

# Promoting Competition Policy & Law in Bangladesh A Civil Society Perspective

#0603

**CUTS**  
International

Bangladesh Enterprise Institute



# **Promoting Competition Policy & Law in Bangladesh**

***A Civil Society Perspective***



Bangladesh Enterprise Institute



# **Promoting Competition Policy & Law in Bangladesh**

## ***A Civil Society Perspective***

**Published by:**



**CUTS Centre for Competition, Investment & Economic Regulation**  
D-217, Bhaskar Marg, Bani Park, Jaipur 302 016, India  
Ph: +91.141.228 2821, Fax: +91.141.228 2485  
Email: c-cier@cuts.org, Website: www.cuts-international.org

**In Association With**



**Bangladesh Enterprise Institute**  
House No. 20, Road No. 5, Gulsan-1 Dhaka 1212, Bangladesh  
Ph: +880.2.989 2662/989 2663, Fax: +880.2.988 8583  
Email: bei@bol-online.com, Website: www.bei-bd.org

**Acknowledgement:**

This document\* is being published as a part of the 7Up2 Project ("Advocacy Capacity Building on Competition Policy & Law in Asia")

**Supported by:**



**Copyright:**

**CUTS, 2006**

The material in this publication may be reproduced in whole or in part and in any form for education or non-profit uses, without special permission from the copyright holders, provided acknowledgment of the source is made. The publishers would appreciate receiving a copy of any publication, which uses this publication as a source. No use of this publication may be made for resale or other commercial purposes without prior written permission of CUTS.

**Citation:**

CUTS, 2006, Promoting Competition Policy & Law in Bangladesh  
*A Civil Society Perspective*

**Printed by:** Jaipur Printers P. Ltd., Jaipur 302 001

**ISBN 81-8257-070-0**

**\*Other documents are also available with CUTS**

---

#0603 SUGGESTED CONTRIBUTION BDT70/INR50/US\$10

## **CONTENTS**

<b>1. Introduction .....</b>	<b>7</b>
<b>2. Summary of Findings on the Competition</b>	
<b>Scenario and Regime in the Country .....</b>	<b>8</b>
Bangladesh at a Glance .....	8
The Bangladesh Economy .....	9
Structure of GDP .....	9
Agriculture as a Way of Life .....	10
The Bangladesh Market .....	10
Toiletries Sector .....	11
Tobacco Sector .....	11
Financial Services .....	11
Power .....	11
Telecommunications .....	12
Transportation .....	12
Health Services .....	13
Anti-competitive Practices and Consumer Concerns .....	13
Anti-competitive Practices in Play .....	14
The Lack of Basic Consumer Rights Protection .....	14
Barriers to Market Entry and Exit .....	14
<b>3. The Current Legal and Institutional Framework .....</b>	<b>15</b>
The Role of Government Policies on Competition .....	15
Financial Services .....	15
Power .....	17
Telecommunications .....	18
Transportation .....	18
Consumer Protection Policies .....	19

<b>4. Stakeholders' Perception and Level of Awareness .....</b>	<b>22</b>
Understanding Competition .....	22
Prevalence of Anti-competitive Practices .....	23
Most Prevalent Anti-competitive Practices .....	23
Faith in a Strong Competition Regime .....	23
Rules to Check Anti-competitive Practices.....	24
The Need for a Comprehensive Law and its Perceived Benefits .....	24
Nature of Competition Authority and its Powers .....	24
Provision for Penalty for Violation of the Law .....	25
Implementation of the Competition Law .....	25
<b>5. Agenda for Action .....</b>	<b>26</b>
Strategy 1: Legal Reform and Competition	
Enforcement in Target Sectors .....	27
Strategy 2: Information Cell .....	28
Strategy 3: Consumer Awareness .....	29

# 1

## *Introduction*

---

The development and enforcement of a healthy competition policy and Law is a necessity for the economic advancement of developing countries, especially in the context of an integrated world trade regime. It is an important tool that can be used for the continuation of the process of economic liberalisation, a cause to which Bangladesh is deeply committed. Such regulations can not only protect the welfare of consumer interests, but also further encourage a fair deal of competition in the markets, from which businesses and consumers are both likely to benefit. Moreover, it also helps to promote trade efficiency in the economy. On a national level, such policies encourage research and development capacities among competitors. However, to achieve the most efficient results, competition policies and laws must be adapted according to national circumstances, taking into consideration specific economic and social aspects.

Aware of such needs for developing countries, Consumer Unity & Trust Society, Centre for Competition, Investment & Economic Regulation (CUTS C-CIER), a developing country-based research and advocacy group has initiated the 7Up2 Project. This project, ‘Advocacy and Capacity Building on Competition Policy and Law in Asia’, aims to help accelerate the process towards well-adapted competition laws and policies in select developing countries in Asia, namely Bangladesh, Cambodia, India, Lao PDR, Nepal and Vietnam. The 7Up2 Project is an action-orientated programme that aims to promote, through research based advocacy and capacity building activities:

- Structures and actors able to advocate for competition legislation;
- Training facilities in the country; and
- Meaningful dialogue between civil society and the government officials.

