



**Government of the People's Republic of Bangladesh  
WTO Cell, Ministry of Commerce**

## **Bangladesh Regional Connectivity Project-1**

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**Policy review/Policy Study/Policy Paper Preparation  
on  
Competition Act, 2012**

**March 2022**

# **Policy review/Policy Study/Policy Paper Preparation**

**on**

## **Competition Act, 2012**

**[Package no. BRCP-1/MOC/SD-26]**

### **Submitted to**

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**March 2022**

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## Preface

The final report intends to respond to the requirement according to the provision of the contract agreement signed between Bangladesh Regional Connectivity Project-1 (BRCP 1) and South Asian Network on Economic Modeling (SANEM) for conducting “**Policy Review/Policy Study/Policy Paper Preparation under the Bangladesh Regional Connectivity Project 1)**” in collaboration with International Development Association (IDA), The World Bank. The objective of this technical assistance project is to review the existing government policies related to trade to strengthen cooperation in trade, transport, and transit facilities and facilitate the economic empowerment of women traders. The ongoing context and challenges are compared with the existing policies. It has also analysed the best practices of regional comparators to promote and improve trade-related activities as well as the relevance of SHE trade with the existing policies. Finally, based on the findings, the recommendation for future policy has been identified.

Consultancy services for conducting the “**Policy Review/Policy Study/Policy Paper Preparation under the Bangladesh Regional Connectivity Project 1)**” were provided by the South Asian Network on Economic Modeling (SANEM), Bangladesh. The study team consists of four senior-level experts. The major objective of the study is to depict a clear picture of the current situation state of the implementation of the policies, challenges for upcoming LDC graduation to provide the suggestion for future policies. Furthermore, Reviewing and identifying the gaps in the existing policies were also aimed to be found for this study.

Various issues have been identified upon the review of the **Competition Act, 2012** which includes an overview of prevailing anti-competitive practices in the goods and services market of Bangladesh, consumer welfare and protection, an overview of the competition in the digital commerce sector, possible effects of the unprecedented COVID-19 pandemic, LDC graduation challenges, and issues regarding the implementation of the Act.

We hope that the policy recommendations would be in the help of the policymakers and relevant stakeholders for the further development of the Act.

**Md. Mijanur Rahman**

Project Director (Joint Secretary)

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## Acknowledgments

It is indeed a great pleasure that Bangladesh Regional Connectivity Project 1 (BRCP-1), Ministry of Commerce has entrusted International Development Association (IDA), the World Bank to carry out “Policy Review/Policy Study/Policy Paper Preparation”. The report of the study has been prepared based on the mixed methodology. The studies are 1) Competition Act, 2012 2) Foreign Private Investment Promotion and Protection Act, 1980, and 3) National Digital Commerce Policy, 2018.

The three policy papers contain objective, scope, and methodology for the studies, current context, and challenges, deviation from the international practices, the relevance of the policies with the SHE trade. The consultants also described the best practices of regional countries adapted to facilitate trade-related activities. In the end, the findings from the analysis and recommendations for the upcoming policy papers are portrayed.

The authors wish to thank Md Mijanur Rahman, Project Director, Bangladesh Regional Connectivity Project 1, and Md Munir Chowdhury, National trade expert, BRCP-1 for their valuable comments and continuous support in undertaking the study.

We are also thankful to all the officials and participants who took part in the consultation meetings, both online and in-person, for helping us with their constructive criticism and valuable suggestions during the study period.

This work would not have been possible without the participation of the relevant stakeholders in the Key Informant Interviews (KIIs). Special thanks to Mr. Khalid Abu Naser (Ex-Director, Bangladesh Competition Commission) for his unconditional support and contribution to developing this review paper. Thanks are also due to all respondents of interviews and KIIs who helped us by providing their information during the data collection period.

The contribution and support provided by everyone for the study are greatly appreciated.



**Dr. Selim Raihan**  
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## **List of acronyms**

<i>ADB</i>	<i>Asian Development Bank</i>
<i>APEC</i>	<i>Asia Pacific Economic Cooperation</i>
<i>BCC</i>	<i>Bangladesh Competition Commission</i>
<i>BIDA</i>	<i>Bangladesh Investment Development Authority</i>
<i>BIWTC</i>	<i>Bangladesh Inland Water Transport Corporation</i>
<i>BRCP</i>	<i>Bangladesh Regional Connectivity Project</i>
<i>DFQF</i>	<i>Duty-Free Quota-Free</i>
<i>EBA</i>	<i>Everything But Arms</i>
<i>EU</i>	<i>European Union</i>
<i>FDI</i>	<i>Foreign Direct Investment</i>
<i>FY</i>	<i>Fiscal Year</i>
<i>GDP</i>	<i>Gross Domestic Product</i>
<i>GoB</i>	<i>Government of Bangladesh</i>
<i>ICN</i>	<i>International Competition Network</i>
<i>ICT</i>	<i>Information and Communication Technology</i>
<i>IFC</i>	<i>International Finance Corporation</i>
<i>KII</i>	<i>Key Informant Interview</i>
<i>LDC</i>	<i>Least Developed Country</i>
<i>MoC</i>	<i>Ministry of Commerce</i>
<i>MoF</i>	<i>Ministry of Finance</i>
<i>NCB</i>	<i>National Commercial Bank</i>
<i>OECD</i>	<i>The Organisation for Economic Co-operation and Development</i>
<i>SANEM</i>	<i>South Asian Network on Economic Modeling</i>
<i>SME</i>	<i>Small and Medium Enterprise</i>
<i>TRIPS</i>	<i>Trade-Related Aspects of Intellectual Property Rights</i>
<i>UMIC</i>	<i>Upper Middle-Income Country</i>
<i>UNCTAD</i>	<i>United Nations Conference on Trade and Development</i>
<i>WTO</i>	<i>World Trade Organization</i>
<i>4IR</i>	<i>4<sup>th</sup> Industrial Revolution</i>



## Executive Summary

Bangladesh Regional Connectivity Project 1 (BRCP-1) in collaboration with the International Development Association (IDA), the World Bank is launched by the Government of Bangladesh (GoB) to facilitate trade and enhance regional connectivity. Component two of this umbrella project is being executed by the Ministry of Commerce (MoC). The primary objective of this component of the technical assistance project is to review the existing government policies related to trade, to increase trade-related institutional capacity, to ensure active and sustainable cooperation among the relevant stakeholders, and to facilitate the economic empowerment of women traders. Also, as Bangladesh is on the verge of graduating from the LDC category in 2026, reviewing the existing trade-related policies is necessary for smoother post-graduation trade performance. Preparatory phases of graduation need effective formulation and efficient implementation of trade and trade-related policies.

As a part of this project, we have conducted a thorough review of the Competition Act, 2012 using mixed methodology. This review paper has identified significant aspects of the Competition Act, 2012, implementation challenges, and its relevance to the current global trade and business scenarios. This review has also compared the competition laws of Bangladesh with some of the significant success cases in formulating and implementing the competition laws of the South-Asia and East-Asian countries.

Formulating and enacting an act is exhaustive work and it needs rigorous study and continuous consultation with the stakeholders. Our primary findings point out that the provisions of the current Competition Act are well thought out. However, there is a lack of coordination and monitoring, which eventually limits the effectiveness of the policy. The current Act also does not address the present changing trade and business dynamics (COVID-19 recovery, 4IR, LDC graduation, 8<sup>th</sup> Five-Year plan, Perspective Plan 2021-2041) as it was formulated back in 2012. Though the dynamics of the goods and services market are changing rapidly across the world and to address the changed scenario, competition authorities around the world prepare short-term, mid-term, and long-term priorities and act accordingly. Some of the vital issues are not mentioned in the Act such as consumer welfare, intervention in the e-commerce market, regulating abnormal pricing, and abuse of dominant position in the digital marketplace.

Section two of this review paper gives an overview of the history and evaluation of the global as well as domestic formulation of the competition policy. This section broadly discusses the economic and social outcomes if the competition policy is enforced properly. A careful review of the Act identified that the issue of consumer welfare is somewhat ignored in the formulation of this Act. In this section, global best practices are deliberated and the lessons that can be adopted for the betterment and up-gradation of the competition policy in Bangladesh are portrayed.

Section three of this review identifies the relationship of the Act with SHE trade and how the inclusion of women entrepreneurs can cause benefits in maintaining a competitive business environment. The Competition Act, 2012 of Bangladesh is considered to be free from gender bias. Neither any discriminatory provisions are included nor any women-friendly ones.

Some specific recommendations have been suggested for a proper formulation and efficient implementation of future competition laws in section four. The new act should be amended to ensure consumer welfare, interest, and a sound competitive market environment by restricting anti-competitive practices like abuse of dominant position, price setting by agreement, deterring supply, business cartels, monopoly and oligopoly, and so on. Ensuring a congenial atmosphere for the business will create healthy competition among the business entities. FDI inflow of the country depends mostly on the current business scenario and on the ease of doing business of the hosting country. A suitable implementation framework of competition law and a strong and independent competition commission can make the anti-trust regime more effective and dynamic in a practical sense. The issue of coordination mentioned in Section 8(1)(j) and Section 14 with other concerned policies and departments is inbuilt in the Act. The competition act of Bangladesh mandates the establishment of the Bangladesh Competition Commission (BCC) consisting of one Chairperson and four Members. Despite the fact that the Act was enacted in 2012, the commission has started its function in March 2020 with the appointment of all five members. The role of the Competition Commission is very vital in implementing the Act. The Commission should be transparent, free from executive and political interference in a real sense, and neutral in conducting its operations. Ensuring strong coordination among the concerned agencies and ministries will enhance the performance of the Commission. The Chairperson and the Members of the Commission should be appointed among those who are experts and possess professional knowledge in economics, law, anti-trust regulation, business, and administration.

A significant number of economies have been started their competition regime and made success stories in terms of the implementation. So lessons from such an effective competition regime can be guidelines for sound implementation of the law of Bangladesh. The government itself, consumer associations, members of business communities should step forward for creating a competitive culture in the country Bangladesh.

Analysis of policy gaps is recommended in this regard. The gaps from the existing Act must be identified and the future act must be designed by fixing the gaps. Consumer policy covers broader issues than the competition policy and it is one of the key tools towards the implementation of competition law and policy. Liberalized trade policy brings positive outcomes to the consumer and can lead to efficient market operation. On the other hand, anti-corruption policies will stop anti-competitive practices like bid-rigging and others. So this is very essential to adopt and implement all other concerned policies and laws toward the effective implementation of competition law.

# 1. Introduction

The competition policy, which consists of a body of laws, administrative rules, and case law is formulated to deter restrictive business practices to maintain fair competition in business practices. The competition act includes measures that remove restrictions upon and barriers to competitive transactions within national and in some special cases extraterritorial markets. Pre-competition economic policies tied with competition law can help a country in promoting a competitive market economy. Competition is considered to be dynamic by its nature (Hayek, 1948). Competition legislation is an effective tool to control collusive cartels, unethical market dominance, monopolistic and oligopolistic behaviours, unscrupulous mergers and acquisitions, and other anti-competitive business practices. Considering the perspective of globalization, 4IR, emerging digital economy, and disruption of innovation, states are not supposed to be involved directly in the production process and distribution chain. But states are to ensure the environment of fair trade and healthy competition for the welfare of the common citizen. In the view of competitive freedom, competition is dependent on other factors and dynamics in nature. According to the theory of contestable markets and Austrian and neo-Austrian theoretical school, competition necessitates open market conditions but artificial entry to market and barriers to exit is need to be identified and broken up immediately. Post-Chicago School argues that competition law thus competition policy – must provide the lowest price for consumers, a price close to production costs. Market interventions will then be unavoidable (Conrad, 2005). The general goal of the competition policy is to ensure the efficient use of the resources and welfare of the consumers (Mondal and Ahmad, 2006).

Ensuring a competitive business environment helps to attain inclusive and sustainable development in the economy. Developed countries like Canada, the USA, the UK, and Japan have adopted competition policies for since long and with proper enforcement of such policies, they have succeeded in achieving socio-economic development. According to Arnold et al. (2011), the long-run productivity of an economy can be boosted up to 10 percent if the prevailing anti-competitive activities can be addressed. The main objective of the competition law is to promote the economic development of the country by creating a congenial environment for the private and public sectors in terms of efficiency in production and pricing decisions and benefit both consumers and producers. Competition is needed to improve productivity, innovation, and new entrepreneurship. A fair competitive business environment contributes to the reduction in inequality, social disparity, and corruption. In Bangladesh, competition law has been enacted in 2012 to ensure fair market practices, prevent unstable random price-hike, and prevent unfair market practices which are hampering competition in the market through the formation of the Bangladesh Competition Commission. However, even after almost eight years of existence, the Commission is still working to achieve its most obvious objectives, specifically concerning prosecuting cartels.

## 1.1. Background

In the context of growing economic activities and business opportunities, the competition act was formulated to prevent anti-competitive market behaviour. Under this act, the competition commission has been set up where the act determines the composition, duties,

and functions of the commission. Moreover, it prohibits any anti-competitive agreement and abuse of dominant position, elaborates complaints, inquiry, order, review, penalty, and appeal procedures. The law itself cannot assure that markets will function effectively unless a range of associated government policies harmonizes altogether (APEC, 1999).

As a part of the Government of Bangladesh's (GoB) attempt to liberalize trade, diversifying export items and export destinations, the Bangladesh Regional Connectivity Project 1 (BRCP-1) is initiated in cooperation with the International Development Association (IDA). The project is being jointly implemented by the Bangladesh Land Port Authority (BLPA), the National Board of Revenue (NBR), and the Ministry of Commerce (MoC). The Ministry of Commerce is responsible to implement component two of the umbrella project. The primary objective of this technical assistance project is to improve trade-related institutional capacity to ensure active and sustainable cooperation among stakeholders related to trade and facilitate the economic empowerment of women traders.

The South Asian Network on Economic Modeling (SANEM), has been assigned to provide consultancy services for the selected activities of the technical assistance project, which is to review the existing trade-related policies to strengthen cooperation in trade, transport, and transit facilities. The policy reviews will also address the barriers faced by women traders in becoming more integrated into the global supply chains and trading opportunities. As part of the project, SANEM will review 22 policy documents and critically analyse each of the policies to demonstrate the compatibility, objectives, challenges, future aspects, and possible recommendations for further improvement.

## ***1.2. Objectives and research questions***

According to White (2008), a set of policies and instruments that are intended to preserve and promote competition among market players are generally referred to as competition policy. In practical terms, it involves efforts at tackling cartels or other collusive practices affecting prices and other market outcomes, preventing mergers that could result in a significant lessening of competition, and dealing with actions including state aid which exert undue market power by one or small group of actors.

The Competition Act of Bangladesh was formulated in 2012. Although the act is passed only nine years back, it has already received criticism about the complaint procedures, appeal, and review provisions which need to be examined carefully. This policy review will analyse these issues in consultation with the stakeholders and experience of other countries. Given the fact that the female traders are lagging in Bangladesh, this study will also examine the inclusion of necessary provisions for promoting the participation of women in trades.

The key research questions that the research team will answer particularly for this study are as follows:

- What are the primary objectives of the Competition Act, 2012?
- Are the objectives adequate to address the future challenges and goals?

- How effective is the Bangladesh Competition Commission (BCC) which was established through the formulation of this act?
- Are the appeal and review procedures related to complaints against anti-competitive market behaviour effective?
- How can the act be more effective to prevent any kind of anti-competitive agreement?
- How can the act encourage women traders and prevent anti-competitive market behaviour faced by females?

### **1.3. Scope and limitations**

The scope of this policy study/policy review/ policy paper presentation lies in reviewing the current Competition Act and making necessary alteration recommendations to ensure fair competition in the market. Another resolution of this study is to analyse whether the stated provisions of this act are capable enough to cope with the current market scenario and possible future challenges (LDC graduation, UMIC graduation, 8<sup>th</sup> Five-Year plan, Bangladesh second perspective plan, 4IR, etc.). The review will also look into the competition policies of different countries (India, Japan, South Korea, South Africa, China, and UNCTAD Model Law on Competition) and suggest what provisions from those countries, Bangladesh might adopt. This policy study/policy review/ policy paper presentation will analyse the bottlenecks and implementation challenges, and provisions to mainstream women entrepreneurs and traders to the domestic value chain. Possible recommendations about inclusion, exclusion, revisions, alteration, and extension of the existing act will make it more relevant to the present context of achieving market efficiency.

