin, an officer at an insurance company, had a nightmarish experience when he went to the Pangu hospital after being shot by some miscreants about a month ago. "I went to the Pangu hospital with a bullet in a leg. It was around 11:30 pm then. Two youths appeared from nowhere and literally forced me to get admitted to a clinic at Mirpur Road", said the 28-year-old. An assistant professor at the Pangu hospital conducted the operation at the clinic and charged *Tk* 11,500. Momin said he had to pay more than *Tk* 77,000 as bills for the hospital, doctor and others in less than a month's treatment there. The clinic's service was far below ordinary, Momin said, adding, "I had to pay *Tk* 1,500 per day as cabin rent alone".

The Daily Star recently found a day-labourer, Fazlu, waiting at a ward of Suhrawardy hospital for a hernia operation. "I got some blood and ultrasonogram tests done at a lab, just opposite the Mirpur road. I know test facilities are available in this hospital. But, a doctor and hospital staff virtually forced me to go for the tests at the clinic", said Fazlu, who came from Bhola for the treatment, when approached. "Hospital staff suggested that the operation at the hospital is very risky and that I should go to a good private clinic he happens to know for operation", he said.

Source: *Shariful Islam, Daily Star, June 28, 2003*

Box 2.3: Pharmaceutical Cos-Doctors' Nexus: Fix of Freebies

Some pharmaceutical company salesmen in Bangladesh are bribing doctors to prescribe their drugs, with the result that patients are often given inappropriate or unnecessarily expensive medicine. A large number of doctors accept 'gifts' from drug companies, admitted S.M. Shafiuzzaman, the President of the Bangladesh Association of Pharmaceutical Industries. He declined to comment further on the practice. But, some salespeople or medical representatives – as they like to be known – are prepared to provide more information.

Four representatives from different pharmaceutical companies, multinational and local, told The Daily Star that bribing doctors in order to increase use of particular drugs was widespread. "We are giving doctors almost everything, from paperweights to cash", admitted one. Other 'incentives' include free air ticket for foreign trips, computers, mobile phones, air conditioners, table lights, telephones, towels, calendars and pens. The representatives said that the value of gifts depended on the 'quality' of the doctor.

'Quality' is defined by the number of patients the doctor sees every day. An 'A' class physician treats at least 30 patients a day. Because these doctors prescribe so many drugs, pharmaceutical salesmen visit them seven times a week, offering not only bribes but also drug samples worth a minimum of *Tk* 500 on every visit. Free samples are an investment for the company, because the doctor is likely to prescribe the drug for many patients. A 'B' class doctor, who treats 20 patients daily, will get three or four visits a week by salesmen, who hand over samples worth at least *Tk* 300 a visit. The bribers also target senior physicians "because when a senior professor prescribes an item, the juniors follow him", one representative explained.

Some of the representatives argued that that the samples are simply designed to show the doctor what is available. But, a professor from Bangabandhu Sheikh Mujib Medical University, requesting anonymity, disagreed. "It is, of course, bribery", he commented, "and ultimately patients have to pay". The samples may not be the best or cheapest on the market and doctors may be encouraged to prescribe them for other illnesses and conditions, for which the drugs are not ideally suited. "Doctors often feel obliged to prescribe our products. So they sometimes prescribe drugs which the patient doesn't need", admitted one young medical representative.

It is not a one-way traffic: the medical representatives interviewed by The Daily Star claimed that some physicians ask them for money in exchange for a promise to prescribe particular products. Giving an example of unnecessary prescribing of costly drugs, a teacher from the pharmacy department of the Dhaka University said: "Pure vitamins fall under the government's price control system. One out of 500 patients might need a bit of zinc, which would cost, for example, *Tk* 1. But, vitamins mixed with the zinc solution are not under price control and could cost, say *Tk* 50, even though the real value may be not more than *Tk* 2. In such a case, a pharmaceutical company makes an extra profit of *Tk* 48 just by persuading the doctor to prescribe that product".

A Dhaka Medical College professor said that physicians who asked for money to prescribe products, or who advised patients to buy drugs merely because they had been paid to do so by pharmaceutical companies, were failing to live up to their social responsibilities. "The government should form strict laws to control the practice", he said.

Source: *Pinaki Roy, Daily Star, June 21, 2003*

state in which firms compete in the market with each other. However, only 35 percent of the CC respondents indicated that increased competition leads to increased consumer protection. The understanding of the majority of the respondents among both policy makers and businesses is that, under competition, firms compete with each other and also that competition leads to improved efficiency of business.