As part of the 7Up2 project, this advocacy document aims to be a simple and concise publication that will provide a comprehensive analysis of the competition scenario in Bangladesh, and put across key recommendations to carry forward the national agenda on competition policy and law in the country.

## 2

# *Summary of Findings on the Competition Scenario and Regime in the Country*

---

### **Bangladesh at a Glance**

Bangladesh is a low-lying riverine country bounded by India to the north, east and west, by Myanmar to the southeast, and by the Bay of Bengal to the south. The country has the highest population density of any country with 144.3 million in 2005, within an area of 147,570 Sq. Km.

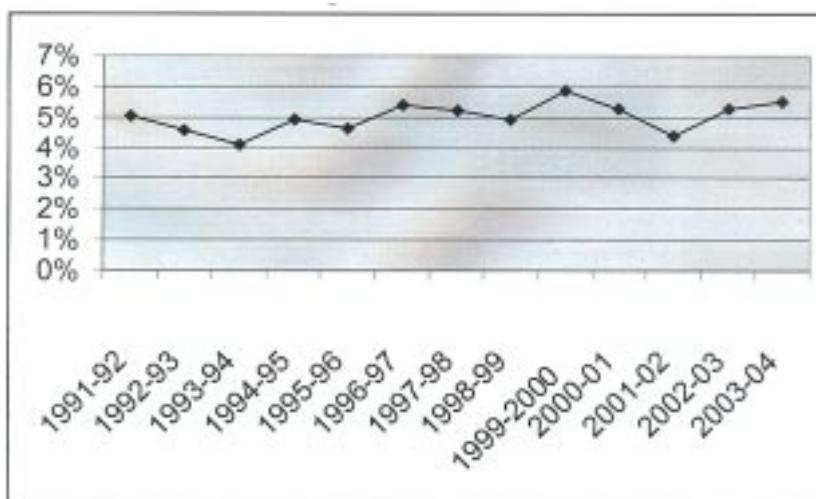
Table 1: Bangladesh at a Glance	
Country Name	People's Republic of Bangladesh
Government	Parliamentary democracy
Capital	Dhaka
Land Area	147,570 sq km
Population	144,319,628
Annual Population Growth Rate	2.09%
Population Density	2,179 per sq km
Official Language	Bangla
Ethnic Groups	Bengalis (98%), Tribal/Non Bengali (2%)
Religion	Islam (83%), Hinduism (16%), Others (1%)
Literacy	43% (15 years and above)
Currency	Taka
Per Capital Income	US\$373 (USD)
GDP	US\$55.1bn
Total Exports	US\$ -7.478bn (2004 est.)
Main Export Destinations	USA, Europe
Total Imports	US\$10.03bn (2004 est.)
Main Import Source	India (14.6%), China (11.7%), Singapore (7.8%), Japan (5.8%)
HDI Rank	138
Population living under Poverty line (1 USD/day)	45% (2004 est.)
Life Expectancy	62.08 years

## The Bangladesh Economy

### Structure of GDP

Bangladesh belongs to the group of least-developed countries (LDCs). Nevertheless, the performance of the economy since the early 1990s has been considered fairly good, with a Gross Domestic Product (GDP) of US\$55.1bn during the financial year 2003-04. The economy has maintained a steady and fairly robust economic growth at an average annual rate of about 5.0 percent during the last decade (Graph 1). 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.

**Graph 1: GDP Growth of Bangladesh**



*Source: Bangladesh Economic Review, 2004*

Trends in Bangladesh show a decline in public sector investments and participation compared to the private sector, thus reflecting the government policy to gradually withdraw its ownership of major economic assets. Since 1990, successive governments have pursued a policy of trade liberalisation resulting in an increase in the trade-GDP ratio. The readymade garments sector should be given maximum credit for such a performance, which constitutes more than 75 percent of the country's total export earnings.

### **Agriculture as a Way of Life**

Agriculture remains the mainstay of the country's economy, contributing about 23 percent of the country's GDP and employing about 62 percent of the labour force. Crops dominate agricultural production, with rice covering about 75 percent of cultivated land and contributing 14 percent to the GDP. Micro-credit programmes delivered by the government and non-governmental organisations (NGOs) have been successful in providing credit to millions of the rural poor from whom the formal credit lending institutions usually shy away. This has largely resolved some of the access to credit issues faced by the very low-income earners.

Sector-wise contribution to GDP data suggests that the service and manufacturing sectors are enjoying a steady growth over the last decade, as their contributions to the GDP are increasing gradually, even though their contributions to employment are still low. In 1997-98, only 0.54 percent of total manufacturing establishments were in the public sector, while the rest were individually owned. In many industries, there is no presence of the public sector at all. However, the public sector's share in total manufacturing production in value terms represents 9.5 percent of total production in the country. Within the private sector, a large number of establishments are small size 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.