### **1.4. Methodology**

Considering the given objectives and the key research questions of this study, the research team has primarily followed mixed methodologies presenting the deliverables. The methodology is based on two significant tasks in general;

- (i) Rigorous desk research of all relevant policy documents, literature, and secondary data
- (ii) Primary data collection and analysis by conducting Key Informant Interview (KIIs) with stakeholders relevant for the study.

Therefore, the research methodology can be categorized as follows:

#### **1.4.1. Desk research**

Desk research comprises examining related documents and existing literature based on the issues, examining and analysing the available secondary data, and identifying potential policy gaps between Bangladesh and the existing universal best practices. The research team will focus on the following documents for desk review:

- The Competition Act, 2012 of Bangladesh
- WTO guideline on competition
- 8<sup>th</sup> Five-Year Plan
- Bangladesh Second Perspective Plan 2021-2041

- Literature reflecting the current situation of competitive and anti-competitive practices in the market

During the desk research, the research team has followed the following steps:

- In-depth review of the policy documents, which includes all relevant and existing acts, ordinances, legislation, agreements, treaty, and literature.
- Finalizing the KII checklists based on the scanning of the stated documents.
- Complementing the preliminary analysis with the findings from the primary data.
- Assessing the current act and its loopholes based on the past events of anti-competitive behaviour and global literature.

#### 1.4.2. Primary data collection

In collecting primary data, the research team will follow a qualitative approach. Social aspects that are mostly unrepresented in the quantitative data can be addressed through qualitative data, which are expected to provide in-depth information on social dimensions and characteristics. As part of the qualitative data, the team will conduct Key Informant Interviews (KIIs). The KIIs will be helpful for an in-depth understanding of the policies, assessment of projects, and identifying gaps. For this particular study, the research team will carry out a total of 4 KIIs with several academicians, representatives from Bangladesh Competition Commission, representatives from the business community, and representatives from the relevant ministries. The list of interviewees are as follows (Table 1).

Table 1: List of KIIs

Organization/Association	Key informants
Representatives from the Competition Commission (1)	• Mr. Md. Khalid Abu Naser (Ex-Director, BCC)
Ministry of Commerce (1)	• Mr. A H M Shafiquzzaman (Additional Secretary IIT)
Representatives from the business communities (1)	• Mr. Fahim Mashroor, CEO, Ajkerdeal.com.bd & bdjobs.com
Experts/professionals on market competition (1)	• Dr. Mohammed Helal Uddin (Professor, DU)

#### 1.5. Evaluation and analysis

All the gathered data and information will be evaluated and analysed at this stage. This process will include:

- Identifying the gaps of existing information through rigorous desk research.
- Identifying whether the act has provisions to face the LDC graduation challenges, 4IR, and emerging digital economy.
- Exploring the potential provisions of the existing policy guideline to mainstream women entrepreneurs.
- Analysis of primary data through KIIs to evaluate the actual activities of the implementing organization and its actors in the present scenario.

- Identifying the weaknesses and implementation challenges of the existing act from stakeholders' experiences, through KIIs.
- Comparing international best practices with the current provision of the act.
- Providing possible legal recommendations about changes, alterations, exclusion, and extension of the current guideline through consultation with legal experts, and recommendations of key informants.

## **1.6. Organization of the paper**

This paper follows the following structure. In Chapter Two, the context and challenges of the policy are discussed in a detailed manner. This chapter briefs the scenario of the existing policy, trade-related provisions, and bottlenecks. This chapter also focuses on the competition policies of different countries related to this policy and how our policy deviates from that. In Chapter Three, the relevance of this policy with SHE trade is demonstrated. This chapter also illustrates whether the current provisions of the existing policy support gender inclusiveness in trade or not. Chapter Four suggests necessary recommendations and action plans to make it a compatible and strong policy considering several issues such as LDC graduation of Bangladesh, changing trade pattern, WTO guidelines, etc. Finally, this paper marks its end with a concluding remark in Chapter Five.

## **2. Context and challenges of the Competition Act, 2012**

### **2.1. History and evolution of competition policy**

The earliest example of competition law appears in the *Lex Julia de Annona* enacted during the Roman republic around 50 BC. This law was formed against business combinations that affected negatively to the supply of grain. One of the purposes of such a law is to protect consumers from heavy price tolls. This law was mainly imposed to protect the corn trade and heavy fines were charged on anyone directly, deliberately, and insidiously stopping supply ships (Lever, 1967). The more formalized legislation came under the constitution of Zeno of 483 AD which can be traced into Florentine municipal laws of 1322 and 1325. It declared for property confiscation and eviction for any trade combinations (now known as cartels) or joint action of monopolies private or granted by the Emperor himself. In 1561, a system of Industrial Monopoly Licences had been introduced to England. But by the reign of Queen Elizabeth I, the system was allegedly abused and instead of preserving privileges, the system was used to exploit the consumers (Holdsworth, 1937).

Modern competition or anti-trust law began with the competition policy formulated in Canada back in 1989 and was followed by the United States legislation of the Sherman Act, 1890 and the Clayton Act, 1914 (Resch, 2005). The Clayton Act was the first American law to cover merger control. The United Kingdom introduced the Monopolies and Restrictive Practices (Inquiry and Control) Act in 1948, the European Union in 1957 (the Treaty of Rome), Germany in 1957 (the Act against Unfair Restraints of Competition), and Japan in 1947 (the Act Concerning Prohibition of Private Monopoly and Maintenance of Fair Trade).

From 1900 until the end of World War II, only 13 countries adopted competition policies. During the cold war, another 28 countries adopted competition policies. A drastic increase was deemed of adopting competition policies with the transition of many countries to market economies. Between 1990 and 2010, 78 countries adopted competition policies. According to the report of UNCTAD published in 2020, 140 countries have enacted competition legislation.

## ***2.2. Competition act in Bangladesh***

Competition law aims at maintaining a congenial environment for business enterprises, ensuring consumer welfare, and regulating mergers and acquisitions by restricting anti-competitive practices like abuse of dominant position, price setting agreements, business cartels, and activities hurting the competition in the market. To restrain the undue concentration of economic power, growth of monopoly, and restrictive trade practices, The Monopolies and Restrictive Trade Practices (Control and Prevention) Ordinance, 1970 (Ordinance V of 1970) was formulated before Bangladesh separated from Pakistan. Though the ordinance has not been implemented as expected and it was not in force after the liberation of Bangladesh in 1971 until the Competition Act, 2012 was formed. Bangladesh took the optimistic initiative of adopting a competition policy followed by the Ministerial Conference of the World Trade Organization in 1996 (Bhuiyan, 2021). But after the Doha Ministerial Meeting in 2001, the progress of formulating a competition policy was at a standstill.

Bangladesh has a long-standing legal regime for the welfare and protection of consumers' to large scale citizens' rights from deterring monopolies and the right of the businessmen from all sorts of malpractices in business (Rahman & Islam, 2020). The Consumers' Rights Protection Act, 2009 (Act 26 of 2009) was enacted to protect the rights of the consumers and prevention of anti-consumer rights practices. Leaving the market unchecked by not regulating prominent companies would have created distortions in the market and left the SMEs open to be prevented from market competition resulting in the impairment of the entire economy. Considering the global trade patterns, globalization, and prevailing anti-competitive practices in the market, the Competition Bill was passed at the national parliament on June 17, 2012. The Competition Act was enacted on June 21, 2012, aiming to strengthen the government measures against market cartels with the subsequent establishment of the Bangladesh Competition Commission (BCC). The purpose of the commission is to prevent, control, and eradicate collusion, monopoly, and oligopoly, combination, or abuse of dominant position or activities adverse to the competition. The commission consists of a Chairperson and not more than four Members among them at least three persons will make a quorum. The commission is entitled with power to acquire, hold and dispose of property- both movable and immovable, shall by the said name sue and be sued. The Commission was established in December 2012 and the first Chairperson of the Commission was appointed in April 2016.

## ***2.3. Overview of the Competition Act, 2012***

The Competition Act, 2012 consists of a preamble, seven chapters, and 46 sections. The preamble of the Act describes the purpose of the Act to ensure a sustainable, congenial, and



reasonable atmosphere for the competition in trade and to regulate all practices harming the competition. Some significant provisions of the Act are summarized in Table-2.

**Table 2: Significant sections of the Competition Act, 2012**

<b>Title of the chapter</b>	<b>Section</b>	<b>Related provisions</b>
Chapter I: Preliminary	Section-1	The short title and commencement of the Act are mentioned in this section.
Chapter II: Establishment of the Bangladesh Competition Commission, etc.	Section 4, 5, 6, 7	The provisions of these sections mention the exemption from this Act, establishment, structure, composition, and eligibility of the Chairperson and Members of the Bangladesh Competition Commission. The Act urges to appoint at least one Member having professional experience in Economics and at least one Member having experience of Law.
	Section-8	The provisions of this section broadly illustrate the duties, responsibilities, powers, and functions of the Commission.
	Section-9	The provisions of this section discuss the criteria based on which Chairperson or Members of the Commission can be removed from their respective positions.
Chapter III: Prohibition of Anti-competition Agreement, Abuse of Dominant Position, etc.	Section-15	The detailed definitions of anti-competition agreements namely tie-in arrangement, exclusive supply agreement, exclusive distribution agreement, refusal to deal, and resale price maintenance are mentioned in this section.
	Section-16	The provisions of this section confer the abuse of dominant position in the market.
Chapter IV: Compliant, Inquiry, Order, etc.	Section-17, 18	The provisions of these sections are regarding the pre-inquiry procedure and inquiry procedures of the Commission.
	Section-19	The provisions of this section mention the power of the Commission to issue an interim order against any person who violates the provisions of subsection 15(1) or subsection 16(1) or section 21 which is an offence under this act.
	Section-20	The provisions of this section discuss the amount of fine a person who is found guilty through the inquiry of the Commission has to pay.
	Section-21	Combinations that can cause an adverse effect on competition in the market are declared prohibited through this section.

<b>Title of the chapter</b>	<b>Section</b>	<b>Related provisions</b>
	Section-22	This section discusses the application of laws regarding acts committed outside of Bangladesh but having an adverse effect in the relevant market.
Chapter V: Review, Penalty, Appeal, etc.	Section-24	This section mentions that if any person without any reasonable cause violates the orders of the Commission, s/he will be sentenced with not exceeding one year of imprisonment or fine not exceeding one lac Taka for each day of non-compliance.
	Section-29, 30	The provisions of these sections are made to reconsider the order of the Commission or to appeal to the government within 30 days of receipt of the order against the order of the Commission.
Chapter VI: Financial Matter of the Commission	Section-31	This section deals with the formation of the fund of the Commission.
	Section-33	This section mentions the annual budget statement of the Commission.
Chapter VII: Miscellaneous	Section-35	This section is regarding the offences committed by companies.
	Section-36	This section mentions the restriction on the disclosure of information.
	Section-37	The provisions of this section discuss the power of the government to issue directions to the Commission.
	Section-39	This section is regarding the annual report of the Commission. According to the provisions of this section, within 90 days of the end of each financial year, the Commission will report to the President on the activities of the previous financial year.
	Section-40	According to this section, the Chairperson, Members, and staff of the Commission will be considered as public servants.
	Section-43	This section articulates that the government will be able to formulate rules to fulfill the purpose of this law.
	Section-44	This section deals with the power of the Commission to make regulations for the Act with the prior approval of the government.
	Section-46	Monopolies and Restrictive Trade Practices (Control and Prevention) Ordinance, 1970 (Ordinance V of 1970) is repealed and activities performed up to the time before the enactment of the Act is protected through the provisions of this section.

Source: *The Competition Act, 2012 of Bangladesh*

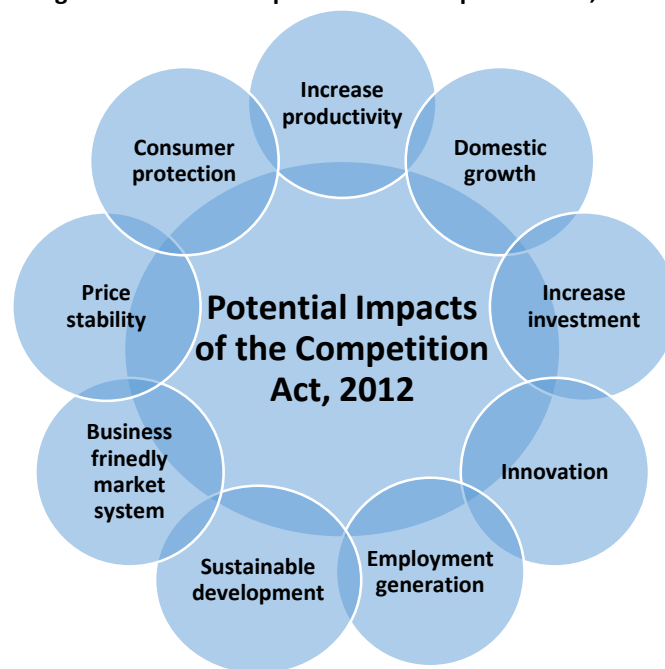
Although the Competition Act, 2012 is primarily considered civil in nature. To prevent the prevailing anti-competitive practices in the market and to protect consumer rights, the Commission penalizes the relevant enterprises for a criminal offence mentioned in this Act. But usually, it becomes very challenging to prove that the producer or the seller has broken a contract for which he may be brought to book. The **review**, **penalty**, and **appeal** mentioned in the Competition Act, 2012 are listed as follows:

- One or more of the following measures can be taken in case of anti-competitive practices in the market such as collusion, monopoly, and oligopoly, unscrupulous mergers, or abuse of dominant position:
  - (i) The administrative financial penalty can be imposed at the discretion of the Commission to any commercial entity or entities, an amount not exceeding 10 percent of the average turnover of the last three financial years.
  - (ii) In the case of a cartel, every person associated with that cartel can be charged an administrative financial penalty of three times the profits earned from the formation of the cartel or 10 percent of the average turnover of three financial years, whichever is higher.
  - (iii) If any person nose-dives to submit the amount of financial penalty as mentioned in (i) and (ii), he will be charged not more than one lac Taka for each day of failure.
- If any person or institute violates any order or direction made or any condition or restriction imposed or any approval given by the Commission without any reasonable cause, it shall be deemed to be an offence under this Act, and for such offence, he shall be punished with imprisonment for not exceeding one year or fine not exceeding one lac Taka for each day of non-compliance.
- Obstruction or intentional disobedience of any person to the exercise of power by the Chairperson or the Commission shall be a punishable offence under this Act and the person shall be penalized with imprisonment for a term not exceeding three years or with a fine or with both.
- Any person/organization can apply to the Commission for reconsideration or to the government for appeal within 30 days of receipt of the order of the Commission by paying the given application fee.
- In the case of review, 10 percent of the fined amount must be deposited to the Commission and in the case of appeal, 25 percent of the amount must be deposited to the government.
- In case of review or appeal, the application for extension of time may be extended up to 30 days for reasonable causes.
- No order can be amended, changed, or revoked without a hearing in the case of review or appeal.
- Review or appeal must be disposed of within 60 days of receipt of the application.
- The decision taken by the Commission in the case of review and the decision taken by the government in the case of appeal will be marked final.

### 2.3.1. Potential impacts of enforcing the Competition Act, 2012

Previously various laws and acts were formulated to protect consumer rights but neither of them was focused to regulate business cartels, conspiratorial or illegal alliances, and unethical collusions. As a consequence, there were ample opportunities to conduct unprincipled business activities in the product and service market. By enacting the Competition Act, 2012, the government has banned all such tarnished activities. The Commission is the implementing authority in this regard. A congenial and competitive business environment will be ensured in Bangladesh if it is possible to properly implement the responsibilities and duties of the Commission as mentioned in Section 8 of the Act. These will bring about positive changes in the socio-economic aspect of the country.

Figure 1: Potential impacts of the Competition Act, 2012



Source: Based on Annual Report 2020-2021, BCC

Proper enforcement of the Competition Act, 2012 will help to ensure employment generation, price stability, sustainable development, increase in investment, enhanced productivity, consumer protection, domestic growth, and a business-friendly market system. Apposite enforcement will have the following impacts:

- **Price fixing-** Price fixing is considered one of the major glitches of an unregulated market. Unethical traders set a higher price to attain a high level of the profit margin of various products and services. This affects both the competitiveness of the market and consumer protection. Enforcement of the Act will diminish the culture of price-fixing and promote fair competition in the market.
- **Determining the geographical boundaries of the market-** Sometimes a business entity creates an area-based geographic market by arbitrarily supplying and fixing prices of products and services through conspiratorial agreements for gaining extra profit. Such a geographical market system is prohibited according to the Act.

