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# The Competition Act of 2012 and Bangladesh Competition Commission: Challenges and Possible Solutions

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## ABSTRACT

*Bangladesh enacted the Competition Act in 2012 to ensure consumers' access to goods and services at a reasonable cost and affordable means providing that the producers in the market do not abuse their market power. It is hoped that the law will improve production and pricing efficiency, benefiting both consumers and producers. As the main regulative body under the said Act, the Bangladesh Competition Commission has been established in 2016 to deal with the implementation and adjudication under the Act. However, implementation and execution of competition laws have always been major challenges for Bangladesh and questions remain regarding how effective this law will actually prove to be. Several issues like ambiguous provisions, institutional capacity, power and role of the Bangladesh Competition Commission etc. put stress on the successful implementation of competition regime in this country. This article aims at the effectiveness of the Act and the Competition Commission, their challenges and possible solutions thereto.*

**Keywords:** *Competition Act, Competition Commission, Competition Law, Bangladesh.*

## I. INTRODUCTION

Ensuring a competitive market now-a-days is considered vital for sustainable economic growth. It's one of the prioritized segments of contemporary market-oriented economic reform that a country should achieve as competitive markets provide more opportunities for the poor with employment and own small business set up. Moreover, competitive markets facilitate wider choice of goods and services for consumers at lowest possible prices and best quality is generally ensured. Fair and sustainable competition creates environment for firms to minimise their costs and pass on the cost reductions to consumers. In this way, consumers, especially the poor, can get value for money.<sup>2</sup>

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<sup>2</sup> PRADIP S MEHTA & MANISH AGARWAL, TIME FOR A FUNCTIONAL COMPETITION POLICY AND LAW IN INDIA: MAINSTREAMING COMPETITION PRINCIPLES INTO POLICY AND LEGAL FRAMEWORK IS PRO-DEVELOPMENT, CUTS INTERNATIONAL 2 (2006), at <https://www.cuts-international.org/pdf/compol.pdf>

Market Players often play unfair in the competition measurement causing failure to the market with various anti-competitive measures like anti-competition agreements, abuse of dominance and anti-competitive mergers and acquisitions etc. That's why many countries have either enacted a competition law to check such behaviours of the market players in addition to economic reform process. Competition law generally lays down legal principles and institutions that govern the behaviour of firms in markets including restrictive trade practices, merger scrutiny, provisions to deal with abuse of dominance, cartels etc. A competition law, in addition to these contains institutional and enforcement design and competition advocacy.<sup>3</sup> Main purpose of competition laws are said to prohibit agreements among supposed competitors to fix prices, divide markets, or in other ways avoid or undermine market competition.<sup>4</sup>

Developing economies need competition law for several reasons, all aimed at fostering a healthy, dynamic market environment that can drive economic growth, innovation, and consumer welfare. A sustainable competition law fosters attaining economic development through growth and attractive investment, regulating Mergers and Acquisitions to prevent market concentration and foster competition and attaining global standards through harmonization of law and policy along with international standard compliance.<sup>5</sup>

The inception of competition law in Bangladesh marks a pivotal step towards establishing a fair and dynamic market environment. The Competition Act of 2012<sup>6</sup> (hereinafter cited as CA2012) was designed to curb monopolistic tendencies, promote healthy competition, and safeguard consumer interests, the legislation heralded a new era of regulatory framework aimed at fostering economic efficiency and innovation.

At its core, CA2012 seeks to prevent practices that distort competition, such as cartels, abuse of dominance, and anti-competitive mergers and acquisitions.<sup>7</sup> By prohibiting agreements that restrict competition and imposing penalties for violations, the law aims to create a level playing field wherein businesses can thrive based on merit and efficiency rather than undue advantage.

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<sup>3</sup> *Id.* p 4.

<sup>4</sup> Umut Aydin & Tim Buthe, *Competition Law & Policy in Developing Countries: Explaining Variations in Outcomes; Exploring Possibilities and Limits*, Law and Contemporary Problems, 2016, at 3.