### **The Bangladesh Market**

The Bangladesh market presents many constraints to the development and smooth operation of the private sector. Some of these constraints are:

- Complicated licensing and regulatory procedures;
- Lack of access to financial capital;
- Poor transport and physical infrastructure;
- Limited access to vocational training;
- High costs of commodities;
- Lack of support from the public sector to those operating in the lower end of the market;
- High levels of corruption working within the system; and
- Competition with illegally imported products that evade taxation.

The Bangladeshi market constitutes a vast majority of informal enterprises that are not officially registered with the government. Also, market data is not systematically recorded by the government and, as a result, information about market composition is only available for a few sectors.

#### **Toiletries Sector**

Locally produced toiletries play a significant role in a sector that has been primarily dominated by imports in the past. Although the toiletries industry consists of a large number of firms, only seven firms possess 95 percent of the market share for toilet soap. Approximately 50 percent of the toiletries sector is controlled by one company.

#### **Tobacco Sector**

The tobacco industry is a small yet significant group of producers in the Bangladeshi economy. The demand for tobacco is largely determined by the demand for cigarettes. There are 10 firms engaged in the manufacturing of cigarettes in the country. British-American Tobacco Bangladesh is the dominant player in this sector, and controls around 50 percent of the country's 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. There are two stock exchanges – the Dhaka Stock Exchange (DSE), and the Chittagong Stock Exchange (CSE) – that deal in the secondary capital market. General insurance is provided by 21 companies, and life insurance is provided by six (6) companies. Permission has been given to another 43 private, general, and 17 life insurance companies to conduct insurance business in Bangladesh. There are 134 micro credit financial institutions (MFI) in the country, which are basically NGOs and provide credit facilities for an explicit social agenda to cater to the needs of the poorest sections of the non-agricultural population.

#### **Power**

The power sector in Bangladesh has grown rapidly with the growth of economic activities and the state owned enterprises (SOEs) are the dominant players in power generation, transmission, and distribution. However, power shortages are still among the most predominant problems of the economy with only 30 percent of the population (80 percent urban, 20 percent rural) having access to electricity. The Bangladesh Power Development Board (BPDB) accounts for more than 73 percent of total power generation. Since 1996, private independent

power producers (IPPs) have also engaged in power generation, accounting for about 27 percent of total installed capacity. 87 percent of total electricity generation is based on natural gas, which is supplied by the state-owned Petrobangla.

### **Telecommunications**

The telecommunication sector is characterised by a very low level of penetration, with a rate of 0.79 telephones per 100 people. The Bangladesh Telegraph and Telephone Board (BTTB) enjoys a monopoly in fixed line telecommunication services, representing more than 95 percent of fixed lines in Bangladesh. International telephone services, facsimile, and data transaction services are provided only by the BTTB.

In contrast, in mobile services, four private operators have a 100 percent market share, which has a potential of 12-15 million users worth about Tk.108 billion. In recent years, competitors in the mobile market 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.

### **Transportation**

Bangladesh has developed a transport network that includes roads, railways, inland waterways, two maritime ports, and a number of 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. Among the four modes of internal transportation, road and inland water transport services are provided by the private sector, while railway transport services are provided only by the public sector. 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.

Until recently, there was no participation of the private sector in transport infrastructure and railway transport. However, this has changed as the operational, maintenance, and construction works are now being handed over to the private sector. Bangladesh Biman, the national state-owned airlines providing international air services linking Bangladesh to international destinations, still dominates the air transport sector, although recently, GMG

Airlines have been allowed to operate flights to Kolkata, India. All these initiatives are likely to increase competition, resulting in more competitive prices and flexibility for consumers.

### **Health Services**

Taking into account the government's low level of resources devoted to health services (US\$3.60 per person per annum), the national health policy mainly focuses on primary health care in the rural areas, in population control, and in immunisation. The private sector plays a large role in the provision and financing of health services. The largest group of providers are composed of qualified and unqualified drug retailers, who serve the dual purpose of prescribing and selling drugs. Both the private sector and government clinics are involved in the provision of pharmaceutical and medical supplies. In addition, some NGOs are also providing health services in close partnership with the government. 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.

### **Anti-competitive Practices and Consumer Concerns**

In the absence of an established competition legislation, restrictive trade practices have prevailed in the markets and eroded consumer interests and rights. There are no hard evidences or reports documenting the anti-competitive behaviour of business companies operating in Bangladesh. Occasionally, newspapers report on price hikes of essential commodities in the country, but they cannot provide any evidence of anti-competitive behaviour by the suppliers of such commodities. Most consumers complain that price hikes are artificial and are caused by a group of traders through collusion.