- **Promoting new entrepreneurs-** The Act will regulate the prevailing anti-competitive practices in the market and will lead towards a congenial atmosphere for new entrepreneurs. Removing the impediments related to entering the market will eventually enhance the participation of new ventures and promote a competitive market system.
- **Retribution for anti-competitive activities-** The Commission has the authority to penalize the organization or individual associated with any anti-competitive activities which have an appreciable adverse effect on the market.
- **Increase in investment-** Enforcement of competition laws ensure a competitive, healthy, and sustainable environment in countries. Both domestic and foreign investors verify the legal safeguards before investing in a certain sector. With the implementation of the Act in Bangladesh, in the context of legal protection, both domestic and foreign investors will be encouraged to invest in Bangladesh.
- **Poverty reduction-** Proper enforcement of the Act will assist in alleviating poverty through business development, increasing domestic/foreign investment, and job creation while maintaining a fair and competitive environment in the market.
- **Increase the supply of products and price stability-** A fair and competitive environment in the market ensure that the products and services produced are sold at competitive prices, the supply of the products increases, and prices remain stable.
- **Innovation-** A competitive market environment works as a catalyst for the existing business entities to focus on innovating new products as a measure of endurance. Innovations allow the consumers a wide range of products and services to choose from them.
- **Improving the standard of living of the consumers-** A fair and competitive environment in the market offering high-quality products and services at a competitive price. Consumers can spend less and avail a quality full product which also indicates the increasing savings of the consumer.

#### ***2.4. Trade related provisions: current state and bottlenecks***

There has been a salient relationship between competition policy and trade as both issues focus on the maximum utilization of the existing resources. Without a properly designed competition policy, the scarce resource of the developing countries would be wasted and to prevent unwanted wastage, each of the developing countries should have the capacity and tools to effectively deter and remedy anti-competitive practices to ensure a more competitive marketplace (WTO, 2003). The competition framework needs to be internationalized in today's integrated, globalized, and digitized economy to promote more bilateral and regional trade agreements (Choi and Heinemann, 2020). The competition law comprises of policies as well as planning guidelines that integrates as well as form an environment that is practically competitive within a particular economy that is national or regional in nature and Bangladesh is no excuse when it comes to matters of economic competition and it's underlying thereto

(GAO, 2001). Inclusive growth, reduction of poverty, and sustainable development can be ensured by implementing a strong competitive regime as Bangladesh aspires to graduate from the LDC bracket by 2026 (Tania and Bilkis, 2021). The competition law is a fairly new concept for Bangladesh and the Competition Act is not accompanied by a robust competition policy. In most of the developed countries, competition law reached its current advanced stage over at least half a century of evolution through legislation and judicial interpretation. In an LDC such as Bangladesh, competition law did not have a chance to evolve through an endogenous process, rather it was adopted by an exogenous process as part of structural reforms promulgated by the IMF, the World Bank, and the OECD (Cook et al., 2008).

The Competition Act, 2012 provides a set of regulations to control the anti-competitive practices prevailing within the country and the measures to overcome those. The current state and the challenges of some significant issues and provisions related to the Competition Act, 2012 are discussed as follows:

#### **2.4.1. Anti-competitive practices**

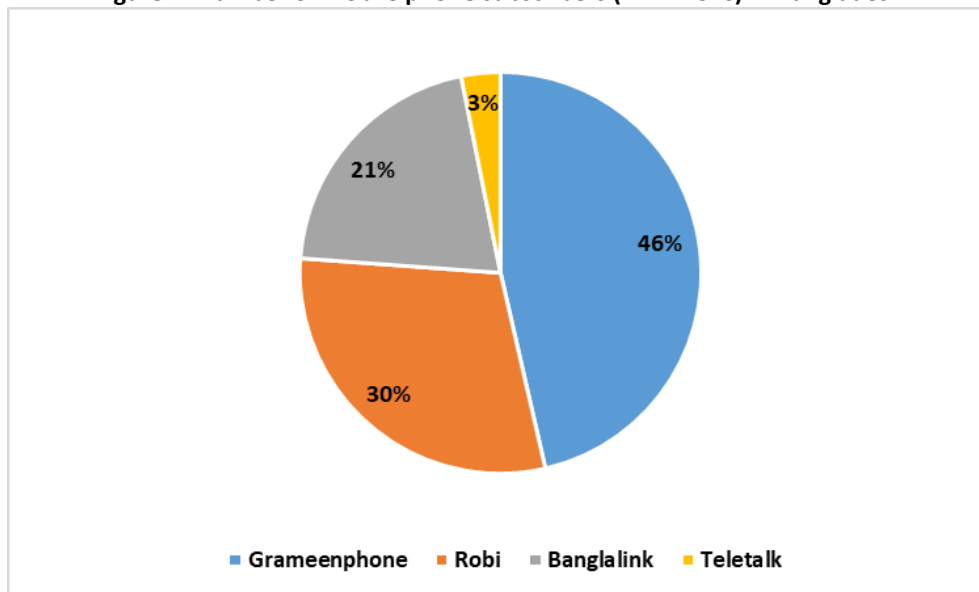
The market of Bangladesh is far from the competition in nature. The market suffers from anti-competitive behaviours such as monopoly, price-fixing, collective price taking, bid-rigging, discriminatory dealing, refusal to deal, etc. The private sector of the Bangladesh market faces many impediments towards its enhancement and full functioning (Saieed, 2014). Reports documenting the anti-competitive behaviours of business companies operating in Bangladesh are not available and in most cases, newspapers occasionally report on the unusual price hiking of essential commodities such as rice, edible oils, perishable products, etc. However, these reports fail to picture the overall scenario of competition in the country. Some sectors are monopolized by the government<sup>1</sup> such as ferry services in Bangladesh are operated only by BIWTC and there is no other way for the heavy vehicles to cross the rivers without ferries provided by the BIWTC authority. On the other hand, there are reports of anti-competitive behaviour in the internal transport sector. Internal road transport is run by a large group of private entrepreneurs. An increase in the transport fare before religious festivals is a common phenomenon and the government has no control over this. Despite strict warnings from the government, the transport owners do as they decide to do for earning more and more profits. 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 patients are cheated in diagnostic services. Contractual arrangements are recounted to exist between diagnostic centres and unscrupulous doctors for sharing the price paid for diagnostic analysis by the patient. Other than the manufacturing sector, anti-competitive practices can be seen in the banking sector as well. 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 following 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 increased rather than decreased.

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<sup>1</sup> Information from KII

Anti-competitive practices are prevalent in the service sector of Bangladesh. Taking into consideration the telecommunications services, the state-owned Bangladesh Telegraph and Telephone Board (BTTB) currently recognised as Bangladesh Telecommunications Company Limited (BTCL) is characterized by a monopoly in fixed-line telecommunications services. It comprises more than 95 percent of the fixed-line throughout the country. So in this case this is considered a complete anti-competitive and monopolistic market in nature. Although private participation in the telecom sector was allowed in 1989, and private provision of services commenced in 1993, still BTCL enjoys a monopoly in the case of fixed-line. Currently, there are four mobile phone operators in Bangladesh, operating under the names of Grameenphone, Banglalink, Robi, and Teletalk. The total number of mobile phone subscribers has reached 171.854 million at the end of January 2021.

**Figure 2: Number of mobile phone subscribers (in millions) in Bangladesh**



*Source: Bangladesh Telecommunication Regulatory Commission*

Historically, telecommunications services have been provided by state or privately owned monopoly providers. Due to the massive amount of investments, telecom operations were considered widely as natural monopolies. While with the deregulation and technological innovation, the cost of service provisioning has come down dramatically, monopolistic providers still dominate the fixed communications sector and mobile is typically characterized by oligopolistic providers. Economic regulation aims to impersonate a competitive market by imposing price regulation for certain services, where markets fail to deliver pricing at the competitive level.

The World Bank has carried out systematic surveys in a large number of countries including Bangladesh on the business environment and investment climate since 2002. Doing Business Project has covered 190 economies in 2020 and it provided a quantitative indicator on regulation for starting a business, dealing with construction permits, getting electricity, registering property, getting credit, protecting minority investors, paying taxes, trading across borders, enforcing contracts, and resolving insolvency.

**Table 3: Overall business position of Bangladesh in 2020**

<b>Topics</b>	<b>Doing Business 2020 Rank</b>	<b>Doing Business 2020 Score</b>	<b>Doing Business 2019 Score</b>
Overall	168	45.0	42.5
Starting a business	131	82.4	80.8
Dealing with construction permits	135	61.1	60.8
Getting electricity	176	34.9	30.8
Registering property	184	29.0	28.9
Getting credit	119	45.0	25.0
Protecting minority investors	72	60.0	60.0
Paying taxes	151	56.1	56.1
Trading across borders	176	31.8	31.8
Enforcing contracts	189	22.2	22.2
Resolving insolvency	154	28.1	28.2

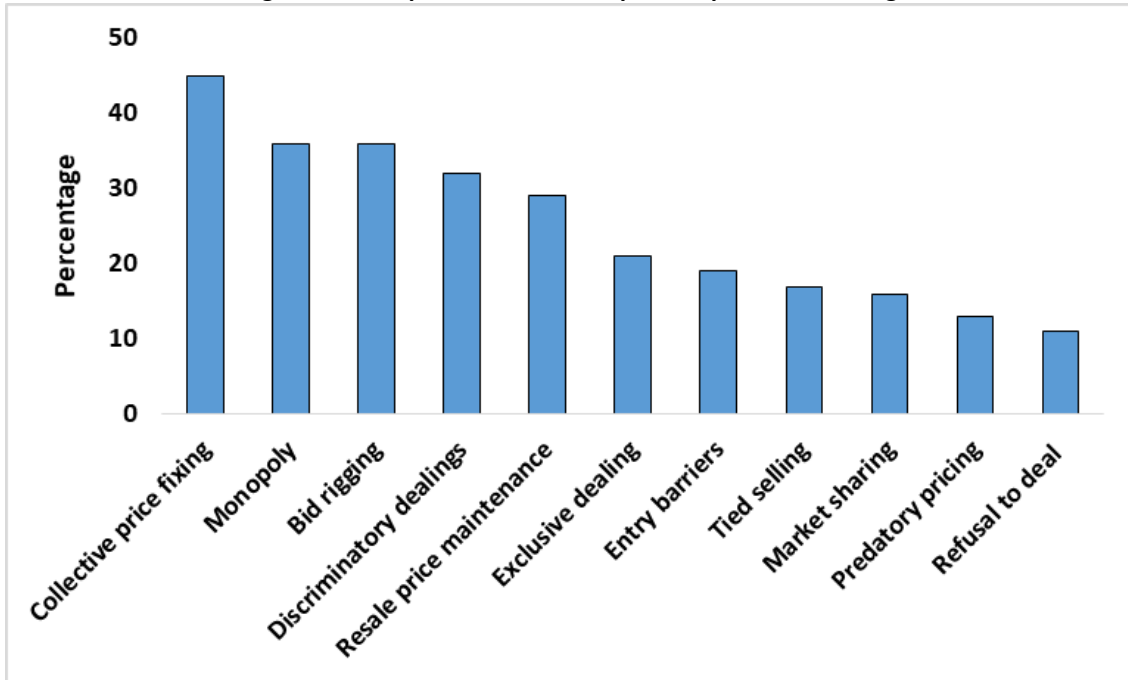
Source: *Doing Business 2020, The World Bank*

The overall rank of Bangladesh was 168 with a score of 45.0 (see Table-3) whereas the top-ranked country New Zealand scored 86.8. Performance of Bangladesh was remarked poor but in many cases like getting electricity, getting credit, starting a business, and registering property Bangladesh has relative to the Doing Business score of 2019. The survey, however, does not address regulatory and monopoly issues.

CUTS (2006), argues in their paper titled 'Promoting competition policy & law in Bangladesh a civil society perspective' that anti-competitive business practices are prevailing in the market due to the lack of an effective competitive regime. This anti-competitive market is greatly affecting consumer welfare and interest. However, in 2005, Bangladesh Enterprise Institute surveyed competition in Bangladesh. The main objective of the study was to measure the perception of three key stakeholders- policymakers, the business community, and consumers. 65 percent of policy makers indicate collective price-fixing as the major anti-competitive practice, monopoly and bid-rigging (both 48 percent), discriminatory dealings (39 percent), and entry barriers (30 percent) are followed. On the other hand, the business community considers resale price maintenance as the most prevalent anti-competitive practice; exclusive dealings and discriminatory dealings are as followed (CUTS, 2006).



Figure 3: Most prevalent anti-competitive practices in Bangladesh

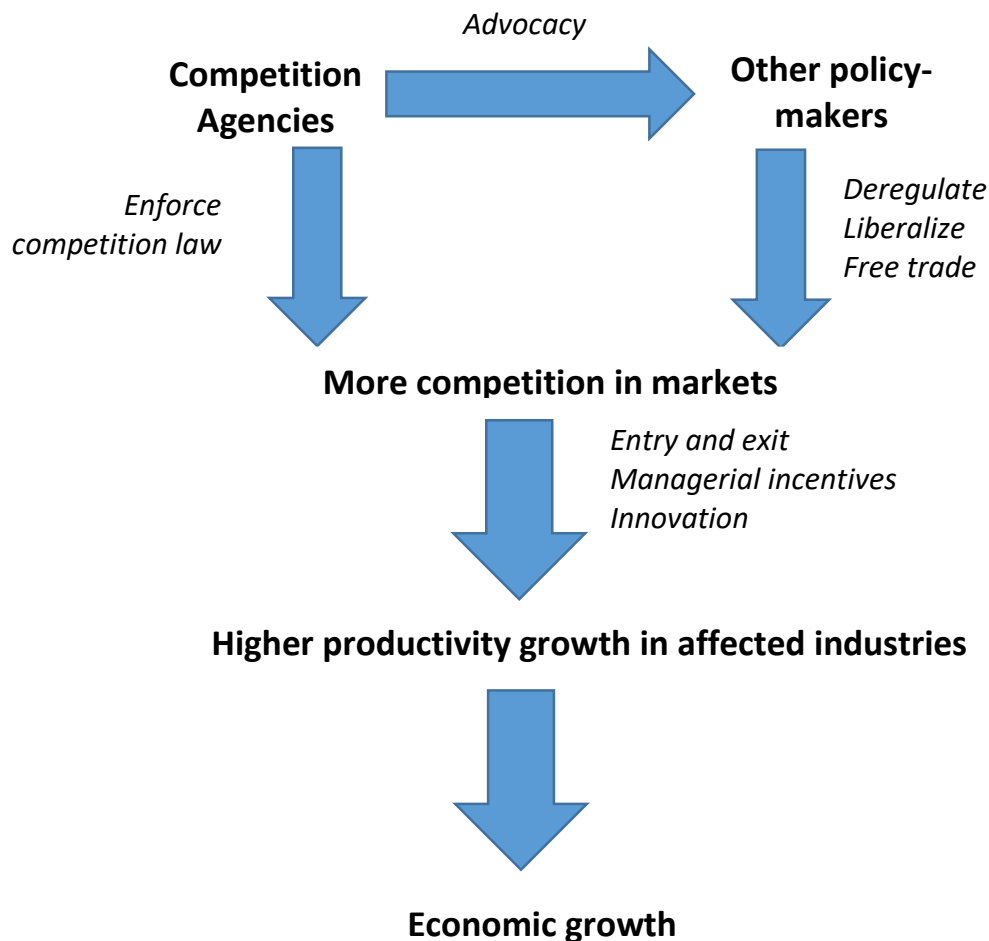


Source: Based on CUTS (2006)

#### 2.4.2. Economic growth

The relationship between competition law and economic growth is controversial (Ma, 2011). A wide variety of empirical studies shows that industries with greater competition experience faster productivity growth. Ahn (2002) concluded that a large number of empirical studies confirm that the link between product market competition and productivity growth is positive and robust. The studies also linked market competition with productivity gains, consumers; welfare gains, and long-run economic growth. Peterson (2013) finds a similar effect, concluding that the introduction of an anti-trust law has a positive effect on the level of GDP per capita and economic growth.