<sup>5</sup> In South Africa, the Competition Act of 1998 has been instrumental in promoting competition and curbing anti-competitive practices in South Africa. It has helped in addressing issues related to monopolies and ensuring fair market practices, contributing to economic growth and consumer welfare. The Competition Act of 2002, enforced by the Competition Commission of India (CCI), has played a significant role in curbing anti-competitive practices, promoting fair competition, and protecting consumer interests. This has led to increased market efficiency and economic development. Kenya's Competition Act, 2010, has helped in creating a regulatory framework that promotes competition, protects consumers, and ensures a level playing field for all businesses. This has been crucial in fostering a competitive business environment and attracting investments.

<sup>6</sup> The Competition Act 2012, No. 23, Acts of Parliament, 2012 (Bangladesh).

<sup>7</sup> *Id.* Preamble.

The Competition Commission of Bangladesh (hereinafter cited as CCB) formed in 2016, is tasked with promoting and maintaining market competition, primarily through the enforcement of CA2012. Its functions include *inter alia* Monitoring and Preventing Anti-Competitive Practices, Regulating Unfair Trade Practices, Advocacy and Guidance, Adjudicating Complaints, Protecting Consumer Interests and Promoting Economic Efficiency.

Despite its commendable objectives, the implementation of the Act has faced numerous challenges, including inherent ambiguous provisions, limited institutional capacity and lack of independence, concurrent jurisdiction, lack of expertise and training in personnel, lack of awareness among businesses, and evolving market dynamics that continually test its effectiveness. As Bangladesh continues its economic growth trajectory, addressing these challenges is crucial for CCB to effectively safeguard consumer interests and promote a competitive business climate. This article delves into the intricate landscape of competition law in Bangladesh, examining the persistent problems and exploring the potential prospects for reform and improvement.

## II. HISTORICAL BACKGROUND OF CA2012

The Monopolies and Restrictive Trade Practices (Control and Prevention) Ordinance of 1970<sup>8</sup> (MRTPO) passed by the Government of Pakistan is considered the precursor of competition law of Bangladesh. It regulated three anti-competitive behaviours that were considered most detrimental to competitive environment *i.e.* undue concentrations of economic power, unreasonable monopoly power and unreasonably restrictive trade practices. This Ordinance provided for a Monopoly Control Authority but the Government of Bangladesh did never implement the Act. In 1990, Bangladesh experienced unprecedented levels of trade liberalization and went for establishing a more appropriate regime for maintain fair competition in the market. Later, CA2012 was enacted for Bangladesh in response to the country's commitment to integrating into the global trade and the structural reforms promoted by the International Monetary Fund and the World Bank.<sup>9</sup>

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<sup>8</sup> The Monopolies and Restrictive Trade Practices (Control and Prevention) Ordinance, 1970, Order 5 of President (Bangladesh).

<sup>9</sup> SELIM RAIHAN, COMPETITION POLICY AND COMPETITIVE MARKETS IN BANGLADESH', in PAUL COOK, RAUL FABELLA & CASSEY LEE (eds. 2007), COMPETITIVE ADVANTAGE AND COMPETITION POLICY IN DEVELOPING COUNTRIES. CHELTENHAM AND NORTHAMPTON: EDWARD ELGAR PUBLISHING LTD.

### III. THE COMPETITION ACT OF 2012: SALIENT FEATURES

#### (A) Scope and application

UNCTAD Model Law template<sup>10</sup> on Competition for developing countries is comparable with the preamble of CA2012 in Bangladesh as it is said to regulate certain anti-competitive practices like collusion, monopoly and oligopoly, combination or abuse of dominant position or activities adverse to the competition.<sup>11</sup> The jurisdiction of CA2012 is applied any institution, company, society, partnership business, firm or statutory body or any other organization or any agent thereof under the definition of person.<sup>12</sup> CA2012 applies to all enterprises engaged in the commercial activities of ‘purchase-sale, production, supply, distribution or storage’ of goods and services<sup>13</sup> and Section 4 provides an exemption for the government only on national security grounds and for ‘any activity relating to the currency or defence of the Government’.<sup>14</sup>

Under section 22, the Commission is given an extra-territorial power to make an inquiry when an anti-competitive conduct is committed outside of Bangladesh but has an adverse effect on competition in the relevant market in Bangladesh.<sup>15</sup>

#### (B) Regulated practices under CA2012

The CA2012 sets out mainly to prohibit three categories of anti-competitive practices like anti-competition agreements; abuse of dominant position; and combination.