Prevalence of Anti-competitive Practices

Although the stakeholders' understanding of competition needs further development, hundred percent of the respondents indicated that anti-competitive practices are prevalent in Bangladesh. A majority of consumers believe there are significant anti-competitive practices in the country, which affect them adversely, whereas businesses and policy makers consider such practices as either moderate or insignificant.

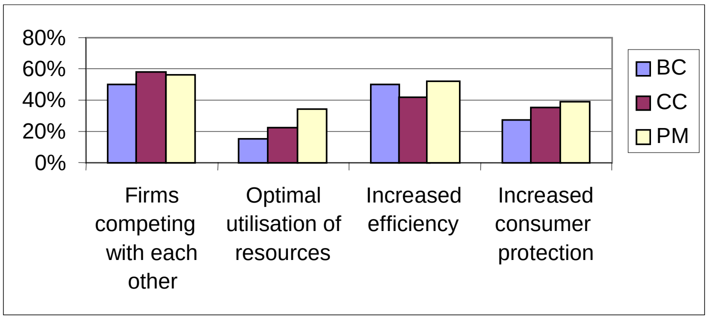
Most Prevalent Anti-competitive Practices

Most policy makers (65 percent of the respondents) believe collective price-fixing to be the major anti-competitive practice, followed by monopoly and bid-rigging (both 48 percent), discriminatory dealings (39 percent) and entry barriers (30 percent). On the other hand, businesses consider resale price maintenance as the most prevalent anti-competitive practice, followed by exclusive dealings and discriminatory dealings. Figure 2.3 depicts the aggregate responses of the stakeholders.

Reaction to Anti-competitive Practices

When faced with anti-competitive practices, business' primary reaction is to talk to other business peers (42 percent), in order to learn from their experience. Some, however, indicated that they complain to the government authorities (38 percent) and complain to their business organisations (35 percent). Consumers,

Figure 2.2: Stakeholders' Understanding of Competition



on the other hand, largely believe that it is useless to complain to the government (81 percent).

Faith in a Strong Competition Regime

All policy-making respondents (100 percent) believe that a strong competition regime will help increase competitiveness of business enterprises, whereas only 43 percent of the respondents from the business sector are in favour of, and a similar percentage of them against, any strong competition regime. The remaining 13 percent are neither for nor against. Interestingly, the policy makers were evenly split regarding the business community's acceptance of a strong competitive regime.

Awareness of Rules/Laws/Regulations to Check Anti-competitive Practices

Only a small proportion of the respondents from all three groups are aware of the presence of such rules/ laws. Not surprisingly, of the three groups, the business group was the most informed, more so than the policy makers, while the consumers were the least aware. Table 2.11 lists the stakeholders' response and evinces the need for launching a strong advocacy and capacity building campaign to educate and raise awareness among the stakeholders.

Implementation of Prevailing Rules/Laws

Most businesses and consumers believe that the prevailing rules/laws are not implemented, while policy making respondents are evenly split on this issue – half of them saying that the rules/laws are properly implemented and the other half saying that they are not implemented.

Regarding the question whether the available rules/laws are enough to check anti-competitive practices, the response of an overwhelmingly large majority (88 percent) of the policy makers is in the negative, whereas the business sector's response is evenly split – 50 percent ayes and 50 percent nays.

The Need for a Comprehensive Law and its Perceived Benefits

All the respondent groups are strongly in favour of such a law and they believe it will benefit both businesses and consumers.

Objectives of the Law

All groups hold the view that the objective of the comprehensive law should be to promote consumer welfare, as well as business efficiency. Also, all the respondent groups suggest that the law should cover all types of enterprises – both private and public, as well as all areas of commercial activity.

Suggestions on Anti-competitive Practices

All the three stakeholder groups suggest that anti-competitive practices should be banned only if they harm general interests. Also, all the three groups have expressed their disapproval of monopoly or market dominance only if market powers are abused.

Review of Provisions relating to M&As

The business sector holds the view that provisions relating to mergers and acquisitions should be reviewed for all deals, while policy makers suggest such reviews for 'big' deals only.

Application of Competition Law to IPRs

All the three groups are of the view that the law should include provisions relating to intellectual property rights as well.

Nature & Powers of Competition Authority

The opinion of all the three stakeholder groups is overwhelmingly (BC 100 percent, CC 90 percent, and PM 74 percent) in favour of an autonomous and independent competition authority. All the three groups strongly feel that the competition authority (CA) should have both investigative and adjudicative powers, with provision for appeal. These groups also want the CA to deal with unfair trade practices, as well as consumer protection issues.