The effects of stronger competition can be felt in sectors other than those in which the competition occurs. In particular, vigorous competition in upstream sectors can cascade to improve productivity and employment in downstream sectors and so through the economy more widely. The main reason seems to be that competition leads to an improvement in allocative efficiency by allowing more efficient firms to enter and gain market share, at the expense of less efficient firms. Regulations, or anti-competitive behaviour preventing entry and expansion, may therefore be particularly damaging for economic growth. The competition also improves the productive efficiency of firms, as firms facing competition seem to be better managed.



Most importantly, it is clear that industries where there is greater competition experience faster productivity growth. This has been confirmed in a wide variety of empirical studies, on an industry-by-industry, or even firm-by-firm, basis. Some studies seek to explain differences in productivity growth between industries using measures of the intensity of competition they face. Others look at the effects of specific pro-competitive interventions, particularly trade liberalisation or the introduction of competition into a previously regulated, monopoly sector (such as electricity).

Competition in the market can promote economic growth in several ways. First, competition results in goods and services being provided to the consumers at a competitive (lower than usual) price and so more of those goods and services are consumed and produced. Most producers are also consumers. To the extent that they pay higher prices for their inputs than foreign competitors because of lack of competition or anti-competitive practices in those markets, firms will be less competitive. Second, a properly implemented competition policy promotes efficiency and productivity. Firms faced with the intense competition are continually pressed to become more internally efficient and productive. Competition compels us to reduce waste, improve the technical efficiency of production, abandon outdated production techniques and operations, and invest in modern technology. Third, competition fosters innovation. Because firms with less innovative products and services find it difficult to survive in the market. Fourth, competition forces restructuring in sectors, at the appropriate time, that have lost competitiveness. The competition for capital and other resources by firms

throughout the economy leads to money and resources flowing away from weak uncompetitive sectors towards the more competitive sectors. Hence competition directs resources to their most efficient use and leads to the closure of inefficient firms and the freeing up resources for more productive uses.

### **2.4.3. Digital commerce and the competition law**

According to the Huawei Global Connectivity Index (GCI) 2019, Bangladesh is ranked one of the top four countries in terms of improvement and remarkable growth in the digital economy in the last four years. Over the last few years, internet connectivity has improved, and the number of people with internet access has increased. With increasing users of the internet, the e-commerce business has made its way to flourish. According to e-CAB, turnover in the e-commerce sector exceeded Tk. 17 billion in 2017 from Tk. 4 billion in 2016. The size of the Bangladeshi e-commerce sector is expected to amount to Tk. 70 billion by 2021. E-commerce has changed not merely how consumers shop, but also the range of providers from which consumers can buy products and services. During the COVID-19 pandemic, digital platforms have developed rapidly. With this growth comes the challenges to properly address the challenges to measure the anti-competitive practices in the digital markets. They are as follows:

- **Appropriate tools for analysing anti-competitive practice-** The dynamic structure of the digital market, zero-price services, network effects, market tipping, lock-in effects, and multi-homing (in this context, using more than one digital platform simultaneously) make it grim to handle the emerging competition issues in the digital economy. Conventional competition tools based on prices and consumer welfare are not suitable enough to address the issues of digital marketing.
- **Efficiencies, pro-competitive effects, and innovation-** A balanced enforcement of the competition law must be ensured that over-enforcement or under-enforcement did not slow down innovation and investment in the digital economy. Maintaining a balance between protecting competition and respecting the intellectual property rights of digital firms is considered one of the major challenges.
- **Collection and analysis of data in competition investigations-** Investigations regarding competition in digital markets were related to accessing accurate and private data to conduct comprehensive and sound analyses and contacting the parties involved and gathering quality data from them. Other related challenges are inadequate specialized skills to handle competition issues raised by online platforms and difficulty in analysing digital market data as well as inadequate tools to identify anti-competitive practices.

Eight years since its inception, while the Commission is still far from achieving its overarching goals, the new dynamics of the digital economy have brought it to a crossroads. This is mainly because the digital economy is ruled by data, in particular, personal data. The latter raises privacy concerns. Privacy is not necessarily in and of itself an important factor for competition regulators, but data is. Data can act as a barrier to entry, and can also be used to foreclose competitors' access to markets, and as a means to leverage market power from one market to another.

The Financial Express (2021) states that approximately 1500 e-commerce firms are running businesses in the country. Recently allegations have been raised against some e-commerce firms for cheating with the consumers and lots of reports have been filed in the Directorate of National Consumer Rights Protection. The current structure of the Commission has the necessary legal powers to regulate the anti-competitive practices but inadequate resources, economic experts, and funds to become fully active and functional are the major impediments of the Commission. As of January 2022, the Commission has received at least 30 complaints so far and has successfully resolved six of them.

#### **2.4.4. Corruption and competition law**

Corruption is considered to be one of the major impediments to achieving the inclusive and sustainable development of an economy. Corruption appears to be more harmful to countries with scarce resources. Enacting a strict regulatory regime will compel the prevailing corruption in the system and ensure fair competition in the market. The competition law, in this regard, has to play a dynamic role in lessening corruption and making the market more competitive because competition laws boost business confidence. In general, any reform that increases the competitiveness of the economy assists to reduce corrupt incentives. According to the empirical study of Gutmann and Voigt (2014), the introduction of competition laws in low-income countries improve the perceived effectiveness of anti-monopoly policy and significantly reduces perceived corruption levels.

According to the Competition Act of Bangladesh, bid-rigging is considered as one of the major anti-competitive agreements (mentioned in Section 15(2)(ii)) which is directly related to corruption. Bid-rigging is known as one type of cartel and according to the Act, a cartel is a serious offence and in some jurisdictions, it is a criminal offence. Strict enforcement of the Act helps to reduce corruption levels.

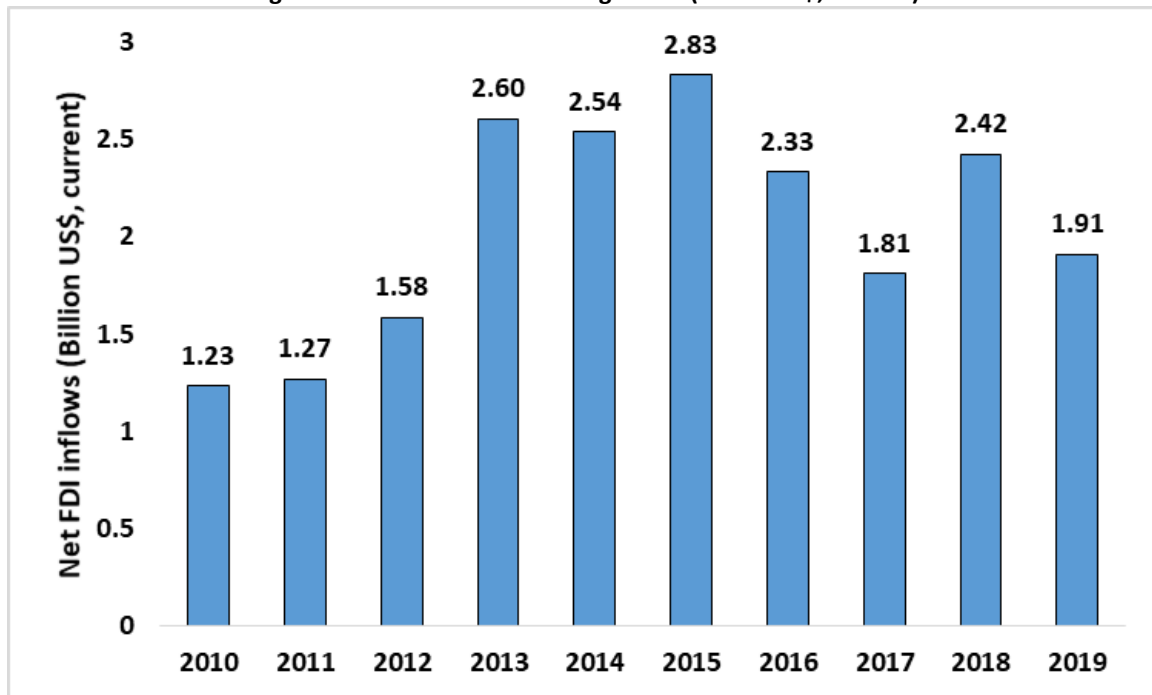
#### **2.4.5. FDI and competition law**

The relationship between competition policy and FDI is important for many reasons. First, FDI has important implications for the sustainability of national policies. A higher level of FDI can pose the government's effort to protect the domestic industries. The trade-off between higher FDI, which is considered to be beneficial for the recipient nation, against the ability of the government to maintain its control over certain sectors of the domestic economy. Second, FDI can help to flourish the industrial production of the economy. It is not immediately clear to the outside observer that a highly competitive economy will encourage inbound FDI. Government policies that protect certain segments of the economy may be more attractive to certain investors than a fully competitive market because of the potential for abnormal profit resulting from imperfect competition in that sector. Alternatively, the introduction of a competition policy accompanied by a vigorous enforcement policy may attract investors. Many studies have already outlined how the foreign investor perception of the host country's public policy is a key factor influencing the location of FDI. According to Caves (1996), foreign investors in their interaction with host governments aim to establish a level playing field for all (foreign and domestic) investors.

Although poor competition raises barriers and impediments for both domestic and FDI affiliate enterprises, the latter is likely to be more severely affected for several reasons. Anti-competitive agreements are generally closed to new foreign entrants. Abuses of dominance

increase the likelihood for FDI affiliate enterprises of being forced out of the market with a substantial sunk cost (Mariotti and Marzano, 2021). In the context of Bangladesh, net FDI inflows have maintained steady growth until 2015. Net FDI inflow in 2016 dropped to US\$ 2.33 billion from that of US\$ 2.83 billion in 2015. After that, the net FDI inflows do not seem to follow any trend.

Figure 4: Net FDI inflows of Bangladesh (Billion US\$, current)



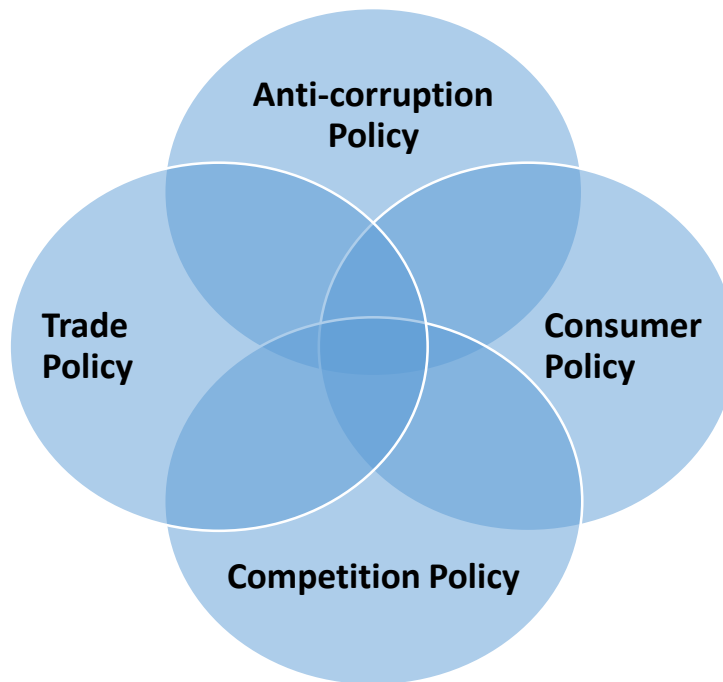
Source: World Development Indicators

The business environment of Bangladesh highlights high regulatory uncertainty which eventually demotivates foreign investors to enter the country. While choosing host countries, investors assess the clarity in existing policies, reliability of government officials, and adherence to rules and regulations. Bangladesh often fails to keep the promises displaying a lack of coordination owing to bureaucratic tangles that discourage investors. Harmonization among relevant policies will boost the business's confidence and competitiveness in the market.

#### 2.4.6. Relation with other policies

The competition law is considered as one of the elements of the competition policy. The effectiveness of the law depends mostly on the extent to which it is coordinated with other policies. Competition policy in a broader sense includes other economic policies to effective implementation of competition regime. Consumer policy covers broader issues than the competition policy and it is one of the key tools to implement the competition law and policy. Bangladesh has already adopted competition-related other policies like Consumer Rights Protection Act, 2009; Industrial Policy, 2016; Import Policy, Export Policy, and so on. Finance Act, 1995 provides the regulation against dumping and countervailing. Proper coordination and institutional accountability can lead to the effective implementation of competition law. Good leadership, political support, and an active consumer movement are needed to maintain a healthy relationship among different policies.

Figure 5: Relationship between competition policy and other policies



Source: Based on CUTS (2002)

## **2.5. Changing nature of the world trade and relevance of the Competition Act, 2012**

The competition law exists to ensure that businesses operate in the competitive market. The law aims to promote healthy competition and fair trading in the goods and services markets. One of the significant objectives of this law is to ensure economic efficiencies such as allocative efficiency, productive efficiency, and dynamic efficiency. The Competition Act, 2012 was formulated considering the context and challenges of that period. The primary objective of the Act remains the same over time but as the market dynamic is ever-changing, the competition authority must prepare various short-term, mid-term, and long-term plans considering the current context and priorities. However, the global trade pattern, political economy, industrialization, and use of technology have undergone remarkable changes as of 2021. As an LDC Bangladesh currently enjoys DFQF market access to the developed and some developing nations and EBA schemes from the EU. But after graduation some serious challenges will be posed and to face the challenges, a strong competitive regime must be ensured in the country.

### **2.5.1. LDC graduation challenges**

Competition policy was not a priority for most least-developed countries (LDCs) in the era of widespread state intervention in economic activity, which was underpinned by the concept of import substitution industrialization (ISI). However, subsequent developments, both internal and external to these economies demonstrated the need for specific pro-competitive initiatives. Internally, the adoption of liberalization policies, the rise in privatizations, and the

fact that most privatized entities in the utility sector are natural monopolies underscore the importance of a solid competition regime to elicit the most favourable efficiency and welfare effects of liberalization and privatization. Externally, the massive international merger wave and the existence of international cartels (WTO, 2001), and their potentially negative impact on market contestability posit a case for competition policy to equip developing countries with the tools to deal with the increased market power of multinational companies and their anti-competitive practices. Most LDCs have, explicitly or implicitly, adopted some kind of competition policy measures during the past decade. The majority of them have virtually done away with a licensing regime, accelerated the process of privatization, and regulated the mergers.

Bangladesh received the final recommendation to graduate from the LDC bracket by fulfilling all three criteria to graduate which include per capita GNI, human assets index (HAI), and economic vulnerability index (EVI). Bangladesh has successfully fulfilled these three criteria in successive triennials of 2018 and 2021. Graduation from LDC brings a mixed set of consequences but well-prepared countries hardly face hardship meeting the challenges in the future. However, upon graduation from LDC, Bangladesh will lose the DFQF (duty-free quota-free) and EBA (Everything But Arms) schemes, leading to an average tariff rise of 11-12 percent, making the exports less competitive. Other than this preference erosion, Bangladesh will also face other challenges, such as loss of TRIPS waiver, domestic export subsidy, loss of preference as an LDC in capacity building programs, loss of access to EIF after a smooth transition of 5 years period, and losing the access to the LDC technology bank after two years smooth transition.<sup>2</sup> Bangladesh now benefits from special and differential treatment (S&DT) under the agreements of the WTO which is specific for LDC countries. Under the TRIPS (Trade-Related Intellectual Property Rights) agreement, Bangladesh enjoys the benefits of cheaper textbooks, pharmaceutical waivers, and other patent-related flexibilities which will no longer be available after graduating from LDC.

After graduation, international trade will be more competitive, and to compete with foreign competitors, Bangladesh will have to make major changes in the relevant policies. Implementation of the Competition Act, 2012 has not been as effective as was originally thought. The prevalence of a host of anti-competitive practices has hindered the process of creating a competitive environment in the marketplace. Competitiveness must be ensured in the local businesses to become more competitive at the international level so that Bangladesh can enjoy smooth graduation. Proper enforcement of the Act can create an enabling business environment in the country to enhance Bangladesh's overall competitiveness in trade and commerce.