##### a) Anti-competition agreements

Both horizontal and vertical anti-competition agreements<sup>16</sup> have been dealt under section 15 of the CA2012.<sup>17</sup> This section prohibits cartels,<sup>18</sup> price fixation, bid rigging, output restricting agreements, geographical market division.<sup>19</sup> Other forms of agreements like tie-in arrangement,

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<sup>10</sup> UNCTAD Model Law on Competition framed the objectives of competition law as: ‘To control or eliminate restrictive agreements or arrangements among enterprises, or mergers or acquisition or abuse of dominant positions of market power, which limit access to markets or otherwise unduly restrain competition, adversely affecting domestic and international trade or economic development’. UNCTAD, MODEL LAW ON COMPETITION: UNCTAD SERIES ON ISSUES IN COMPETITION LAW AND POLICY, SUBSTANTIVE POSSIBLE ELEMENTS FOR A COMPETITION LAW, COMMENTARIES AND ALTERNATIVE APPROACHES IN EXISTING LEGISLATIONS 3 (2007). NEW YORK AND GENEVA: UNITED NATIONS.

<sup>11</sup> *Supra* note 6.

<sup>12</sup> *Id.* sec 2(1)(1).

<sup>13</sup> *Id.* Sec 3.

<sup>14</sup> *Id.* sec 4 & 2(m).

<sup>15</sup> *Id.* sec 22.

<sup>16</sup> Horizontal agreements occur between enterprises or businesses at the same level, such as between two manufacturers while vertical agreements occur between enterprises at different levels, such as between manufacturer and distributor, or distributor and retailer.

<sup>17</sup> *Supra* note 6, sec 15.

<sup>18</sup> *Id.* sec 15(1).

<sup>19</sup> *Id.* sec 15(2)(a).

exclusive supply and distribution, refusal to deal and resale price maintenance agreements shall be deemed to be an anti-competition agreement if they have adverse effect on competition.<sup>20</sup>

### **b) Abuse of dominance**

The CA2012 declares general prohibition of abuse of dominance<sup>21</sup> which is presumed if an enterprise does certain act(s).<sup>22</sup>

The term “dominant position” comprises under CA2012 as a position of strength enjoyed by an enterprise in the relevant market that enables it to operate independently of competitive forces prevailing in the relevant market; or affect its competitors or consumers or the relevant market in its favour.<sup>23</sup>

### **c) Prohibition on combination**

Combination has been defined under CA2012 as ‘acquisition or taking control or amalgamation or merger in trade’.<sup>24</sup> Section 21(1) prohibits combination ‘which causes or is likely to cause an adverse effect on competition in the market of goods or services’.<sup>25</sup> The breach of combination rule constitutes in an offence under s 19 of the CA2012.<sup>26</sup> The Bangladesh Competition Commission may approve a combination “on application”, after assessing that they will not have an adverse effect on competition; otherwise, the Commission may forbid the operation.

## **(C) Enforcement mechanism under CA2012**

### **a) Varied functions of CCB**

The main duties, powers and functions of the CCB as the core institution having power to enforce the CA2012 and to promote and maintain sustainable market competition are ‘to eliminate practices having adverse effect on competition in the market, to promote and to sustain competition and to ensure freedom of trade’.<sup>27</sup>

Core functions of CCB include receiving complaints on anti-competitive practice,<sup>28</sup> conducting

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<sup>20</sup> *Id.* sec 15(3).

<sup>21</sup> *Id.* sec 16(1).

<sup>22</sup> These acts include directly or indirectly imposing of unfair or discriminatory conditions in the purchase or sale of goods or service or discriminatory price or predatory price in the purchase or sale of goods or service, limiting or restricting the production of goods or provision of services or market thereof or technical or scientific development relating to goods or services to the prejudice of consumers, indulging in practice or continues to conduct practices which deny the market access of others, making the conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts or using its dominant position in one relevant market to enter into or protect another relevant market. *Id.* sec 16(2).

<sup>23</sup> *Id.* explanation (i) to sec 16.

<sup>24</sup> *Id.* sec 2(h).

<sup>25</sup> *Id.* sec 21(1).

<sup>26</sup> *Id.* sec 19.

<sup>27</sup> *Id.* sec 8(1)(a).