The most common anti-competitive actions occur when businesses practice the following trends:

- Collective price fixing, restrictive outputs or market allocation or sharing;
- Bid rigging;
- Predatory pricing;
- Merging operations with their closest competitors;
- Tied-selling;
- Price discrimination;
- Forcing exclusive contracts on their suppliers or distributors that protect their own dominant position in a particular market; and
- Discriminatory dealing, exclusive dealing or refusal to deal.

### **Anti-competitive Practices in Play**

There are reports on anti-competitive behaviour in the internal transport sector. 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.

There are also widespread complaints about anti-competitive practices in the health sector. Apart from the poor quality of service in the health sector, consumers report that agents, in connivance with a section of doctors, maintain links with private clinics and motivate patients to receive services in the clinics, most of which lack proper equipment and efficient doctors. There are also allegations that the pharmaceutical companies often resort to unfair means to sell their products, through bribing doctors to prescribe medicine produced by the companies themselves.

In the banking sector, the 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 hence, price-fixing is common in this sector of the economy.

### **The Lack of Basic Consumer Rights Protection**

Consumers in Bangladesh suffer from a severe lack of knowledge about consumer rights. Markets are often not very transparent and as there are no established systems in which markets can be compared, consumers often remain unaware of the price, safety, and quality of available products. Only a limited number of products have been certified for quality standards. Moreover, poverty is another problem that places severe limits on consumer rights.

### **Barriers to Market Entry and Exit**

Low entry and exit barriers are an important feature in maintaining a competitive environment. However, analyses of existing policies indicate that deliberate measures are in effect restricting entry into certain ‘reserved, regulated or over-saturated’ sectors. Rather than allowing the markets to regulate the existence of over-saturated sectors, the government has decidedly stepped in, and in the process, at the loss of consumer welfare, has created a barrier to entry of potentially more efficient firms that could be more productive and technologically sophisticated. Similarly, the state-owned industries are characterised by strong unionised labour and other vested interest groups that make it extremely difficult to exit these industries – a feature that has set back the privatisation process, as it discourages private entrepreneurs from stepping into these industries.

# 3

## *The Current Legal and Institutional Regime*

---

### **The Role of Government Policies on Competition**

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. However, in the absence of an effective competition law in Bangladesh, domestic government policies play an important role in regulating competitive behaviour in specific sectors. Therefore, studying sectoral policies is crucial to understanding the current environment on competition.

### **Financial Services**

#### *Regulations and Regulators:*

- The Banking Companies Act, 1991, and Bank Company (revised) Act are the principal legislations regulating the banking sector.
- The Bank of Bangladesh (the Central Bank), exercises its powers under the Financial Institutions Act, 1993, and is responsible for supervising the banking and also the non-banking financial institutions engaged in financing activities, including leasing companies and venture capital companies.
- The Bank of Bangladesh is further responsible for issuing licenses to carry out banking businesses. However, according to the country's industrial policy, foreign investment in the banking sector is discouraged. The Ministry of Finance, in consultation with the Bangladesh Bank, also takes charge of certain areas of banking regulation.
- The Securities and Exchange Commission (SEC) exercises powers under the Securities and Exchange Commission Act, 1993 and 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 Insurance Act, 1938, along with regulatory oversight provided by the Chief Controller of Insurance (CCI), on authority under the Ministry of Commerce, approves and regulates the insurance sector.
- At present, activities of micro financing institutions are not regulated, supervised, or monitored by any single authority in Bangladesh. The Government of Bangladesh has formed a committee, under the chairmanship of the Governor of Bangladesh Bank, to formulate uniform guidelines and the legal framework of a regulatory body for this rapidly growing financial sector.

*Competition Scenario:*

- Although the Banking Act, 1991, does not contain any provisions regarding anti-competitive behaviour, it does maintain that the 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.
- Similarly, the Financial Institutions Act, 1993, does not contain any provision regarding anti-competitive practice of financial institutions, but it does have the authority to cancel the license of a financial institution if it carries on its business in a manner detrimental to the interest of the depositors.
- The capital markets are still at a nascent stage, and continue to be plagued by structural weaknesses, regulatory inefficiencies, absence of adequate transparency in market transactions, flaws in disclosure and reporting standards, prevalence of many fraudulent practices, and absence of professionalism on the part of the market practitioners.
- General and life insurers are required to confine their business to their respective fields and are not allowed to provide other financial services. Further, private insurance companies are required to reinsure themselves with government owned insurance companies in Bangladesh.

*Outlook:*

- 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 banks; and, (ii) removal of administrative barriers to competition. This has lead to an improvement in the quality and range of financial services available to the customers, as reforms have facilitated new entry, mainly by the private

sector, into banking markets. The number of banks and financial institutions has increased, and the dominant market share of the major banks has eroded.