### **2.5.2. COVID-19 pandemic**

The ongoing sprawl of the COVID-19 pandemic in human lives has significantly impacted the fates and fortunes of people as well as the business entities. The pandemic has generated a major economic and development crisis, with a very significant temporary demand and supply shock. The extent of the impact of the COVID-19 will depend on the duration and seriousness

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<sup>2</sup> Ex-ante assessment of the possible impacts of the graduation of Bangladesh from the category of Least Developed Countries (LDCs), Secretariat of the Committee for Development Policy, United Nations Department for Economic and Social Affairs, Apr 1, 2019

of the outbreak, as well as on when the economic activity restarts and by how much it can regain. The economic consequences of the pandemic require rapid and strong government actions to keep markets and the economy functioning. The impact of the COVID-19 outbreak is already evident on many economic indicators in the last fiscal year. According to the MoF (2020), the budget deficit is expected to be 6 percent of GDP, the highest in recent years. But the World Bank (2020) forecasted the most frustrating outlook for the Bangladesh economy and according to them projected growth rate for FY2020-21 will be 1.6 percent.

Competition enforcement actions during and after the crisis will be crucial to ensure that markets are functioning well in the short run. Competition authority can play a vital role in advising the government on designing and implementation of policies that can ensure the proper functioning of the market in the long run. Competition authority must closely monitor unusual behaviours that may eventually be problematic such as suspicious pricing behaviour, crisis cartels, and cooperation among competitors. Competition authority should step up advocacy with the government explaining the competition principles that should be respected to ensure markets remain competitive following the crisis, which will be crucial for the economic recovery.

### **2.5.3 4<sup>th</sup> Industrial Revolution (4IR)**

The 4<sup>th</sup> Industrial Revolution represents a fundamental change in the way of life, work, and relate to one another. It introduces a new chapter in human development, enabled by extraordinary technological advances commensurate with those of the first, second, and third industrial revolutions. It is a synthesis of advances in artificial intelligence (AI), robotics, the internet of things (IoT), 3D printing, genetic engineering, quantum computing, and other advanced technologies. As artificial intelligence will replace the repetitive jobs mostly performed by the low and semi-skilled workers, many developing countries like Bangladesh will lose the comparative advantage in the low-skilled labour-intensive production process as a consequence.<sup>3</sup> The 4IR will induce job loss, as automation will take over the labour-intensive manufacturing sector of Bangladesh.

With the increased degree of globalization which changes the role of nations in the competitiveness framework and business competition that has become fiercer both nationally and internationally (Chikan, 2008), an updated competition regime must be ensured at the national, international, cluster, and firm levels. Building a new competitiveness framework under the 4IR, with a special focus on the role of innovation, adaptable factors of productions, shifting demand conditions, new business relationships, and pro-active public policies and business strategies is a crying need.

### **2.5.4. 8<sup>th</sup> Five-Year plan the perspective plan (2021-2041)**

The Competition Act was formulated in 2012 which somewhat resonated with the 6<sup>th</sup> Five-Year plan of Bangladesh. The 8<sup>th</sup> Five-Year plan is already been formulated which addresses issues like job creation, preparing to compete with the intense competition in the world market, inclusive development, tackling the adverse effects of climate change, 4<sup>th</sup> industrial revolution, LDC graduation, etc. Also, the perspective plan 2021-2041 states that Bangladesh needs to ascend to the UMIC country status by 2031 and a HIC by 2041.

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<sup>3</sup> 8<sup>th</sup> Five-Year plan of Bangladesh p. 646



To comply with the action plans of the 8<sup>th</sup> Five-Year plan and the perspective plan 2021-2041, the competition authority must prepare short-term, mid-term, and long-term plans according to the current context and priorities. To make the Competition Act consistent with the wide-ranging goals of the 8<sup>th</sup> Five-Year plan and the perspective plan 2021-2041, special focus should be given to ensure a healthy business environment, eradicate barriers to entry and exit, increase competitiveness among the players in the market, and regulate unscrupulous business practices.

## **2.6. Deviation from the international practices (by comparators)**

In this section, we will look into the competition legislations of some comparators that have achieved remarkable success. As Bangladesh is soon to graduate from the LDC status and possesses a vision to become a UMIC by 2031, a timely Competition Act must be designed to contribute to the economic growth of the country. Amending an act requires several legal procedures and at the same time, it is time-consuming. But a well-crafted act can have a huge impact on the regulation process. A critical analysis of the competition legislations of India, Japan, China, South Korea, South Africa, and UNCTAD Model law on Competition will be helpful to take learnings from them. Preambles of different countries' competition policies are listed in Table-4.

**Table 4: Preamble of some selected competition agencies**

<b>Jurisdiction</b>	<b>Preamble</b>
Bangladesh (2012)	In the context of the gradual economic development of the country, it is expedient and necessary to make provisions to promote, ensure and sustain congenial atmosphere for the competition in trade, and to prevent, control and eradicate collusion, monopoly, and oligopoly, combination or abuse of dominant position or activities adverse to the competition;
Japan (1947)	The purpose of this Act is to promote fair and free competition, stimulate the creative initiative of enterprise, encourage business activity, heighten the level of employment and actual national income, and thereby promote the democratic and wholesome development of the national economy as well as secure the interests of general consumers by prohibiting private monopolization, unreasonable restraint of trade and unfair trade practices, preventing excessive concentration of economic power and eliminating unreasonable restraints on production, sale, price, technology, etc., and all other unjust restrictions on business activity through combinations, agreements, etc.
South Korea (1980)	The purpose of this Act is to promote fair and free competition, to thereby encourage creative enterprising activities, to protect consumers, and to strive for balanced development of the national economy by preventing the abuse of Market-Dominant Positions by enterprises and the excessive concentration of economic power, and by regulating improper concerted acts and unfair business practices.
South Africa (1998)	The people of South Africa recognize: That apartheid and other discriminatory laws and practices of the past resulted in excessive concentrations of ownership and control within the national economy, inadequate restraints against anti-competitive trade practices, and unjust

Jurisdiction	Preamble
	<p>restrictions on full and free participation in the economy by all South Africans. That the economy must be open to greater ownership by a greater number of South Africans. That credible competition law, and effective structures to administer that law, is necessary for an efficient functioning economy. That an efficient, competitive economic environment, balancing the interests of workers, owners, and consumers and focused on development, will benefit all South Africans.</p> <p>IN ORDER TO- provide all South Africans equal opportunity to participate fairly in the national economy; achieve a more effective and efficient economy in South Africa; provide for markets in which consumers have access to, and can freely select, the quality and variety of goods and services they desire; create greater capability and an environment for South Africans to compete effectively in international markets; restrain particular trade practices which undermine a competitive economy; regulate the transfer of economic ownership in keeping with the public interest; establish independent institutions to monitor economic competition; and give effect to the international law obligations of the Republic.</p>
Indonesia (1999)	<p>The purposes of enacting this law shall be as follows:</p> <ol style="list-style-type: none"> <li>a. Safeguard the public interest and enhance the efficiency of the national economy as one of the endeavors aimed at improving the people's welfare;</li> <li>b. Create a conducive business climate by regulating fair business competition in order to ensure certainty in equal business opportunities for large-, middle- as well as small-scale business actors;</li> <li>c. Prevent monopolistic practices and or unfair business competition caused by business actors; and</li> <li>d. Creating effectiveness and efficiency in business activities.</li> </ol>
India (2002)	<p>Keeping in view of the economic development of the country, for the establishment of a Commission to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers, and to ensure freedom of trade carried on by other participants in markets, in India, and for matters connected therewith or incidental thereto.</p>
Singapore (2004)	<p>An Act to make provision about competition and the abuse of a dominant position in the market; and to establish the Competition and Consumer Commission of Singapore, to provide for its functions and powers and for matters connected therewith.</p>
Malaysia (2010)	<p>An Act to promote economic development by promoting and protecting the process of competition, thereby protecting the interests of consumers and to provide for matters connected therewith.</p>
Pakistan (2010)	<p>It is expedient to make provisions to ensure free competition in all spheres of commercial and economic activity to enhance economic efficiency and to protect consumers from anti-competitive behavior and to provide for the establishment of the Competition Commission of Pakistan to maintain</p>

Jurisdiction	Preamble
	and enhance competition; and for matters connected therewith or incidental thereto.
UNCTAD (2000)	To control or eliminate restrictive agreements or arrangements among enterprises, or mergers and acquisitions or abuse of dominant positions of market power, which limit access to markets or otherwise unduly restrain competition, adversely affecting domestic or international trade or economic development.

Source: Author's compilation from competition laws of different countries and UNCTAD

### 2.6.1. India

The Competition Act, 2002 came into existence in January, 2003 replacing the Monopolies and Restrictive Trade Practices Act, 1969. The Competition Commission of India (CCI) was established in October, 2003. CCI started its function in 2009 (addressing anti-competitive agreements and abuse of dominant position) and after promulgation of M&A Regulation in 11<sup>th</sup> May, 2011 which came into force on 1<sup>st</sup> June, 2011. So CCI started its full function in 2011. Against the rules of "The Competition Commission of India (Selection of Chairperson and Other Members of the Commission) Rules, 2003", a writ petition namely Brahm Dutt vs. Union of India (Civil 490 of 2003) was filed before the Apex Court. Chief Justice bench passed the judgement on 20<sup>th</sup> January, 2005. The Commission consists of a Chairperson and not less than two and not more than six other Members. The early Act penalized market dominance regardless of whether the cause was unfair practices or superior efficiency. Wider discussion regarding the amendment of the Act was called considering the Competition (Amendment) Bill, 2006. The bill proposed to amend no less than 42 of the 61 sections of the Act, replacing 13 and deleting five sections entirely, and introducing 21 new sections (Bhattacharjea, 2006). The 2002 Act was amended in 2007 giving more authority to the poorly-staffed and inadequately equipped Commission.

Table 5: Overview of India's Competition Act

Title of the chapter	Highlights	Weaknesses	Takeaways
Chapter I: Preliminary	<ul style="list-style-type: none"> <li>Anti-competitive agreements such as price-fixing, output restriction, market allocation, and bid-rigging are prohibited per se.</li> <li>Regulations of mergers and acquisitions above a threshold and prior notification optional.</li> </ul>	<ul style="list-style-type: none"> <li>CCI requires to adhere to the policy guidelines from the Central Government from time to time. The independence of the Commission is in doubt.</li> <li>The bill appears soft on serious competition abuses such as</li> </ul>	<ul style="list-style-type: none"> <li>Section: 10 (3)-The Chairperson and every member of the Commission shall make and subscribe an oath of office and of secrecy to the certain authority before entering upon his office.</li> <li>Section: 46- The law contains provisions for the application of leniency</li> </ul>
Chapter II: Prohibition of Certain Agreements, Abuse of Dominant Position and Regulation of Combinations			
Chapter III: Competition Commission of India			
Chapter IV: Duties, Powers and			

Title of the chapter	Highlights	Weaknesses	Takeaways
Functions of Commission	<ul style="list-style-type: none"> <li>Higher penalties for offences, up to 10 percent of the average of turnover for the last three preceding financial years.</li> <li>Unfair trade practices omitted.</li> <li>Establishment of CCI and Competition Fund.</li> </ul>	<ul style="list-style-type: none"> <li>hard core cartels.</li> <li>Competition abuses due to Intellectual Property Rights not addressed well.</li> <li>Relationship between CCI and other sectoral regulators are not very well defined.</li> <li>'Exemptions' from the bill is left on the discretion of the Central Government without any proper guideline.</li> </ul>	<ul style="list-style-type: none"> <li>Section: 53A- The National Company Law Appellate Tribunal accepts and disposes of appeals against the Commission's decision.</li> <li>Section: 53N (3)- The Appellate Tribunal may order compensation on the application of the affected person/enterprise.</li> </ul>
Chapter V: Duties of Director-General			
Chapter VI: Penalties			
Chapter VII: Competition Advocacy			
Chapter VIII: Finance, Accounts, and Audit Chapter VIIIA: Appellate Tribunal			
Chapter IX: Miscellaneous			

Source: Author's compilation from various sources

**Learnings-** The Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969) of India would not consider market dominance in the view of whether the practice is unfair or in superior efficiency condition. The Competition Act, 2002 amended such provisions and included the provisions of abuse of dominant positions. But the condition of the Indian competition authority was not that effective till 2007. The government amended the Act again in 2007 to remove the deficiency. After two years of this amendment, the competition commission started to work in full fledge but it could not be able to satisfy the target.

### 2.6.2. China

China promulgated the law against unfair competition in 1993. After more than a decade of discussions, debates, and drafting, China adopted its Anti-monopoly Law at the 29<sup>th</sup> meeting of the standing committee of the National People's Congress in 2007. The law came into force on August 1, 2008. The Anti-monopoly Law of China consists of eight chapters and 57 articles. The promulgation of the Chinese Anti-monopoly Law can be regarded as a great achievement of international cooperation (Wang, 2008) and an important milestone in the building of the Chinese socialist market economy system. The formulation of the law not only marked the formation of the competition law system of the Chinese socialist market, but also the establishment of the basic framework of the Chinese competition policy.

**Table 6: Overview of China's Anti-monopoly Law**

Title of the chapter	Achievements	Weaknesses	Takeaways
Chapter I: General Provisions	<ul style="list-style-type: none"> <li>Prohibition of monopoly agreements and abuse of dominant position.</li> </ul>	<ul style="list-style-type: none"> <li>Conflicts of jurisdiction under the Anti-monopoly Law and other existing regulations.</li> </ul>	<ul style="list-style-type: none"> <li>Article: 11- Industry associations shall strengthen industry self-discipline, guide operators in the industry to compete in accordance with the law, and maintain the order of market competition.</li> </ul>
Chapter II: Monopoly Agreements	<ul style="list-style-type: none"> <li>Merger/acquisition reporting and control.</li> </ul>	<ul style="list-style-type: none"> <li>Conflicts of capabilities under the Anti-monopoly Law and other industry regulations.</li> </ul>	<ul style="list-style-type: none"> <li>Article: 16- An industry association shall not organize the operators of the industry to engage in the monopolistic behaviour prohibited in the law.</li> </ul>
Chapter III: Abuse of Dominant Market Position	<ul style="list-style-type: none"> <li>Actively carrying out the anti-monopoly enforcement work.</li> </ul>	<ul style="list-style-type: none"> <li>The legal barrier that prevents private individuals and enterprises from initiating administrative litigation.</li> </ul>	<ul style="list-style-type: none"> <li>Article: 19, 22- The threshold of abuse of dominant position and combination has been stated.</li> </ul>
Chapter IV: Concentration of Undertakings	<ul style="list-style-type: none"> <li>Actively enhancing the formulation of the supporting provisions following the law.</li> </ul>	<ul style="list-style-type: none"> <li>The anti-monopoly enforcement authority lacks direct power to enforce against state restraints.</li> </ul>	<ul style="list-style-type: none"> <li>Article: 19, 22- The threshold of abuse of dominant position and combination has been stated.</li> </ul>
Chapter V: Abuse of Administrative Power to Eliminate or Restrict Competition	<ul style="list-style-type: none"> <li>Facilitating the development of the anti-monopoly enforcement staff and international exchange and cooperation.</li> </ul>	<ul style="list-style-type: none"> <li>The anti-monopoly enforcement bodies lack coordination with the industry regulations.</li> </ul>	<ul style="list-style-type: none"> <li>Article: 19- If an organization possesses less than 10 percent of the market share, it can be considered that it is not in the dominant position.</li> <li>Article: 26- The application</li> </ul>
Chapter VI: Investigation into Suspected Monopolistic Conducts	<ul style="list-style-type: none"> <li>Deeping the studies of the relevant anti-monopoly field.</li> </ul>		
Chapter VII: Legal Liabilities			
Chapter VIII: Supplementary Provisions			

Title of the chapter	Achievements	Weaknesses	Takeaways
			<p>regarding merger must be disposed of within 90 days but there is a provision to extend it up to 60 days in special cases.</p> <ul style="list-style-type: none"> <li>• Article: 46- The minimum fine for breaking the law has been fixed at one percent.</li> <li>• Article: 46, 47- the authority has the power to confiscate assets that are acquired illegally by a business entity in the event of abuse of dominant position.</li> </ul>

*Source: Author's compilation from various sources*

**Learnings-** Since the implementation of the Chinese Anti-monopoly Law, the three Anti-monopoly enforcement authorities, under the organization, coordination, and direction of the Anti-monopoly Committee of the State Council, have been active in exercising their functions, formulating the supporting provisions in accordance with the law, improving the working mechanism, enhancing the dissemination of the anti-monopoly ideas, establishing the authoritative position of Anti-monopoly Law. An important aspect of the law is, it contains some key China-specific features as the economic, cultural, and legal environment differ from other jurisdictions.