<sup>28</sup> *Id.* sec 8(1)(b).

pre-inquiries,<sup>29</sup> conducting inquiries and using field experts for inquiry,<sup>30</sup> power to investigate through issuance summons, ordering discovery and production of documents, books, accounts related to trade, examining information, and taking any necessary action for the purpose of investigation,<sup>31</sup> determining and approving (or disapproving) combination,<sup>32</sup> and lodging complaints with the court in respect of an anti-competition conduct.<sup>33</sup> As of legislative power concerns, the CCB can make rules, policy, instructions, notifications and regulations.<sup>34</sup> It's also entrusted with adjudicatory or judicial functions since it can issue an interim order to the party in breach of competition law,<sup>35</sup> and deliver the final order by restraining a person from continuing anti-competitive conduct and imposing a penalty.<sup>36</sup> CCB also performs the role of pursuing competition advocacy<sup>37</sup> in addition to its administrative functions.<sup>38</sup> The CCB now maintains its function through five divisions, namely administrative division, advocacy, policy and international relations division, inquiry and investigation division, business, trade, economy and research division and law and implementation division.<sup>39</sup>

#### **(D) Redressal mechanism under CA2012**

CCB can act with a complaint or it can act *suo moto* or on its own motion.<sup>40</sup> Section 8(1)(b), 8(2) and 18 of CA2012 have laid down basic provisions on conducting inquiries.<sup>41</sup> CCB has already issued an office order on 30 October 2017 (No 26.12.0000.104.22.021.17-251) elaborating the interim rules of procedure for investigation.<sup>42</sup>

On receiving complaint, the Chairperson of CCB sends it to the investigation unit for preliminary inquiry under section 1 and 2 or for a full investigation or Inquiry under section 4 and 5 of office order for interim rules of procedure for investigation.<sup>43</sup> CCB chairman has an

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<sup>29</sup> *Id.* sec 17.

<sup>30</sup> *Id.* sec 8(1)(b)(c) & 8(5).

<sup>31</sup> *Id.* sec 8(4).

<sup>32</sup> *Id.* sec 8(1)(d).

<sup>33</sup> *Id.* sec 25(2).

<sup>34</sup> *Id.* sec 8(1)(e) & 18(2).

<sup>35</sup> *Id.* sec 19.

<sup>36</sup> *Id.* sec 8(1)(e) & 18(2).

<sup>37</sup> *Id.* sec 8(1)(f)-(j).

<sup>38</sup> *Id.* sec 8(1)(k)-(m).

<sup>39</sup> Annual Report (FY 2022-2023), Competition Commission of Bangladesh 30 (2023), at [https://ccb.gov.bd/sites/default/files/files/ccb.portal.gov.bd/annual\\_reports/6ec93ed9\\_5616\\_4be3\\_8da2\\_ad5c5271f2a4/2024-05-20-06-09-ced677d4c00d0f664e03825350bd4a4b.pdf](https://ccb.gov.bd/sites/default/files/files/ccb.portal.gov.bd/annual_reports/6ec93ed9_5616_4be3_8da2_ad5c5271f2a4/2024-05-20-06-09-ced677d4c00d0f664e03825350bd4a4b.pdf)

<sup>40</sup> *Supra* note 6, sec 18.

<sup>41</sup> *Id.* sec 8(1)(b), 8(2) & 18.

<sup>42</sup> Office Order, Competition Commission of Bangladesh, No 26.12.0000.104.22.021.17-251 (October 30, 2017), at [https://ccb.gov.bd/sites/default/files/files/ccb.portal.gov.bd/office\\_order/f1b46632\\_36a2\\_439a\\_a505\\_1cda47132f3c/Inquiry%20and%20Investigation.pdf](https://ccb.gov.bd/sites/default/files/files/ccb.portal.gov.bd/office_order/f1b46632_36a2_439a_a505_1cda47132f3c/Inquiry%20and%20Investigation.pdf)

<sup>43</sup> *Id.* sec 1,2,4 & 5.

option to settle the matter after report from such unit.<sup>44</sup> Duties are vested to investigation unit to identify breaches of provisions of CA2012, provide reasoning and if necessary to seek help from experts before presenting the inquiry report to the CCB.<sup>45</sup> CCB follows due process of natural justice (notice and hearing) in both pre-inquiry and formal inquiry proceedings under which is also extended to third party.<sup>46</sup> After being satisfied that parties are engaged in anti-competitive conduct, the CCB can give final order<sup>47</sup> or can also issue interim order in such situation.<sup>48</sup> Any aggrieved party can seek review before the CCB or can lodge appeal to the government against any impugned order.<sup>49</sup>