- However, the impact of new entrants on the cost, quality, and range of financial services has been limited due to a number of reasons. Although the major government banks have lost some of their market share to the new entrants, they have still retained a large enough share to exercise considerable market power. This has resulted in large interest rate spreads, a slow improvement in reform of some of the government banks and a general confinement of benefits and improved services in the urban areas. Moreover, because banking markets, particularly credit markets, are segmented, competition is severely impeded.

### **Power**

#### *Regulations and Regulators:*

- 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.
- The Bangladesh Energy Regulatory Commission Act, 2003, was enacted in order to create an atmosphere conducive to private investment in the 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 to promote the creation of a competitive market.
- The Act empowers the Commission to encourage the creation of a congenial atmosphere to promote 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 to make these compulsory, with a view to ensuring the quality of service.

#### *Competition Scenario:*

- Power generation is dominated by the 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 transmission and distribution system 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 down the years to

high system losses, poor financial management (inadequate pricing, poor billing, and collection), and ineffective or unresponsive governance.

## **Telecommunications**

### *Regulations and Regulators:*

- 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 Telecommunications Act, 2001.
- The Bangladesh Telecommunications Regulatory Commission (BTRC) was established in 2002 and is responsible for spectrum management, 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 ensuring quality telecommunication services.
- The Commission will also have to protect an operator or a service provider from anti-competitive behaviour and facilitate the access of persons intending to participate as players in the market. The functions of the Commission also include protecting the interests of local consumers, with respect to charges; their access to telecommunication services; and the quality and variety of such services.

### *Competition Scenario:*

- The Telecommunications Act, 2001, does not include any of the aforementioned functions, except in respect of tariffs, call, and other charges. The Act does not differentiate 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.

## **Transportation**

### *Regulations and Regulators:*

- The Port Act, 1908, and Port Rules, 1966, constitutes the core legislative and regulatory framework for port services. However, the government has been increasingly encouraging private participation and the Dhaka Inland Container Depot (ICD) is now operated by the private sector. Moreover, many activities in the port areas have been transferred to the private sector on a lease basis.
- The Department of Shipping, under the Ministry of Ports, Shipping and Inland Water Transport, regulates maritime transport and related services. The Bangladesh Flag Vessels (Protection) Ordinance, 1982, and the

Bangladesh Merchant Shipping Ordinance, 1983, provides the main regulations defining the conditions of maritime transport business in Bangladesh. The Bangladesh Flag Vessels (Protection) Ordinance, 1982, provides for the protection of the interest of the national shipping industry.

*Competition Scenario:*

- The Bangladesh Flag Vessels (Protection) Ordinance, 1982, maintains that national flag vessels shall carry 40 percent of sea-borne cargo, which is in conformity with the United Nations Conference on Trade and Development (UNCTAD) code of conduct for ocean liners. Domestic routes are not open to foreign vessels but national treatment is extended to port facilities or services for overseas vessels that call at Bangladeshi ports.

It is evident from the review of sectoral policies that none of them contain specific provision on competition. Although the various legislation promulgated in recent years contain some provisions to address the issue of competition, they do not provide any specific mechanism to address anti-competitive behaviour. However, all 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.

Even though legislations are in place to ensure fair competition, inefficiencies due to an overburdened judicial system often raise the cost of doing business in Bangladesh. Moreover, in general, the legal system and the government lack the capacity to enforce the rule of the law, resulting in a failure to guarantee property rights and enforcement of contracts, hence, seriously undermining the interests of the consumers.

### **Consumer Protection Policies**

In Bangladesh, a review of existing legal instruments reveals very little legal provisions that effectively protect the interests of consumers, in spite of the fact that an active consumer-protection effort by governments is proper public policy.

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, as it helps reduce unfair competition in the markets, and therefore ensures an even playing field in which businesses can operate.

Moreover, 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. There are, however, a number of ordinances and laws in specific areas, which are directed towards protection of consumers. Notable among them are:

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

The above laws are reportedly outdated and ineffective when it comes to protecting the interests of consumers against unfair practices. They are flawed in that they do not allow aggrieved consumers to directly litigate against the violators, but instead empower the government to initiate proceedings. Moreover, the laws fail to act as significant deterrents to wilful violators, as enforcement of these laws are extremely poor and the provisions of penalty or punishment are so negligible that everybody ignores the rules, further limiting the scope for compensation.

To add to the problem, poor governance and lack of necessary infrastructure makes it extremely unlikely that the laws are well implemented and finally, ignorance of the laws is another reason for poor implementation. Thus, consumers in general, in Bangladesh, are seldom aware of their rights and entitlements and are grossly deprived of their rights to have adequate protection.

In 2005, the government stepped up visible enforcement of food, health, and safety rules through the use of mobile magistrate courts. The food adulteration, health violations, and labelling infractions that have been brought to light by these mobile courts have greatly increased consumer interest in these issues.