### 2.6.3. Japan

The Anti-monopoly Act of Japan was first introduced in 1947. It has been amended several times to make the competition regime more effective. Japan has also formulated several supplementary laws and rules to make antitrust laws more pragmatic. The competition authority has three core wings- secretariat, economic affairs, and investigation. These three-division control and coordinate the activities of the Commission from top to root level. In 2003, Competition Policy Research Centre was established to promote research work on market competition and find out effective ways to implement the law.

**Table 7: Overview of Japan's Prohibition of Private Monopolization and Maintenance of Fair Trade Act**

Title of the chapter	Highlights	Weaknesses	Takeaways
Chapter I: General Provisions	<ul style="list-style-type: none"> <li>Japan Fair Trade Commission has the power to conduct an operation against horizontal price-fixing and bid-rigging.</li> </ul>	<ul style="list-style-type: none"> <li>The Act does not include any particular provisions about extraterritorial applicability.</li> </ul>	<ul style="list-style-type: none"> <li>Article: 3- Business entities or entrepreneurs are prohibited from creating private monopolization and unreasonable trade barriers.</li> </ul>
Chapter II: Private Monopolization and Unreasonable Restraint of Trade			
Chapter III: Trade Associations			
Chapter III-2: Monopolistic Situations	<ul style="list-style-type: none"> <li>The Commission detects anti-monopoly or anti-competitive activities and investigates the matter. The Commission can also investigate the fact which is reported by the public.</li> </ul>	<ul style="list-style-type: none"> <li>The implementation of the Act is hindered because of several administrative issues.</li> </ul>	<ul style="list-style-type: none"> <li>Article: 6- Execution of any kind of international agreement that hinders trade or creates any kind of unfair trade practice is prohibited.</li> </ul>
Chapter IV: Shareholdings, Interlocking Officers, Mergers, Splits, Share Transfers, and Acceptance of Assignments of Business		<ul style="list-style-type: none"> <li>The procedure of dealing with a violation of the anti-monopoly practice is time-consuming.</li> </ul>	
Chapter V: Unfair Trade Practices	<ul style="list-style-type: none"> <li>The Commission is able to issue service by publication against foreign companies.</li> </ul>		<ul style="list-style-type: none"> <li>Article: 7 (1) to 7-2 (1)- In case of violation of Article 3 and 6, the Commission will direct to take disciplinary action and deposit the proceeds of such measures in the special treasury of the state.</li> </ul>
Chapter VI: Exemptions			
Chapter VII: Injunctions and Damages			
Chapter VIII: Fair Trade Commission			
Chapter IX: Legal Actions			
Chapter X: Miscellaneous Provisions			
Chapter XI: Penal Provisions			<ul style="list-style-type: none"> <li>Article: 8- Any kind of unfair trade practices of trade associations are declared banned.</li> </ul>
Chapter XII: Investigation of Criminal Cases, etc.			

Source: Author's compilation from various sources

**Learnings-** Japanese experience of growth and development post-war is highly appreciable. Japanese government strategy in defending the anti-competitive practices is comprehensive and pragmatic. The Commission takes into account several issues such as the scale of

economies, enhanced efficiency, business cycle stabilization, industrialization orderliness, price stabilization, and economic security. To promote investment and technical change, the Japanese government protected domestic industries at the very beginning level but it was mandatory to have competition when the industries were matured in terms of technology. Due to the rapid economic growth of the economy, the fast growth of the small firms helps Japan to decrease market concentration and increase competition. Above all, the organizational structure of competition authority is undoubtedly an exemplary one as it has three core wings like secretariat, economic affairs, and investigation division and it established a separate research wing for researching market business and competition.

#### 2.6.4. South Korea

In September 1980, the government of South Korea made public a plan to enact the Monopoly Regulation and Fair Trade Law before the end of the year to regulate monopolies and restore functioning markets (Yang, 2009). Later on in 1980, Korea's constitution was amended and it included an article stipulating the proper regulation and control of harm from monopolies. On the basis of the amendment of the constitution, the Monopoly Regulation and Fair Trade Act (MRFTA) was enacted in 1980 and was intended to change the government-led economy to a market economy. The Act came into force on April 1, 1981. At that time only 10 developed countries in the world had competition laws. Hence, it was a rare and unique choice that Korea adopted competition policies at a time when it was at its development stage. The majority of the developing countries overlooked competition policies in the interest of spurring economic development. Korea's introduction and operation of competition policies are significant in that it enhanced industrial dynamism while also forming a foundation for lasting economic development. In 1994, the Korea Fair Trade Commission became an independent body, reporting directly to the Prime Minister.

**Table 8: Overview of South Korea's Monopoly Regulation and Fair Trade Act**

Title of the chapter	Highlights	Weaknesses	Takeaways
Chapter I: General Provisions	<ul style="list-style-type: none"> <li>Ensuring market competition and enhancing consumer protection.</li> <li>The major areas of enforcement are- prohibitions against abuse of dominant position, restrictions on mergers with anti-competitive effects, prohibitions against cartels,</li> </ul>	<ul style="list-style-type: none"> <li>The Act does not include the necessary provisions related to supporting SMEs.</li> <li>The case-handling procedures at the Commission and the appeal system against the Commission decisions lack the standard of liability. The current</li> </ul>	<ul style="list-style-type: none"> <li>Article: 19 (2)- The Commission will approve the development of research and technology, recovery activities of the economy, restructuring of the industry, rationalization of the terms of trade, and development of competitiveness of SME</li> </ul>
Chapter II: Prohibition of Abuse of Market-Dominant Positions			
Chapter III: Restriction on the Combination of Enterprises and Repression of the Economic Power Concentration			
Chapter IV: Restrictions on Improper Concerted Acts			



Title of the chapter	Highlights	Weaknesses	Takeaways
Chapter V: Prohibition of Unfair Business Practices	and prohibitions against unfair trade practices.	procedures for both investigation and adjudication at the Commission do not guarantee full opportunities for self-defense.	entrepreneurs through mutual cooperation.
Chapter VI: Enterprises Organization	<ul style="list-style-type: none"> <li>• Changing the perception of the economic development paradigm.</li> </ul>	<ul style="list-style-type: none"> <li>• The issues like ease of market concentration and make general economic policies more competition oriented have become relaxed due to emphasizing more on restrictions against unfair trade practices and regulation against the abuse of intellectual property rights.</li> </ul>	<ul style="list-style-type: none"> <li>• Article: 22-2 – If a person voluntarily provides information on conspiracy or if a person provides appropriate assistance to the Commission in its investigation and prosecution through evidence, the fine may be reduced or waived or the charges against him may be removed.</li> </ul>
Chapter VII: Restrictions on Resale Price Maintenance	<ul style="list-style-type: none"> <li>• The Act has served as the basic foundation of Korea’s free-market economy and has raised awareness of the importance of innovation and market competition.</li> </ul>		
Chapter VIII: Restrictions on the Conclusion of International Contracts			
Chapter IX: Enforcement Agency			
Chapter X: Identification Procedures and Other Related Matters	<ul style="list-style-type: none"> <li>• Vitalizing market competition and economic development.</li> </ul>		
Chapter X-2: Imposition and Collection of Surcharges, etc.			<ul style="list-style-type: none"> <li>• Article: 26- There are provisions for making guidelines (do’s and don’ts) for business organizations.</li> </ul>
Chapter XI: Damages			
Chapter XII: Exemptions			
Chapter XIII: Supplementary Provisions			<ul style="list-style-type: none"> <li>• Article: 64-2 – The Fair Trade Commission has the opportunity to provide appropriate rewards if a person complains about a violation of the law or helps with information.</li> </ul>
Chapter XIV: Penal Provisions			

Source: Author’s compilation from various sources

**Learnings-** The implementation of competition policies played an important role in breaking away from government-led economic development strategy in the 1960s and 1970s when

fostering monopolization was considered a valid measure for industrial policy purposes. This implementation also allowed Korea to officially adopt market competition as a fundamental principle in its economy. Since their introduction, Korea’s competition policies have been essential in establishing and proliferating competition principles. A unique aspect of the Monopoly Regulation and Fair Trade Act is that the Korean Fair Trade Commission works in collaboration with other government entities to create a pro-competition environment, improve anti-competitive laws, and spread the reach of its compliance programs. This has led to a systematic improvement of enforcement and the development of a culture of legal compliance. The Commission is a quasi-judicial and quasi-legislative body in the form of an independent regulatory commission. It enforces the Act and other competition-related laws by establishing legal standards and making decisions on what measures to take against various anti-competition conducts in the market.

### 2.6.5. South Africa

The competition act of South Africa is considered to be one of the most liberal, inclusive, and an example of tailor-made pieces of legislations in its category. The 1998 Competition Act which came into force on September 1, 1999, covers all sorts of economic activity in South Africa and has extra-territorial reach to the extent as the Act applies to all economic activity within, or having an effect within the Republic (Hartzenberg, 2006). This Act is different and unique compared to most of the other competition legislations globally in that, in addition to the normal goals of competition such as promotion and maintenance of competition in the markets, provide consumers with competitive prices, regulate the prevailing anti-competitive practices, etc. it simultaneously recognise the role of foreign competition in the Republic and it also pursues certain public interest goals.

**Table 9: Overview of South Africa’s Competition Act**

Highlights	Takeaways
<ul style="list-style-type: none"> <li>• Covers all economic activities in South Africa and has extra-territorial reach.</li> <li>• Enhancing the participation of disadvantaged persons.</li> <li>• The Act provides for extensive jurisdictional coverage.</li> <li>• Much importance is given to the issues of public interest and economic welfare.</li> <li>• The Competition Commission is an autonomous statutory body.</li> <li>• Presence of Competition Tribunal and Competition Appeal Court.</li> </ul>	<ul style="list-style-type: none"> <li>• Article: 2(a) - To promote the efficiency, adaptability, and development of the economy.</li> <li>• Article: 2(e) - To ensure SMEs have an equitable opportunity to participate in the economic activities.</li> <li>• Article: 2(f) - To promote a greater spread of ownership, in particular to increase the ownership stakes of historically disadvantaged persons.</li> <li>• Article: 17 – Provision for appeal in the Competition Appeal Court against the order of the Commission.</li> <li>• Article: 22(1) – The Commissioner is appointed for the term of five years.</li> <li>• Article: 24 – Provision for the Commission to appoint one or more persons as inspectors in case of merger investigation or collusion.</li> </ul>

Highlights	Takeaways
	<ul style="list-style-type: none"> <li>• Article: 26(1) – Provisions for establishment and constitution of the Competition Tribunal.</li> <li>• Article: 36(1) – Provisions for establishment and constitution of the Competition Appeal Court.</li> </ul>

Source: Author's compilation from various sources

**Learnings-** The Act is well-designed according to the need and urge of the country's economy. The objectives of this Act covers a wide range of economic and social issues. The balance between the competition goals and the application of public interest is maintained in a very efficient way. More emphasis is given to promote the SMEs.

### 2.6.6. UNCTAD Model Law on Competition

In 1980, the United Nations Conference on Restrictive Business Practices approved the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices (The UN Set) for adoption as a resolution. The UN Set is a multilateral agreement on competition policy that:

- Provides a set of equitable rules for the control of anti-competitive practices.
- Recognizes the development dimension of competition law and policy.
- Provides a framework for international operation and exchange of best practices.

Although most of the developing countries have liberalized their economies and have adopted a market-based strategy for their growth and development, their level of development and the extent of poverty levels constrain their ability to introduce and apply the most modern standards in competition policy. UNCTAD has assisted in explaining the role of competition policy in maximizing the benefits from liberalization and integration into the world economy. The UNCTAD Model Law on Competition consists of 13 chapters mentioning the possible elements for competition law.

**Table 10: Overview of UNCTAD Model Law on Competition**

Title of the chapter	Focuses on	Takeaways
Chapter I: Objectives or purpose of the law	<ul style="list-style-type: none"> <li>• Promoting effective competition in the enterprise sector.</li> <li>• Maximizing benefits from Foreign Direct Investment and trade.</li> <li>• Protecting and promoting social welfare in general and, in particular, the interests of consumers.</li> <li>• Eliminating disadvantages to trade and development which may result from the</li> </ul>	<ul style="list-style-type: none"> <li>• Chapter III Paragraph I (g) - Collective boycotts/denials in the production/supply of goods and services by businesses have been considered as anti-competitive activities.</li> <li>• Chapter IV Paragraph II (e) - If any business organization fails to ensure the standard and quality of products/services, it will be considered as abuse of dominant position.</li> </ul>
Chapter II: Definitions and scope of application		
Chapter III: Restrictive agreements or arrangements		
Chapter IV: Acts or behavior constituting an abuse of a dominant position of market power		
Chapter V: Notification		

Title of the chapter	Focuses on	Takeaways
Chapter VI: Notification, investigation, and prohibition of mergers affecting concentrated markets	restrictive business practices of transnational corporations or other enterprises.	<ul style="list-style-type: none"> <li>• Chapter XXII- There is a provision for ‘Judicial Review’ in case of appeal.</li> <li>• Chapter XXIII- If a party suffers a loss as a result of the activities of a business organization, there is a chance for the affected party to receive compensation.</li> </ul>
Chapter VII: The relationship between competition authority and regulatory bodies, including sectoral regulations	<ul style="list-style-type: none"> <li>• Ensuring sustainable development in both developed and developing countries.</li> </ul>	
Chapter VIII: Some possible aspects of consumer protection	<ul style="list-style-type: none"> <li>• Achieving greater efficiency in international trade and development, particularly that of developing countries, in accordance with national aims of economic and social development and existing economic structures.</li> </ul>	
Chapter IX: The Administering Authority and its Organization	<ul style="list-style-type: none"> <li>• Ensuring that the restrictive business practices do not impede or negate the realization of benefits that should arise from the liberalization of tariff and non-tariff barriers affecting world trade, particularly those affecting the trade and development of developing countries.</li> </ul>	
Chapter X: Functions and powers of the Administering Authority		
Chapter XI: Sanctions and relief		
Chapter XII: Appeals		
Chapter XIII: Actions for damages		

*Source: Author's compilation from various sources*

**Learnings-** UNCTAD's Model Law on Competition highlights the major issues of market competition and economic development for both developed and developing countries. The chapters are well thought out and are updated accordingly. The issues like consumer protection, the exercise of intellectual property rights, actions for damages, and appeals are included in this model law.

### 3. The Competition Act, 2012 and relevance to SHE trade

The fight for gender equality is one of the defining challenges of the present era. A lot of areas have ensured gender equality but the relationship between gender and competition policy remains largely unexplored. Competition policy generally deals with consumers and firms, government, and regulators. Traditionally, consumers have been considered only by their willingness to pay, rational preferences, ability to substitute between products offered by firms. On the other hand, firms are treated as entities that are defined by the profit-maximizing objectives of their owners, and only rarely seen as collections of people. Competition policy is therefore largely gender blind and prides itself on its objectivity.

According to Santacreu-Vasut and Pike (2019), the relationship between competition and gender is bi-directional. Competition leads to gender equality similarly gender equality leads to competition. Promoting and protecting competition may help reduce gender inequality. Historically women have faced both formal and informal barriers in accessing formal markets and institutions. Formal barriers can be referred to as legal and regulatory. Informal barriers are behavioural and cultural. Women contribute outside of the formal market is unpaid labour which can be said as household labour. Women surveyed in OECD countries do almost twice as many hours of unpaid work per day than men. The gender wage OECD average is 12.5 percent in 2019.

Recently, the competition policy community has started paying more attention to gender. Hubbard (2017) argues that the gender glass ceiling is nothing but another cartel. Pike (2018) suggests that gender restrictions potentially constitute anti-competitive regulations and that competition agencies might make a difference by prioritizing investigation of those markets on which women rely. In this case, competition policy may have a natural role to play in addressing the issues and in levelling the playing field for women and men alike.

The consequences of gender inequality are considered negative for inclusive growth and sustainable growth. Less competition in a market generally indicates the inefficient use of the available resources. The consequences of gender inequality are as follows:

- It possesses a threat to a fair distribution of resources.
- It may lead to a less efficient and less competitive market.
- Talent is misallocated and competition works less efficiently.

The impact of gender on competition cannot be neglected. Gender can influence market entry where it constitutes a legal barrier to entrepreneurship. For example, in some countries, women are prevented from working in certain industries such as construction, transportation, or manufacturing, and face legal obstacles to acquiring property (World Bank, 2018). Barriers to entrepreneurship can be informal and behavioural. These barriers might include the risks of sexual harassment, long working hours, cultural barrier, and a lack of access to networks. Gender can also influence consumer prices. For example, there is a tradition of gender pricing across multiple industries. In particular, male and female consumers face price differences when buying the male and female versions of the same kind of products.