Figure 2.3: Anti-competitive Practices Prevalent in Bangladesh

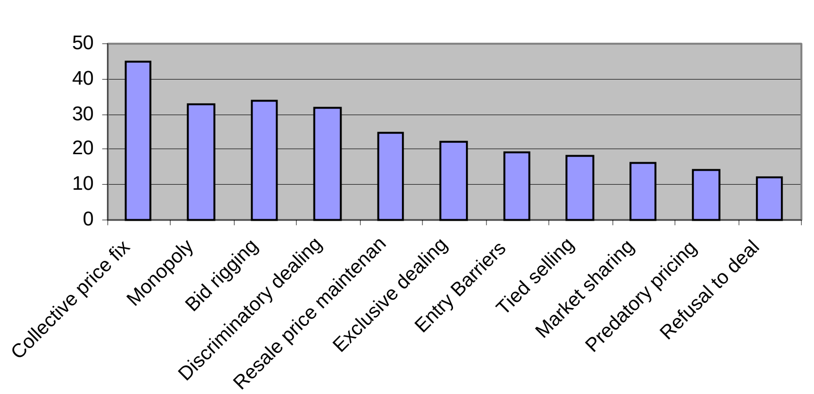
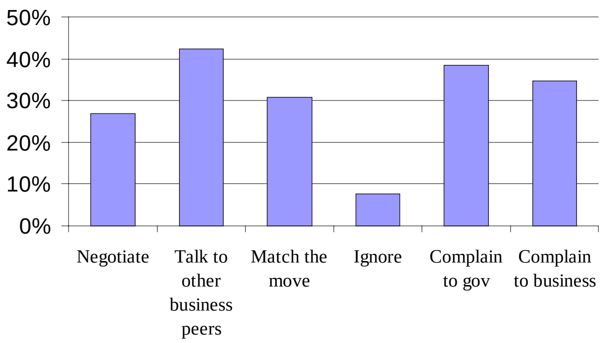


Figure 2.4: Objectives of the Law



Provision of Special Regulators for Specific Sectors

All the three groups hold an identical view that there should be specialised sectoral regulators for electricity, telecom, etc. The CA should not have any say in these sectoral issues.

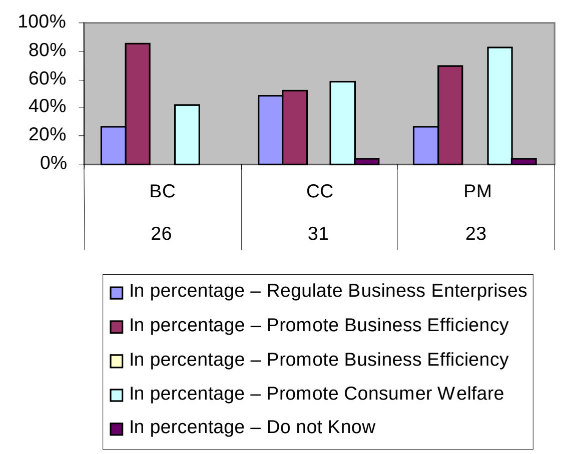
Provision for Penalty for Violation of the Law

The business sector's responses are evenly split in this regard – 50 percent of the respondents suggesting criminal penalty for all types of violation and the other 50 percent suggesting penalty only in particular cases. On the other hand, consumers and policy makers suggest criminal penalty in all cases of violation of the law. However, all the three groups strongly feel that there should be exemptions from penalties on grounds of technological advancement, protection of SME interest, etc.

Approach to Implementation of the Competition Law

The commonly held view of all the three groups is that the 'rule of reason' approach should be followed in implementing the competition law.

Figure 2.5: Objectives of such a Law (percentage)



Right to Private Action

To the query whether the law should contain provisions to ensure the right to private action, the response of all the groups is overwhelmingly positive.

Implementation of the Law in Phases

All stakeholders want implementation of the law in phases.

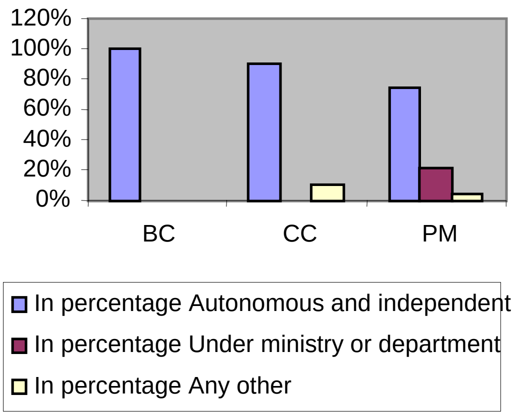
Involvement of other Stakeholders in the Implementation of the Law

All the three stakeholder groups strongly feel that, in implementing the competition law, the competition authority should involve all the stakeholders, through well-structured committees.