Court of first-class magistrate or metropolitan magistrate<sup>50</sup> can try offences regarding contravention of orders of commission<sup>51</sup> upon complaint from CCB or authorised person on its behalf.<sup>52</sup> Court of Sessions Judge are designated to hear appeal from such trial of magistrate court.<sup>53</sup>

#### **(E) Punishment and sanctions**

Section 20 empowers CCB to take proceedings like order of discontinuation of activities and not to re-enter into such agreement in case of anti-competition agreements and abuse of dominance.<sup>54</sup> The CCB can also impose administrative financial penalty which may not exceed 10% of the average of his turnover for the last 03 (three) preceding financial years for such offence.<sup>55</sup>

For cartel under section 5 of the CA2012, the CCB can impose upon every person included in that cartel an administrative financial penalty of up to 03 (three) times of its profit for each year of the continuance of such agreement or 10% of the average of his turnover for the last 03 (three) preceding financial years, whichever is higher.<sup>56</sup> If any person fails to pay the financial penalty of the aforementioned offences, CCB can impose fine not more than 1 (one) lac for each day<sup>57</sup> or pass any order for preservation of competition including division of an enterprise enjoying

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<sup>44</sup> *Id.* sec 4 & *Supra* note 6, sec 17.

<sup>45</sup> *Supra* note 41, sec 6 & 7.

<sup>46</sup> *Id.* sec 8.

<sup>47</sup> *Id.* sec 11 & & *Supra* note 6, sec 20.

<sup>48</sup> *Supra* note 6, sec 19.

<sup>49</sup> *Id.* sec 29.

<sup>50</sup> *Id.* sec 25(2).

<sup>51</sup> *Id.* sec 24.

<sup>52</sup> *Id.* sec 25(1).

<sup>53</sup> *Id.* sec 30.

<sup>54</sup> *Id.* sec 20(a)(i).

<sup>55</sup> *Id.*

<sup>56</sup> *Id.* sec 20(b).

<sup>57</sup> *Id.* sec 20(c).



dominant position.<sup>58</sup>

### **(F) Consumer Protection**

The Competition Act, 2012, does not have specific provisions on consumer protection, but the Bangladesh Competition Commission has the power to review the actions taken under any other law for consumer rights protection and implementation.<sup>59</sup>

## **IV. OVERVIEW OF SOME DECISIONS OF CCB**

One of the landmark cases involved the Retired Army Officers' Welfare Association (RAOWA) and Iqbal Hossain Catering. The CCB found that RAOWA had entered into an exclusive agreement with Iqbal Hossain Catering, which hindered competition by not allowing other caterers to operate in their convention hall. The Commission ordered the termination of this agreement, requiring RAOWA to enlist multiple catering service providers, thus fostering a competitive environment.<sup>60</sup>

In another case, CCB observed that Chittagong C&F had been engaging in 'cartel', 'oligopoly' and 'exclusion' of non-compliant C&F agents since 1993 and thereby breached ss 15(1) and 15(2)(b) of the Competition Act. The Commission declared certain provisions of the Tender Rules and art 3(17) of their constitution invalid, with an order to amend the constitutional provision with approval from the relevant authority.<sup>61</sup>

In one recent notable case, CCB has fined Foodpanda with taka 10 lacs for abusing its dominant market position by implementing unfair practices against restaurant partners.<sup>62</sup> It has also fined CP Bangladesh taka 10 Lacs and Diamond Egg Limited Tk 2.5 Crores for egg price gouging in 2024.<sup>63</sup>

In another move, the CCB sued 44 companies in September 2022 for artificially raising the prices of essential commodities like rice, cooking oil, soap, flour, eggs, and chicken. The Commission acted upon evidence of price manipulation amid global supply chain disruptions due to the Russia-Ukraine war and the post-pandemic economic recovery. The hearings for these cases were scheduled to determine the appropriate legal actions against these companies.<sup>64</sup>

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<sup>58</sup> *Id.* sec 20(d).