The Competition Act, 2012 of Bangladesh is considered to be free from gender bias. Neither any discriminatory provisions are included nor any women-friendly ones. To increase the

competition in the market, gender-inclusive provisions must be included in the Act. Competition may contribute to the fight against gender inequality by:

- Driving participants that exhibit taste-based discrimination against women out of the market.
- Increasing the efficient provision of market substitute for service provided by women in household (childcare, elderly, health, etc.).
- Increasing the efficient provision of services that complement women's economic engagement (finance and infrastructure).

## 4. Recommendations/ Action plan/ Way forward

In this chapter, we have provided some recommendations for amendment of the Competition Act, 2012. The recommendations are mostly based on the primary information collected through conducting several KIIs. The policies are in general well-crafted and well-written. A lot of effort, consultation, and opinions from related stakeholders are considered while formulating the policies. The Competition Act, 2012 is not any different. The intent and measures to achieve the desired goals stated in the Act are sincere. Several issues are not mentioned properly in the Act but including them will aid to attain the stated objectives.

Our careful review of the Competition Act, 2012, has identified some specific areas that need to be addressed in future policy. One of the major impediments of updating the Act is, the procedure of amending an Act takes a toll of time. Legal procedures are complicated and by the time of amending, however, in most of the cases, the issues are settled by then. Some noteworthy vague issues of the Competition Act that need to be readdressed properly in the future Act are as follows:

**Establishment of the Competition Commission-** The act provides for the establishment of a competition commission consisting of a chairperson and four members. The Act has also delineated some of the powers and functions of the commissions which include eliminating practices having an adverse effect on competition; ensuring trade freedom; inquiring into complaints received by the commission; determining combination and matters related to combination; setting the standard for the promotion of competition; providing training related to competition; developing awareness by way of conducting research seminars, workshops, etc. The commission has also been given powers of a civil court with regards to certain matters for proper adjudication of the alleged violation of the law. For the successful operation of the Commission, the number of officials must be increased and it will also increase the efficiency of the Commission.

**Prohibition on the anti-competitive agreement-** The act prohibits all kinds of anti-competition agreements in case of production, supply, distribution, storage, or acquisition of goods or services which cause or has the potential of causing adverse effects of competition or create monopoly and oligopoly in the market. The act defined monopoly as a situation where only one person or enterprise takes control over the market of goods or services. Whereas, oligopoly is defined as a situation where some people or enterprises take control over the market of goods or services.

It includes both horizontal and vertical anti-competitive agreements. The former is an agreement between the parties which operates at the same level of production, supply, or distribution chain while the latter is an agreement between the parties which operates at the different level of production, supply, or distribution chain. Section 15(2) of the Act provides for the horizontal anti-competitive agreements and states that a number of activities shall be presumed to have an adverse effect on competition if taken by any person or association of persons. The activities include determining abnormal purchase or sale price; determining deceptive price in processes including bid-rigging; limiting or controlling production, supply, markets, and technical development; devising the market based on types of goods or services, source of production or provision of services, geographical area of the market, number of

customers in the market, etc. These activities are often performed by the cartels. Section 2(e) of the act provides that “cartel” means any person or association of persons who, by explicit or implicit agreement, limit or control or attempt to limit or control over the production, distribution, sale, price, or transaction of goods or services in order to establish monopoly in trade. If section 15(2) and 2(e) are read together, it can be seen that section 15(2) has primarily focused on prohibiting the cartels.

**Prohibition of combination-** In many cases, the merger, acquisition, or amalgamation of enterprises seriously prejudices the competition in the market. Therefore, section 21 of the Act prohibits the combinations which adversely affect the competition in the market of goods or services. The commission has been given the authority to inquire and determine whether a combination will affect the competition in the market. The detailed procedure of how this determination shall be made will be provided in the regulations. However, the commission is yet to come up with a regulation under the Act. Therefore, this section is also infected with the blemish of vagueness at least in absence of the regulation.

**Penal provision and enforcement mechanism-** The Act provides the commission with the power of inquiry to determine whether any anti-competition activities have taken place. However, even before the inquiry, the commission can dispose of and settle any issue if it appears that an imminent agreement or misuse of the dominant position is going to take place having an adverse effect on the competition. The commission can make an inquiry by itself or upon receipt of any complaint if it believes that an anti-competition agreement or misuse of a dominant position has taken place. Yet again, the detail of the procedure of inquiry is to be provided in the rule which is yet to be formulated.

**The problem with the simultaneous role of prosecution and adjudication-** The act provides the commission with the power of inquiry as well as adjudication. It can be logically apprehended that the commission might be biased towards its own inquiry. The commission certainly has an interest in the prosecution since it is the responsibility of the commission to eliminate anti-competition activities. The primary issue to this dual role, as asserted against the United States Federal Trade Commission, is the inequity inherent in the fact that the same individuals who initiate cases eventually make judgments in them. While criticising the Federal Trade Commission, Richard Posner commented that ‘it is too much to expect men of ordinary character and competence to be able to judge impartially in cases that they are responsible for having instituted in the first place.’

**Implementation challenges-** The challenges to the implementation of this Act are as follows. Firstly, since this is a comparatively new development in the country, most of the relevant officials might not have the necessary expertise in dealing with the intricate issues of competition law particularly because the officials are often appointed by government officials. This can be tackled by a comprehensive training program to make the officials more capable of dealing with the issue of competition. Secondly, the commission may face problems in avoiding conflict with other sectoral regulations, for example, Security and Exchange Commission, Safe Food Authority, Bangladesh Energy Regulatory Commission, Bangladesh Telecommunication Regulatory Commission, etc. They might have similar jurisdiction in some fields, and sometimes it appears to be quite difficult to harmoniously operate with them in reality.



**Accountability of the Commission-** The competition Act provides ample power to the competition commission. Even the commission has been given the power of a civil court in deciding disputes under this Act and the violation of the order of the commission has been made a punishable offence. However, the Act fails to contain any accountability measures against the competition commission if they fail to perform the assigned duties under the Act or cause any irregularities that go against the interest of the business enterprise or common people. Rather the Act contains some safeguarding measures to provide immunity to the commission even if it causes any irregularities.

Section 11 (6) of the Act provides safeguards to the Competition Commission. It refers that no act or proceeding of the Commission shall be invalid or be called in question merely on the ground of any vacancy in, or any defect in the constitution of the Commission. According to this provision, the act or proceedings of the Commission relating to vacancy and any defect in the constitution of the Commission shall remain beyond scrutiny. This provision creates room for arbitrary decision-making that may facilitate doing discriminatory practices. It has been observed that 'all executive action must be based on legal sanction and there is no place for executive action that springs from individual whim, malice or caprice. Any arbitrary action without being justified compromises the essential elements of rule of law'. The provision also indicates that the constitution of the Commission cannot be challenged even if there remains any unjust or defective procedure or practices. This kind of provision is inherently abusive and susceptible to discrimination.

In this regard, it is recommended that the law should not contain any clause that provides unjustified immunity to the commission.

Again, section 41 of the Act provides safeguards for the Competition Commission, any member, officer, or employee of the Commission for any damage caused or likely to be caused to any person as a result of any act done in good faith under this Act and no suit or prosecution or any other legal proceeding shall lie against them. As it is noted earlier that the good faith clause may be used as a shield to justify their actions even if they commit any irregularities leading to discrimination. It is noted that the term good faith is so wide and vague that the extent of it remains uncertain. It is observed that while addressing the wide and vague terminologies in an Act, 'the precision and guidance are necessary so that those enforcing the law do not act in an arbitrary or discriminatory way. Where however the law admits of no such construction and the persons applying it are in a boundless sea of uncertainty and the law prima facie takes away a guaranteed freedom, the law must be held to offend the Constitution.'

The good faith clause also provides favourable treatment to the implementing stakeholders of the law which goes against the constitutional stipulation of equality before the law. It is also noted that if the actions of implementing stakeholders remain without any legal scrutiny or consequences, there exists a possibility of doing abusive and discriminatory practices. In our culture, where the law is frequently used to serve the interest of the influential people, such kind of saving clause may provide unchallenged room for legal exploitation.

It is recommended that the good faith clause may remain as self-defence for the commission and its employees. However, there should be some objective criteria to decide the meaning

and extent of good faith. If any act/omission in good faith causes harm to any person, such person should have the opportunity to challenge it in a court of law and the court should have the powers to look into the matter and decide whether the said actions or omissions fall under the fiction of good faith.

**The act should be followed by policy-** An act is an instrument that records a fact or something that has been said, done, or agreed to ensure the welfare of the state. Acts generally take the form of legal instruments of writing that have been probative value and executory force. They are usually accepted as self-authenticating demonstrative evidence in court proceedings. On the other hand, policy deliberates a system of guidelines to guide decisions and achieve rational outcomes. Policies help in assisting in both subjective and objective decision-making. The act which is followed by any policy serves the best as policy includes a detailed guideline about the provisions. Generally, acts are precise and contain technical terms which makes them less reader-friendly. In contrast, policies are written explaining the provisions in a reader-friendly approach. In this regard, a policy guideline of competition in businesses will enhance the effectiveness of the Act.

**Sustainable development and competition law-** Competition law can greatly promote the Sustainable Development Goals (SDGs). Competition in the market provides the consumers a wider variety of goods to choose from and as a result, the enterprises try their best to keep the price at the minimum making it easier for poor people to have access to basic commodities. This, in turn, helps reduce hunger and also ensures good health and well-being of the people. The competition also ensures that more enterprises are in the market which means more people are going to have the opportunity to work. Moreover, Competition fosters productive efficiency, requiring a business to make the most effective use of its inputs to provide the finest goods and services at the lowest feasible cost. Besides, it ensures dynamic efficiency, which encourages businesses to innovate and develop new goods and services to expand their market share. In addition to that, competition fosters technical advancement via an inventive channel. Thirdly, allocative efficiency, which requires companies to provide just the goods and services that consumer's desire.

**Competition law and digital commerce-** With the advent of modern technology, e-commerce has mushroomed in the country. Around 1,500 e-commerce enterprises operate in the nation. These huge numbers of enterprises have created room for fierce competition. However, there are scopes for prominent enterprises to get involved in anti-competition practices. Recently, Evaly, an e-commerce site, has been scrutinized by regulators for its business methods, which include extraordinary discounting. Last year, the company came up with an Eid promotion that contained a variety of cashback offers on different goods, ranging from 80% to 150%. The competition commission inquired and found out that the promotion violated section 15(3)(a) of the Competition Act.

In a report of 2020 on e-commerce in India, the Competition Commission of India (CCI) highlighted that there are certain areas in the field of e-commerce that can be susceptible to anti-competition practice, for example, exclusive agreement between retailers and sellers, huge discounts which are predatory in nature, platform neutrality and platform parity clause, etc.

**Competition law and graduation from Least Developed Nation (LDC)** - Bangladesh is expected to graduate from LDC to the Developed country by 2024 which will be effective from 2026. This also means that Bangladesh will lose many trade benefits that are associated with the LDC status and the international trade will be more competitive. Therefore, export businesses in Bangladesh must prepare themselves to compete with the intense competition in the world market. The government has also included this goal in the 8<sup>th</sup> Five-Year plan which has stretched on the competitiveness of business. It states that “there is little doubt that “preference erosion” in the post-graduation scenario is expected to unleash the strongest forces of competitiveness in the global market. That calls for stronger measures to raise productivity, efficiency, and competitiveness of Bangladeshi products—mostly manufacturing, but agro-processed (e.g. jute goods) and agricultural products could be no less competitive. It is therefore important that the competition law is implanted in Bangladesh so that the local industries can cope with the competitive environment in the market. It is important, therefore, to ensure the strict compliance of competition law in the domestic business as well.

**Table 11: Recommendations for future Competition Act**

Chapter	Stated provision in the Competition Act, 2012	Unchanged	Extension	New inclusion	Drop
<b>Preamble</b>	In the context of the gradual economic development of the country, it is expedient and necessary to make provisions to promote, ensure and sustain congenial atmosphere for the competition in trade, and to prevent, control and eradicate collusion, monopoly, and oligopoly, combination or abuse of dominant position or activities adverse to the competition	NA	<ul style="list-style-type: none"> <li>• There is no specific definition of a congenial atmosphere for the competition in trade. For example- The Competition Act of Pakistan mentions the congenial business environment in Section 10.</li> <li>• The preamble can be redrafted based on UNCTAD model law and others.</li> <li>• Deceptive trade practices including advertising-related issues can be crafted using the reference of Pakistan and China's competition legislation.</li> </ul>	<ul style="list-style-type: none"> <li>• Mentioning the issues of consumer welfare, equity, human dignity, social justice, and SHE trade in the preamble.</li> </ul>	NA

Chapter	Stated provision in the Competition Act, 2012	Unchanged	Extension	New inclusion	Drop
<b>Chapter One</b>	2- Definitions	NA	NA	<ul style="list-style-type: none"> <li>Including the definitions of agreement, digital economy, dawn raid, search and seizure, deceptive trade practices, and turnover.</li> </ul>	NA
<b>Chapter Two</b>	7(6) - The Chairperson and the Members shall hold their respective offices for a term of three years from the date on which they enter upon their offices and shall be eligible for re-appointment of another term; Provided that the person who has attained the age of 65 (sixty five) years shall not be eligible for appointment or hold offices as Chairperson or Member.	NA	<ul style="list-style-type: none"> <li>A term of five (05) years, in this case, is appreciated.</li> <li>The age limit of 67 (sixty seven) years or removing the age limit is appreciated.</li> </ul>	NA	NA
<b>Chapter Three</b>	15- Anti-competition agreement: (1) No person shall, directly or indirectly, enter into any agreement or collusion, in respect of production, supply, distribution, storage or acquisition of any goods or services which causes or is likely to cause an adverse effect on competition or creates monopoly or oligopoly in the market.	NA	<ul style="list-style-type: none"> <li>A mention of a cartel in this section is needed.</li> </ul>	NA	NA

Chapter	Stated provision in the Competition Act, 2012	Unchanged	Extension	New inclusion	Drop
	<p>15(3)- For the purposes of this section the following arrangements and agreements shall be deemed to be an anti-competition agreement if they have adverse effect on competition, namely:</p> <p>(a) “tie-in arrangement”, that is to say, an agreement or understanding requiring a purchaser of goods, as a condition of such purchase, to purchase some other goods or to receive any benefit from the seller or any other person or enterprise engaged by him;</p> <p>(b) “exclusive supply agreement”, that is to say, an agreement restricting in any manner the purchaser in the course of his trade from acquiring or otherwise dealing in any goods other than those of the seller;</p> <p>(c) “exclusive distribution agreement”, that is to say, an agreement which limits, restricts or withholds the output or supply of any goods or allocates any area or market for the disposal or sale of the goods;</p> <p>(d) “refusal to deal”, that is to say, an agreement which restricts, by any</p>	NA	<ul style="list-style-type: none"> <li>This section does not provide a definitive list of activities that have an adverse effect on competition. Rather, it provides a list of agreements that will be prohibited only if they have an adverse effect on the competition.</li> </ul>	NA	NA

Chapter	Stated provision in the Competition Act, 2012	Unchanged	Extension	New inclusion	Drop
	manner the persons or classes of persons to whom goods are sold or from whom goods are bought; (e) “resale price maintenance”, that is to say, an agreement to sell goods on condition that the prices to be charged on the resale by the purchaser shall be the prices stipulated by the seller unless it is clearly stated that prices lower than those prices may be charged.				
	15(4)-Nothing contained in sub-section (1) shall restrict: (i) the right of any person, to restrain any infringement of, or for protecting intellectual property rights conferred under the intellectual property law, to impose reasonable conditions.	NA	<ul style="list-style-type: none"> <li>Mentioning the extent to which reasonable conditions can be imposed to protect intellectual property rights.</li> </ul>	NA	NA
	16- Abuse of dominant position	NA	NA	<ul style="list-style-type: none"> <li>Provision mentioning the threshold of the dominant position.</li> </ul>	NA
	18- Inquiry, etc.: If the Commission has reason to believe that any enterprise has entered into any agreement or misused dominant position which is harmful to the relevant market, the Commission may, suo-moto or on	NA	<ul style="list-style-type: none"> <li>Providing detailed procedure of the inquiry.</li> </ul>	NA	NA