Interest groups that can voice the concerns of consumers are weak or absent in Bangladesh. In 1978, the Consumer Association of Bangladesh (CAB) was formed and became the only social group in the country advocating consumer protection. This was done 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. CAB drafted a consumer protection bill in 1998, which has since been under consideration of the Ministry of Commerce. Available information suggests that a draft consumer protection bill has been placed before the Cabinet, but its fate remains uncertain.

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 influence by interest groups. Not surprisingly, the policy trend in Bangladesh is disproportionately biased against the interests of the consumers. Hence, only through changing the sphere of interest can policies that will favour consumers be expected.

## 4

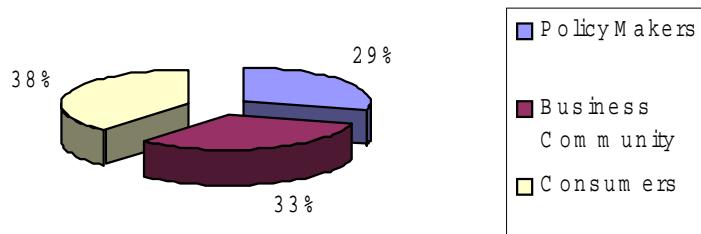
### *Stakeholders' Perception and Level of Awareness*

---

---

Under the 7Up2 project, a field survey was administered over a three month period with the objective to gauge the perceptions of three key stakeholder groups on competition related issues using separate sets of structured questionnaires for each group. The three groups were divided into policy makers (PM), business community (BC), and consumers (CC). Each questionnaire contained around thirty questions, many of which were multiple-choice 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. Despite limitations in the sample selection methodology and size, some general inferences can be drawn.

**Chart 1: Profile of Respondents**



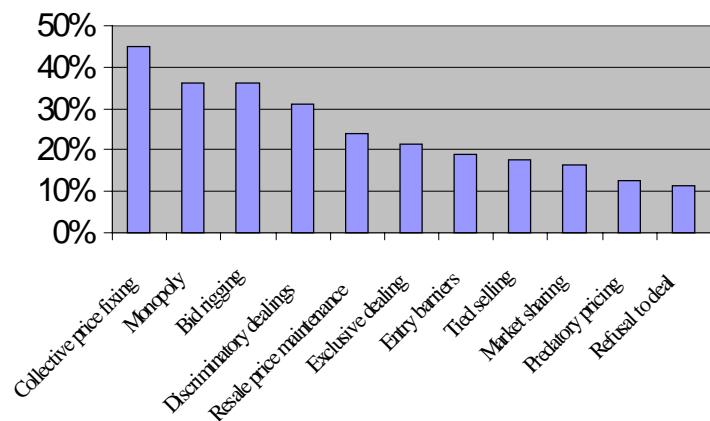
#### **Understanding Competition**

A large majority of respondents did not seem to have a clear grasp of the concept of competition regulation and confirmed the need for more understanding, building, and raising awareness on competition related issues within the stakeholders groups. Competition, according to the consumers, is a state in which firms compete with one another in the market.

### **Prevalence of Anti-competitive Practices**

Although the stakeholders' understanding on competition needs further development, a 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.

**Chart 2: Anti-competitive practices prevalent in Bangladesh**



### **Most Prevalent Anti-competitive Practices**

Most policy makers believe collective price fixing to be the major anti-competitive practice, followed by monopoly and bid rigging, discriminatory dealings, and entry barriers. On the other hand, businesses consider resale price maintenance as the most prevalent anti-competitive practice, followed by exclusive dealings and discriminatory dealings.

### **Faith in a Strong Competition Regime**

All policy maker respondents believe that a strong competition regime will help increase competitiveness of business enterprises, whereas only a small portion of the respondents from the business sector are in favour of, and a similar percentage of them against, any strong competition regime. Interestingly, the policy makers were evenly split regarding the business community's acceptance of a strong competitive regime.

### **Rules/Laws/Regulations to check Anti-competitive Practices**

Only a small proportion of respondents are aware of the presence of such rules/laws, out of which the business group was the most informed, more so than the policy makers or consumers. Most businesses and consumers believe the prevailing rules/laws are not implemented, while policy maker respondents are evenly split on this issue. An overwhelmingly large majority of policy makers state that the existing rules and laws are not enough to check anti-competitive practices, whereas the business sector is evenly split on this issue.

<b>Table 2: Stakeholders awareness of laws regarding anti-competitive practices</b>			
<b>Awareness about competition related laws</b>	<b>Business Community (N=26)</b>	<b>Consumers (N=31)</b>	<b>Policy Makers (N=23)</b>
<b>Yes</b>	10 (38%)	4 (13%)	8 (35%)
<b>No</b>	16 (62%)	27 (87%)	15 (65%)

### **The Need for a Comprehensive Law and its Perceived Benefits**

All respondent groups were strongly in favour of such a law, and they believe it will benefit both businesses and consumers. 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 respondent groups have suggested that the law should cover all types of enterprises – both private and public, as well as all areas of commercial activity. All three stakeholder groups suggested that anti-competitive practices should be banned, only if they harm general interests. Also, all three groups have expressed their disapproval of monopoly or market dominance, only if market powers are abused. 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. All three groups are of the view that the law should include provisions relating to intellectual property rights (IPRs) as well.