The Bangladeshi Competition Statute

Competition policies have become an important part of private sector development agendas in developing countries, as countries shift from state control to market economies. This has, indeed, been the case for relatively more advanced developing countries like

Figure 2.6: Nature of the plementation Mechanism or Competition authority



Brazil and India, where trade liberalisation, deregulation, and privatisation have dramatically changed their economies since the early 1990s.

Competition laws around the world are structured to regulate markets to prevent and prosecute abuse of dominance, anti-competitive actions, and mergers and acquisitions that will lead to monopoly power. However, there is no universal consensus regarding what constitutes the principle elements of an ideal competition policy and best practices are being constantly redefined. Therefore, it is for a particular country to decide and choose for itself the fundamental tenets of an effective competition policy, consistent with the national development objectives and priorities. Also, a fair amount of thought needs to be

Table 2.11: Stakeholders Awareness of Laws regarding Anti-competitive Practices			
Awareness about Competition-related Laws	**Business Community (N=26)**	**Consumers (N=31)**	**Policy Makers (N=23)**
Yes	10 (38%)	4 (13%)	8 (35%)
No	16 (62%)	27 (87%)	15 (65%)

put in to determine the scope of the competition law and the framework for its implementation.

Globally, there are over a hundred countries with competition laws, with many more in the process of developing and instituting such laws. Experience in other countries suggests that the objectives of a competition policy are best achieved with wide public support and are deeply rooted in a competition culture. Besides, consumer activism, where consumers are well aware of their rights and exert demand on the institutions to respect consumer rights, is the key to ensuring an enabling competition culture.

At another level, an important component of creating a competition-enabling environment is to have in place effective advocacy organisations to promote and protect competition, which is different from enforcement of the instituted laws. On the one hand, this implies convincing public authorities to abstain from adopting unnecessary anti-competitive measures that protect specific interest groups but harm the greater public interest. It also implies helping regulatory authorities clearly delineating the boundaries of economic regulation, by determining which markets are characterised by natural monopolies or other market failures, where regulation, rather than competition, should be the disciplinary force. Other important components of an effective advocacy programme include efforts by the competition authority to raise the awareness of other stakeholders (other government entities, the judicial system, market forces, and the public at large) about the benefits of competition, through various awareness-raising initiatives. These advocacy programmes, when effectively implemented, enhance the effectiveness of the enforcement of the law.

As mentioned from the introduction, there is no clearly spelt out competition policy or law in Bangladesh and, as such, there is no regulatory body that serves the function of a competition authority. The related ordinance 'Monopolies and Restrictive Trade Practices (Control and Prevention) Ordinance' (MRTPO) promulgated in 1970 has never been notified and implemented, even after economic reforms were initiated in the mid-1980s and intensified in the 1990s.

The provisions of the Ordinance are fairly elaborate and exhaustive. Article 3 prohibits undue concentration of economic power, unreasonable monopoly power or unreasonably restrictive trade practices. The Ordinance provides for the creation of a Monopoly Control Authority, lays down the mechanism of its composition and outlines its functions (Articles 8, 9, and 10). The Ordinance covers only the private sector undertakings and does not apply to (i) any undertaking owned or controlled by the government, a government company or a corporation established by or under any act; (ii) any trade union or other association or workman or employee; (iii) any undertaking engaged in one industry the management of which has been taken over by any person or body of persons in pursuance of any authorisation made by the government.

Only private monopolies come under the purview of the law, and state monopolies do not. To be effective in fostering competition, it is necessary to extend the coverage to include the public sector companies as well, thereby ensuring a level playing field for both the private and public sector organisations.

Other limitations of the MRTPO include that the provision of the Ordinance is not sufficient to deal with anti-competitive practices and the consumers' grievances at large. Also, single firm monopolies are not covered in the substantive provisions of the law. In addition, the levels of the penalties are very low and fail to serve as an effective deterrent to potential violators.

The MRTPO has no clear definition of unfair trade practices and fails to control any abuses of market dominance. Moreover, since the Act does not declare monopolistic, restrictive and unfair practices illegal and *ipso facto* void, its ability to promote competition, consumer welfare, and industrial growth is limited.