Chapter	Stated provision in the Competition Act, 2012	Unchanged	Extension	New inclusion	Drop
	receipt of complaint from any one, inquire into the matter. (2) The Commission may make regulations regarding the procedures of inquiry under sub-section (1).				
<b>Chapter Four</b>	21- Prohibition of combination	NA	<ul style="list-style-type: none"> <li>The term 'Merger and Acquisition regulation' can be used instead of 'Prohibition'.</li> </ul>	NA	NA
<b>Chapter Five</b>	29- Review of orders of Commission, appeal, etc.: (1) Any person aggrieved by an order of the Commission may, within 30 (thirty) days from the date of such order, on payment of such fees and in such form as may be prescribed by regulations, make an application- (a) to the Commission for review; or (b) to the Government for appeal	NA	NA	<ul style="list-style-type: none"> <li>Provisions for an appeal to the High Court instead of the Government.</li> <li>Appeal procedure can be done by the High Court or special tribunal headed by the justice of the Supreme Court instead of the Chairperson.</li> </ul>	NA
<b>Chapter Six</b>	31(6) - The surplus money of the fund shall be deposited to the Consolidated Fund of the Bangladesh government.	NA	<ul style="list-style-type: none"> <li>Allocating the surplus money of the Competition Fund for betterment and</li> </ul>	NA	NA



Chapter	Stated provision in the Competition Act, 2012	Unchanged	Extension	New inclusion	Drop
			advancement of the Commission.		
<b>Chapter Seven</b>	35- Offences committed by companies, etc.: (1) If any offence under this Act is committed by any company, the owner, Director, Manager, Secretary or any other officer or employee or agent of the company having direct involvement in such offence shall be deemed to have committed the offence, unless he proves that the offence was committed beyond his knowledge or that he exercised all due diligence to prevent the commission of such offence.	NA	<ul style="list-style-type: none"> <li>There is no such provision for offences committed by Trade Associations.</li> </ul>	NA	NA
	36-Restriction on disclosure of information: (2) If any officer or employee of the Commission violates the provisions of sub-section (1), departmental or legal proceedings shall be taken against him.	NA	<ul style="list-style-type: none"> <li>Provision of legal proceedings against the Chairperson or any Member of the Commission if s/he violates Section 36(1).</li> </ul>	NA	NA

Source: Author's compilation from various sources and KIs

## 5. Conclusion

A detailed review of the Competition Act, 2012 using **mixed methodology** has been carried out and some striking findings have been noted. From desk review, secondary analysis, and KIs, we have pointed out some substantial issues of the Act, implementation challenges, and its relevance to the current business scenarios and changing global trade patterns. The review also compared the competition law of Bangladesh with some of the remarkable successes of South-Asian, South-East Asian countries.

Our primary **findings** draw attention to the provisions of the Competition Act, 2012, and the overall business set-up of Bangladesh. The provisions are well-thought but in some cases, the lack of coordination among the implementing authorities limits the effectiveness of the Act. The current Act is unable to fully address the present changing trade dynamics as both goods and services markets are dynamic in nature. With the introduction of new and innovative technology, the pattern and context of markets are changing rapidly. The current physical market in some extent have converted into a digital one. So to address the changed situation, new tools must be introduced to detect the anti-competitive practices. The structure and efficiency of the Commission must be upgraded to ensure proper implementation of the Act. Along with this, the lack of monitoring and evaluation on the retail markets, corruption among different relevant agencies, lack of resources to implement the legislation, and inadequate power to intervene in the e-commerce marketplace are some of the major bottlenecks for the implementation of the Competition Act, 2012.

Against these findings, we have provided some specific **recommendations** for a proper formulation and efficient implementation of future competition law. Analysis of policy gaps is recommended in this regard. The gaps from the existing Act must be identified and the future act must be designed by fixing the gaps. Consumer policy covers broader issues than the competition policy and it is one of the key tools towards the implementation of competition law and policy. Liberalized trade policy brings positive outcomes to the consumer and can lead to efficient market operation. On the other hand, anti-corruption policies will stop anti-competitive practices like bid-rigging and others. So this is very essential to adopt and implement all other concerned policies and laws toward the effective implementation of competition law. The role of the Competition Commission is very vital in implementing the Act. The Commission should be transparent, free from executive and political interference in a real sense, and neutral in conducting its operations. Ensuring strong coordination among the concerned agencies and ministries will enhance the performance of the Commission. The Chairperson and the Members of the Commission should be appointed among those who are experts and possess professional knowledge in economics, law, anti-trust regulation, business, and administration. Advocacy and awareness programs need to conduct on a regular and mandatory basis among all the relevant stakeholders to uphold the competitive regime. Building good ties and relationships among the regional and global competition authorities such as UNCTAD, International Competition Network (ICN), OECD-GFC, etc.

## References

- Ahn, S. (2002). Competition, Innovation and Productivity Growth: A Review of Theory and Evidence. *SSRN Electronic Journal*. Published. <https://doi.org/10.2139/ssrn.318059>
- APEC. (1999, December). *Study on Competition Laws for Developing Economies, 1999* (APEC#99-CT-01.1). <https://www.apec.org/Publications/1999/12/Study-on-Competition-Laws-for-Developing-Economies-1999>
- Arnold, J. M., Nicoletti, G., & Scarpetta, S. (2011). Does Anti-Competitive Regulation Matter for Productivity? Evidence from European Firms. *IZA Discussion Paper No. 5511*. Published. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1765677](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1765677)
- Bhuiyan, M. A. U. (2021, June 17). The Competition Commission of Bangladesh and regulatory agency-academia nexus. *The Business Standard*. <https://www.tbsnews.net/thoughts/competition-commission-bangladesh-and-regulatory-agency-academia-nexus-262036>
- Caves, R. E. (1996). *Multinational Enterprise and Economic Analysis (Cambridge Surveys of Economic Literature)* (2nd ed.). Cambridge University Press.
- Chikán, A. (2008). National and firm competitiveness: a general research model. *Competitiveness Review: An International Business Journal*, 18(1/2), 20–28. <https://doi.org/10.1108/10595420810874583>
- Choi, Y. S., & Heinemann, A. (2020). Competition and Trade: The Rise of Competition Law in Trade Agreements and Its Implications for the World Trading System. *World Competition*, 43(4), 521–542. <https://kluwerlawonline.com/journalarticle/World+Competition/43.1/WOCO2020026>
- Conrad, C. A. (2005). *Improving International competition order an institutional approach* (1st ed.). New York: Palgrave Macmillan.
- Cook, P., Fabella, R., & Lee, C. (2008). *Competitive Advantage and Competition Policy in Developing Countries (The CRC Series on Competition, Regulation and Development)*. Edward Elgar Publishing.
- CUTS. (2002). *Challenges in Implementing a Competition Policy and Law: An Agenda for Action* (ISBN: 81–87222-54-9). CUTS International.
- CUTS. (2006). *Promoting competition policy & law in Bangladesh a civil society perspective*. <http://www.beibd.org/images/publication/whc4f4b94377bdf6.pdf>
- GAO. (2001). *FREE TRADE AREA OF THE AMERICAS Negotiators Move Toward Agreement That Will Have Benefits, Costs to U.S. Economy* (No. 01–1027). <https://www.gao.gov/products/gao-01-1027>

- Gutmann, J., & Voigt, S. (2014). Lending a Hand to the Invisible Hand? Assessing the Effects of Newly Enacted Competition Laws. *SSRN Electronic Journal*. Published. <https://doi.org/10.2139/ssrn.2392780>
- Hartzenberg, T. (2006). Competition Policy and Practice in South Africa: Promoting Competition for Development Symposium on Competition Law and Policy in Developing Countries. *Northwestern Journal of International Law and Business*, 26(3).
- Hayek, F. A. (1948). *Individualism and Economic Order*. The University of Chicago Press.
- Holdsworth, S. W. S. (1937). *A History of English Law* (2nd ed, Vol. 7). Sweet & Maxwell Ltd.
- Hubbard, S. (2017), How monopolies make gender inequality worse, *Forbes magazine*. <https://www.forbes.com/sites/washingtonbytes/2017/12/20/how-monopolies-make-gender-inequality-worse-and-concentratedeconomic-power-harms-women/?sh=6857c3d5429e#379831911b11>.
- Khan, O. H. (2020, January 31). Competition law and sustainable development. *Dhaka Tribune*. <https://www.dhakatribune.com/law-and-rights/2020/01/31/competition-law-and-sustainable-development-2>
- Laffont, J. J., & N'Guessan, T. (1999). Competition and corruption in an agency relationship. *Journal of Development Economics*, 60(2), 271–295. [https://doi.org/10.1016/s0304-3878\(99\)00056-5](https://doi.org/10.1016/s0304-3878(99)00056-5)
- Lever, J. (1967). *The law of restrictive trade practices and monopolies* (2nd ed). Sweet & Maxwell Ltd. <https://doi.org/10.1093/iclqaj/16.2.575>
- Ma, T. C. (2011). The Effect of Competition Law Enforcement on Economic Growth. *Journal of Competition Law and Economics*, 7(2), 301–334. <https://doi.org/10.1093/joclec/nhq032>
- Mariotti, S., & Marzano, R. (2021). The effects of competition policy, regulatory quality and trust on inward FDI in host countries. *International Business Review*, 30(6). <https://doi.org/10.1016/j.ibusrev.2021.101887>
- Mondal, W. I., & Ahmad, A. K. M. U. (2006). Government policy and competitive business environment in Bangladesh: a case study. *International Journal of Quality and Productivity Management*, 6(1), 15–26. <http://www.isqpm.org/2006%20Journal/Government%20policy%20and%20competitive%20business%20environment%20in%20Bangladesh%20by%20Mondal%20and%20Ahmad.pdf>
- OECD. (2014). *Factsheet on how competition policy affects macro-economic outcomes*. <https://www.oecd.org/daf/competition/2014-competition-factsheet-iv-en.pdf>

- Petersen, N. (2013). Antitrust Law and the Promotion of Democracy and Economic Growth. *Journal of Competition Law and Economics*, 9(3), 593–636. <https://doi.org/10.1093/joclec/nht003>
- Pike, C. (2018). What's gender got to do with competition policy? On the level OECD Blog.
- Rahman, M. M., & Islam, M. R. (2020). Competition Policies and Laws in Bangladesh: A Tool to Redress The Suffering of The Citizen As Well As to Protect The Interest of The Businessmen. *International Journal of Multidisciplinary Sciences and Advanced Technology*, 1(1), 5–12.
- Resch, A. (2005). Phases of Competition Policy in Europe. *UC Berkeley: Institute of European Studies*. Published. <https://escholarship.org/uc/item/7wr2g49j>
- Saieed, A. (2014). Competitive Market Environment and Implementation Mechanism of Competition Law in Bangladesh: Lesson from Other Countries. *International Journal of Social and Economic Research*, 4(2), 100. <https://doi.org/10.5958/2249-6270.2014.00488.7>
- Santacreu-Vasut, E., & Pike, C. (2019). Competition Policy and Gender. *SSRN Electronic Journal*. Published. <https://doi.org/10.2139/ssrn.3487726>
- Stucke, M. E. (2012). What is competition? In *The goals of competition law* (Daniel Zimmer ed., pp. 27–51). Edward Elgar Publishing.
- Tania, S., & Bilkis, A. (2021). Competition Law in Bangladesh: Towards Achieving Inclusive Sustainable Development. *Australian Journal of Asian Law*, 21(2), 159–179. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3875215](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3875215)
- The Financial Express. (2021, September 21). Competition commission to sue e-commerce firms giving unusual offers. *The Financial Express*. <https://thefinancialexpress.com.bd/trade/competition-commission-to-sue-e-commerce-firms-giving-unusual-offers-1632243745>
- UNCTAD. (2007). *Model Law on Competition*. United Nations.
- Wang, X. (2008). Highlights of China's New Anti-monopoly Law. *American Bar Association*, 75(1), 133–150. <https://www.istor.org/stable/27897572>
- White, L. J. (2008). The Role of Competition Policy in the Promotion of Economic Growth. *SSRN Electronic Journal*. Published. <https://doi.org/10.2139/ssrn.1129833>
- World Bank. (2020). *South Asia Economic Focus, Fall 2020: Beaten or Broken? Informality and COVID-19*. <http://hdl.handle.net/10986/34517>
- WTO. (2003). *Report of the Working Group on the Interaction Between Trade and Competition Policy* (No. 03–3876). World Trade Organization.

[https://docs.wto.org/dol2fe/Pages/FE\\_Search/FE\\_S\\_S006.aspx?Query=\(@Symbol=%20wt/wgtcp/\\*%20not%20m%20or%20w\)%20and%20\(@DocumentType=%20report\)%20and%20\(@Title=%20working%20group%20on%20the%20interaction%20between%20trade%20and%20competition%20policy%20not%20draft\)&Language=ENGLISH&Context=FomerScriptedSearch&languageUIChanged=true#](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?Query=(@Symbol=%20wt/wgtcp/*%20not%20m%20or%20w)%20and%20(@DocumentType=%20report)%20and%20(@Title=%20working%20group%20on%20the%20interaction%20between%20trade%20and%20competition%20policy%20not%20draft)&Language=ENGLISH&Context=FomerScriptedSearch&languageUIChanged=true#)

Yang, M. C. (2009). Competition Law and Policy of the Republic of Korea. *The Antitrust Bulletin*, 54(3), 621–650. <https://doi.org/10.1177/0003603x0905400304>

## Annexure

### KIIs conducted for the review of the Competition Act, 2012-

<b>Organization/Association</b>	<b>Key informants</b>
Representatives from the Competition Commission	• Mr. Md. Khalid Abu Naser (Ex-Director, BCC)
Ministry of Commerce	• Mr. A H M Shafiquzzaman (Additional Secretary IIT)
Representatives from the business communities	• Mr. Fahim Mashroor, CEO, Ajkerdeal.com.bd & bdjobs.com
Experts/professionals on market competition	• Dr. Mohammed Helal Uddin (Professor, DU)

### Team composition-

<b>Name of staff</b>	<b>Area of expertise relevant to the assignment</b>	<b>Designation for this assignment</b>	<b>Assigned tasks or deliverables</b>
Dr. Bazlul Haque Khondker	Economist, Institutional analysis expert, Survey expert, FGD and KII expert	Team Leader	Finalize questionnaire, FGD, and KII checklists, Evaluation, and analysis, Draft synthesizing summary, Draft short summaries Finalizing reports
Dr. Selim Raihan	Economist, Political economy and institutional analysis expert, Survey expert, FGD and KII expert	Co-Team Leader, Trade Expert	Coordinating and monitoring the team, monitoring all the activities performed by the team members, finalizing questionnaire, FGD, and KII checklists, evaluation, and analysis draft synthesizing summary and finalizing reports.
Mahtab Uddin	Policy analysis and evaluation, Survey expert, FGD and KII expert	Policy Analyst	Monitoring all the activities performed by the team members, finalizing questionnaire, FGD and KII checklists, evaluation, and analysis, draft synthesizing summary and finalizing reports.
Mohammad Golam Sarwar	Legislative consultant, development law practitioner	Legal Expert	Analysing the legal terms and provisions of the study, identifying the possible grounds of alterations, extensions, and exclusion of current legal provisions, providing legal recommendations.

<b>Name of staff</b>	<b>Area of expertise relevant to the assignment</b>	<b>Designation for this assignment</b>	<b>Assigned tasks or deliverables</b>
Recardo Saurav Antor Halder	Data analyst, Survey Experts	Senior Research Associate	Desk review, analysing secondary data, designing questionnaires for KIIs, supervising and conducting FGDs, analysing primary data, and drafting the reports.
Sakil Ahmed	Data analyst, Survey Experts	Research Associate	Desk review, analysing secondary data, designing survey questionnaires for KIIs, supervising the survey, conducting FGDs, analysing primary data, and drafting the reports.
Zareen Tasnim	Data analyst, Survey Experts	Research Associate	Research and analysis of relevant literature, primary and secondary data, supervising and conducting KIIs and FGDs.
Afia Mubasshira Tiasha	Data collection and Supervision	Research Assistant	Desk Review, developing KII questionnaire, assisting in conducting the KIIs, conducting FGDs.
Shithee Ahmed	Data collection and drafting	Intern	Conducting KIIs and FGDs, and transcribing.
Halima Binte Islam	Data collection and drafting	Intern	Conducting KIIs and FGDs, and transcribing.





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