### **Nature of Competition Authority and its Powers**

The opinion of all three stakeholder groups is overwhelmingly in favour of an autonomous and independent Competition Authority. 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. All three groups hold an identical view that there should be specialised sectoral regulators for electricity, telecoms etc.

### **Provision for Penalty for Violation of the Law**

The business sector's responses were evenly split in this regard – 50 percent of the respondents suggesting a 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 are in favour of criminal penalty in all cases of violation of the law. However, all three groups strongly feel that there should be exemptions from penalties on grounds of technological advancement, protection of small and medium enterprises (SME) interest etc.

### **Implementation of the Competition Law**

The commonly held view of all three groups is that the ‘rule of reason’ approach should be followed in implementing competition law. All groups strongly felt that that the law should contain provisions to ensure the right to private action. All stakeholders also want an implementation of the law in phases. All the three stakeholder groups strongly feel that in implementing the competition law, the Competition Authority should involve all stakeholders through well-structured committees.

## 5

### *Agenda for Action*

---

While trade liberalisation and privatisation are predominant features of a growing and a healthy free market economy, it does not, in itself, guarantee effective competition, particularly, when the market players are unequal. In Bangladesh, the concentration of market power has always been in favour of business interest groups. Left unchecked, the situation is only likely to worsen in the foreseeable future. Without a proper framework, 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. Bangladesh urgently needs to institute and enforce a competition law and policy, as the absence of such a law has made the economy vulnerable to all kinds of anti-competitive practices.

The survey shows a consensus among stakeholders for an urgent need to regulate the market in terms of anti-competitive practices, to institute a mechanism to implement the law, and finally to develop the capacity of the stakeholders, empowering them to create an enabling environment where competition can flourish, benefiting both consumers and businesses.

The enormity of the challenges in instituting a competitive regime suggests that there is no quick and simple remedy that will be immediately effective across the board. Drafting a comprehensive competition policy or law will be constrained by its effective implementation, though there are merits to such a comprehensive legislation, since it can provide an overall strategic outlook and guidance into the future.

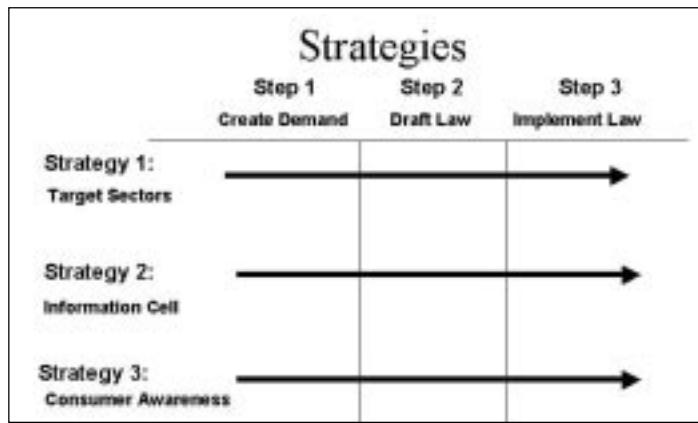
At the implementation level, the legislation will provide a mechanism for legal recourse to aggrieved parties. The best response to current challenges is the creation of greater public awareness as to the utility of a competitive environment and the benefits it will bestow among all stakeholders. Only through creation of a greater demand through the demonstration of tangible

benefits to stakeholders, and particularly businesses, can such a policy find ground to permeate gradually throughout the entire market system.

### **Strategy 1: Legal Reform and Competition Enforcement in Target Sectors**

Initially, efforts need to be concentrated on identifying priority sectors, where changes in existing legislation competition can be introduced gradually, systematically, and transparently. Selection criteria should include: high visibility, wide impact, relatively short-term implementation time frame, and demonstrable benefits. The process followed needs to be consultative, involving a wide group of stakeholders and integrating their concerns, wide media coverage to raise the awareness of the general population at large, with attention to ensure adequate protection for small actors.

**Chart 3**



A cornerstone to successful implementation and sustainability of such an initiative is the establishment of a modern, independent, and transparent Competition Authority (CA). As corroborated by the survey respondents, the CA should be autonomous, having both investigative and adjudicative powers, with provision for appeal. Since the ‘Monopolies and Restrictive Trade Practices (Control and Prevention) Ordinance’ (MRTPO) promulgated in 1970 allows for such an authority, legal provision is already in place.