The above analysis reveals the shortcomings of the MRTPO and delineates the challenges that need to be addressed to make the MRTPO effective. In Pakistan and in India, where similar laws were in place, it can be observed that, rather than amend the law, they choose to draft and enact a new law. Learning from the experience of the neighbouring countries, it might be appropriate for Bangladesh to draft a new Competition Law. Alternately, the current Ordinance could be amended to address its shortcomings and, as the Ordinance has provisions for dealing with anti-competitive practices, it can easily be implemented now. The government could first indicate its serious interest in this matter and proceed to create the Monopoly Control Authority, as laid down in the Ordinance, along with the appropriate agencies to enforce the provisions of the Ordinance.

Some Concluding Remarks and the Way Forward

While trade liberalisation and privatisation are preconditions for the growth of a free market, it does not, in itself, guarantee effective competition, particularly when the market players are not evenly matched. In Bangladesh, the concentration of market powers has historically been skewed in favour of business interest groups. Left unchecked, it is unlikely the situation will correct itself in the foreseeable future. It is irrational to expect that efficiency gains due to reforms will be transferred to the vulnerable consumers, resulting in the desired socio-economic growth. Instead, it appears that the future will bring more rampant abuse of power and more sophisticated anti-competitive practices, through cartels and other price-fixing arrangements, coupled with greater rent-seeking practices, at great costs to the consumers and the economy.

The prevalent perceptions of the stakeholders, as gauged from the survey, show a consensus among stakeholders for an urgent need to regulate the market, to check anti-competitive practices, institute a mechanism to implement the law and develop the capacity of the stakeholders, empowering them to create an enabling environment where competition can flourish. Beneficiaries of a flourishing competitive regime will not only be the consumers, but also the businesses themselves.

Should Bangladesh institute and enforce a competition law and policy? The answer is a resounding ‘yes’. Repeatedly, this Paper has highlighted the need for a well-articulated and effective competition policy and law. The absence of such a law has made the economy vulnerable to all kinds of anti-competitive practices, the costs of which are being borne by all the stakeholders.

Competition policy enforcement is an important part of the continuation of the process of economic liberalisation, to which the country is deeply committed. As large enterprises that dominate particular industries are privatised in the liberalisation process, they may not welcome the emergence of competition to their products, whether the competition of domestic substitutes or from imports, and they may take actions to deter the import or distribution of such competing products. Only competition enforcement can negate such actions.

Competition enforcement is important for another reason – much of the population of the country may face increased economic uncertainty, as a result of liberalisation. The best response to such concerns is, perhaps, the creation of an effective social safety net, but a second response is the enactment, enforcement, and publication of a competition law, which will convince the population that there are rules and protections for small actors in the marketplace. An effective competition law and policy can, in fact, be regarded as a pre-requisite for the enactment of liberalising rules in other areas.

A modern, independent, and transparent competition authority will be needed for the enforcement of the competition law. Being at a very early stage, Bangladesh will need adequate technical assistance, as well as financial support from the international community, to establish a national competition authority and also promote institutional capacity of the newly created authority.

Effective implementation of the competition policy will also require close co-operation among these countries, given the greater degree of interdependence among them. Countries will need to co-operate with one another consistently with their respective laws, to maximise the efficacy and the efficiency of the enforcement of each country’s laws and help disseminate the best practices for the implementation of competition policies.

The challenges ahead for Bangladesh are the following:

a) Draft, adopt and implement an effective competition law and policy;
b) Create a competition authority;
c) Empower stakeholders to affect a competition culture through competition advocacy;
d) Seek co-operation of other countries to maximise the efficiency of enforcement of the competition law; and
e) Seek international support in the form of technical assistance and financial resources for institution building and create and enhance institutional capacity in the area.

Notes:

* This chapter has been researched and written by a team comprising Iftekar Ahmed, Ataur Rahman, Masud-ul-Aziz and Vidya Amrit Khan of the Bangladesh Enterprise Institute (BEI). The team received helpful comments and suggestions from Mostafa Abid Khan of Bangladesh Tariff Commission; MA Razzaque and Ayubur Rahman Bhuyan of University of Dakha. The authors acknowledge the support received from Nitya Nanda and Alice Pham of CUTS C-CIER in designing the study and their comments and suggestions on the draft. Comments and suggestions were also received from the members of the Project Advisory Committee.

1 CUTS, 2003, Investment Policy in Bangladesh – Performance and Perceptions, p.12

2 Ibid, p.14

3 CPD Monograph No 2: Reform of State-Owned Enterprises and Privatisation, CPD 1998.

4 Ibid.