<sup>59</sup> *Id.* sec 8(1)(j).

<sup>60</sup> Barrister M Sarwar Hossain v. Chairman, Executive Committee of the RAOWA and Iqbal Hossain Catering Services Ltd (Competition Case no 1/2018).

<sup>61</sup> Pacific International Trading v. Chittagong C&F Agents' Association Case (Competition Case No 2/2018).

<sup>62</sup> Saddam Hossain, 'Foodpanda hit with 10L fine for abuse of monopoly power', Dhaka Tribune, 16 January 2014, at <https://www.dhakatribune.com/business/336902/foodpanda-hit-with-10l-fine-for-unfair-market>

<sup>63</sup> Senior correspondent, 'Bangladesh Competition Commission fines CP, Diamond Tk 35m for egg price gouging', Bdnews24.com, 24 January 2024, at <https://bdnews24.com/business/xsmm8f5w6x>

<sup>64</sup> Senior correspondent, 'Bangladesh Competition Commission sues 44 firms over price hike', Bdnews24.com, 22

In suit 65/2022, the commission forbade Tie-in arrangements of Playpen School compelling students to buy books, stationaries and writing pads from school and to buy school dress and other sports dresses from a fixed tailoring shop and.<sup>65</sup>

As routine monitoring, administrative decisions have been taken to implement steps to prevent abnormal hike of price of rice, broiler, egg, sugar, paper<sup>66</sup> The CCB has also set up database of market study on three medicines of cardiac diseases, cement, electric cable, bottled drinking water, paper and LPG cylinder.<sup>67</sup>

## V. LACUNAS OF CA2012 AND CCB WITH POSSIBLE RECOMMENDATIONS FOR SUCCESSFUL IMPLEMENTATION OF COMPETITION REGIME IN BANGLADESH

### (A) The CA2012

#### i. Scattered provisions of prohibited anti-competitive practices

If we examine CA2012, we can see that definitions of anti-competitive practices are scattered within few sections of the Act. Section 15(2), if examined deeply, says about cartel and it should be clearly identified. Single section has been suggested to list all types of anti-competitive practices and separate sections are suggested for practices like cartels, exclusive dealing and resale price maintenance.<sup>68</sup>

#### ii. As to definition of some anti-competitive practices

Definition of cartel should remove clause like ‘in order to establish monopoly in trade’ and it is assumed that existing clauses like ‘Limiting or controlling or attempt to limit or control production, distribution, sale, price or transaction of goods or services’ should be sufficient to establish a cartel.<sup>69</sup> ‘Contract’ in s 2(g) should include all types of mutual consensus part from formal written contract as anti-competitive conducts could be engaged in by means other than contract. For example, refusal to transact may arise outside of a contract while Resale price maintenance could be initiated by intimidation or threat, which are not necessarily contractual in nature.<sup>70</sup>

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September 2022, at <https://bdnews24.com/business/k7pva1211u>

<sup>65</sup> *Supra* note 38, p 88.

<sup>66</sup> *Id.* pp 55-60.

<sup>67</sup> *Id.* pp 63-69.

<sup>68</sup> Sharmin Tania & Afroza Bilkis, *Competition Law in Bangladesh: Towards Achieving Inclusive Sustainable Development*, Australian Journal of Asian Law, Vol 21 No 2, 2021, pp. 175.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

### iii. Conducts under section 15

The conducts described in section 15(2)<sup>71</sup> has been made prohibited without exceptions and thus constituting a *per se* prohibition and not permitting an exemption on grounds of efficiency. It may create hardship and make this section out of progressive interpretation.

In CA2012, anti-competitive agreements listed exclusively under sections 15(2) and 15(3) rather than descriptive texts removing the flexibility to identify other possible anticompetitive agreements at the enforcement stage. It is hence recommended that this list should include clause like ‘any other conduct that may deemed as anti-competitive conducts under inquiry of the CCB’.

### iv. As to declaration of anti-competitive practices as offence

The CA2012 has not declared anti-competitive practices or non-compliance of order of CCB as offences. It has only mentioned an offence under section 19 dealing primarily with the powers of the Commission. This may cause serious impediment for the trial of the anti-competitive practices in future if challenged. Hence insertion of a separate section has been suggested declaring aforementioned acts or omissions as offences.