Once the CA is established, initial efforts can be concentrated to develop its capacity and refine its mandate. The authority can seek external funding for technical assistance and other capacity building activities. In this regard, there are also valuable lessons to be learned from the experiences of similar entities operating in the other partner countries within the 7Up2 Project. Possibilities of additional synergies for further development exist under the multi-donor

funded Private Sector Development Support Project (PSDSP), which can be explored if this idea develops further.

*Why?*

- The existing competition regime has not been effective in terms of implementation or effects.
- Many regulations in Bangladesh directly or indirectly deal with competition issues, but none so far have any direct implications for competition in Bangladesh.
- Bangladesh already has many regulations that are not properly enforced.
- Competition law allows for better governance and regulatory efficiency.
- Stronger consumer representation is also necessary in the context of Bangladesh, as it can help protect consumer rights.
- Demonstrated effects could create greater constituency of competition proponents

*How?*

- The Ministry of Commerce should draft and enact an overarching competition law for Bangladesh, through consultations with all stakeholders.
- Once drafted, this law should be ratified by the Parliament.
- The co-operation of other countries should be sought to maximise the efficiency of enforcement of the competition law.
- Sectoral competition policies should be reviewed through a detailed data analysis to identify sectors where anti-competitive practices are most prevalent, in order to tackle such practices effectively.
- A dedicated and autonomous authority must be created at the outset of this phase, in order to enforce and implement the newly drafted law.
- International support, in the form of technical assistance and financial resources for institution building, and creating and enhancing institutional capacity in the area, should be sought in order to make the new CAAs efficient and as sound as possible.
- The new law must be disseminated among a wide audience through articles, websites and other mass communication methods.
- Consumer representation must be strengthened, either through capacity building and assistance through the existing CAB, or through the formation of an autonomous body to oversee the rights of the consumers.

**Strategy 2: Information Cell**

Research work conducted so far under the project has been severely limited by the absence of well-documented evidence on anti-competitive practices and abuses of market powers. An information cell could be established to address this issue and to strengthen the voice of individual consumers who are victims

of such abuses. The information cell can offer a hotline and monitor and record consumer grievances. It should periodically generate reports of the abuses and from time to time, commission research to investigate the complaints. The information cell can also serve as a dialogue space between consumers, the business community, and policy makers to address the many concerns.

*Why?*

- An absence of well documented evidence on anti-competitive practices and abuses of market powers.
- Significant consumer interest due to enforcement of mobile courts on food outlets.

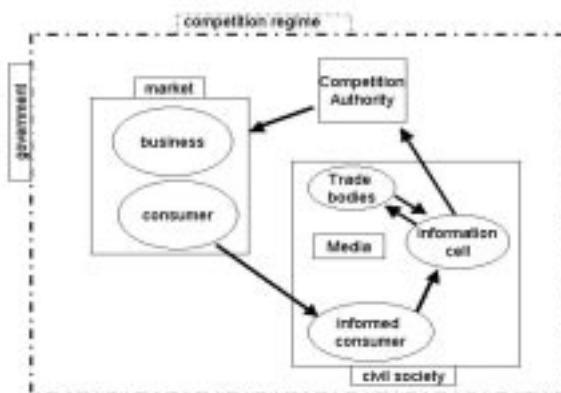
*How?*

- Creation of an Information Cell and Consumer Hotline.
- Monitor abuses of market power and infringement of consumer rights.
- Generate independent research and reports on product quality.
- Serve as a platform for dialogue between consumers, the business community, and policy makers.

### Strategy 3: Consumer Awareness

The recent drive by the mobile courts exposing anti-competitive fraudulent practices of various businesses has caused quite a stir amongst consumers. To build on the momentum gained through such activities, the actions of the mobile courts need to be taken to the next level. As a follow-up strategy, independent efforts should be devoted to targeting rigorous consumer advocacy, including raising awareness on consumer rights, complaint mechanisms, and legal recourse to which the consumers are entitled. As a long-term goal, business market services related to product quality testing and certification can be explored.

**Chart 4**



*Why?*

- The lack of understanding about competition and its benefits severely constrains greater championing and the wider adoption of the existing competition regime.
- Awareness building will empower stakeholders to affect a competition culture through competition advocacy.
- Awareness of competition issues is beneficial for all stakeholders: regulators, businesses, and consumers.
- Understanding of competition issues helps reduce the costs and burdens associated with regulations.
- In order that the policy be effective and efficient, it is necessary for the existing law to be disseminated as widely as possible, so that all stakeholders are aware of the provisions of the law.
- Awareness of competition issues is necessary for the protection of consumer rights and benefits.
- Competition policy opens the door for growth of the private sector through increased investment and development.
- An effective competition regime can help businesses function better, and can promote the principles of corporate governance and corporate social responsibility.

*How?*

- Distribute information on competition issues and policy to a wider audience through publications, newspaper articles, and websites.
- Conduct training on competition issues for stakeholder groups, government, regulators, intermediaries, business communities, civil society, consumers, and the media to promote understanding and awareness.