### v. Defining clauses of abuse of dominance

The CA2012 does not contain an indicative market share threshold for the presumption of dominance. It simply sets out that ‘dominant position’ means a position of strength enjoyed by an enterprise in the relevant market which enables it to operate independently of competitive forces prevailing in the relevant market; or affect its competitors or consumers or the relevant market in its favour.<sup>72</sup> Adding market share threshold can be easier for the CCB to determine abuse of dominance.

## (B) As to functions and powers of the CCB

### i. As to nomination and tenure of chairperson and members of CCB

The process for the nomination and appointment of the chairperson and members of the CCB has not been mentioned in CA2012. It’s claimed as practice that the Ministry of Commerce proposes nominees to the Prime Minister. The criteria for the selection of nominees and whether the selection is scrutinized by other public bodies and relevant stakeholders are unclear.<sup>73</sup> Inserting clear and unambiguous nomination process can make CCB stronger as to capacity of

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<sup>71</sup> These are price fixation, bid rigging, output restricting agreements and geographical market division.

<sup>72</sup> *Supra* note 6, explanation (i) to sec. 16(2).

<sup>73</sup> UNCTAD, VOLUNTARY PEER REVIEW OF COMPETITION LAW AND POLICY OF BANGLADESH: OVERVIEW (2022). NEW YORK AND GENEVA: UNITED NATIONS 5.

its core members. The tenure of three years under section 7(6) of CA2012<sup>74</sup> for members and chairman is too short for a new branch competition law. Its quite short to learn and master provisions relating to competition regulations. Hence this tenure can be extended to five years.

### **ii. Independence of CCB**

The CA2012 postulates CCB as an independent body with statutory status and perpetual succession as a body corporate.<sup>75</sup> Section 32 also provides that CCB is not required to get permission the Government to spend its budget.<sup>76</sup> These provisions indicate that CCB has autonomy in decision making and it's not under any ministry or department of the government. However, if we analyse several other sections, we can find that government has an extended degree of control and hegemony over the CCB. For instance, CCB is "bound by such directions of the Government on questions of policy other than those relating to the implementation [and] technical and administrative matters" under section 37.<sup>77</sup> Government can make rules to carry out the provisions of the CA2012 under section 43<sup>78</sup> and section 44 further states that rules framed by the CCB must be consistent with the CA2012 and such rule must be subjected to prior approval from the government.<sup>79</sup> Regarding appeal, section 29 indicates government as appellate authority against the decision of the CCB. However one can easily assume that such appeal shall be entertained by the Ministry of Commerce and thereby CA2012 places a ministry over the CCB.

Hence CA2012 should be amended to give CCB more autonomy for the effective implementation of the Act. CCB should be given co-decision making power to formulate policy on competition and it should have sole legislative powers to formulate rules regarding implementation of CA2012.

### **iii. Regarding concurrent investigative and adjudicative powers of CCB**

The CCB has own machinery to investigate through investigation unit and it plays adjudicatory role through decision. Such dual and concurrent role of a regulatory body has been severely criticized, as raised against the Federal Trade Commission of the USA, showing unfairness of the same persons who are initiating cases ultimately also making decisions in them.<sup>80</sup> However, CCB describes its Inquiry and Investigation Division as "separate and independent". In practice,

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<sup>74</sup> *Supra* note 6, sec 7(6).

<sup>75</sup> *Id.* sec 5(2).

<sup>76</sup> *Id.* sec 32.

<sup>77</sup> *Id.* sec 37.

<sup>78</sup> *Id.* sec 43.

<sup>79</sup> *Id.* sec 44.

<sup>80</sup> Terry Calvani & Angela Diveley, 'The FTC at 100: A Modest Proposal for Change', 21(5) *George Mason Law Review*, (2014) 1174.

one of the members of the CCB supervises this Division and certain measures have been adopted to protect the independence of the said division.<sup>81</sup>

#### **iv. Power of CCB regarding combination**

The CA2012 has laid down that the CCB can approve combination if there is sufficient proof that it will not create adverse effect on competition in the market of goods or services.<sup>82</sup> CA2012 however remain silent if such anti-competitive conducts are in place after the combination has been approved. Hence, there must be a provision providing power to the CCB that it can split any combination if there is sufficient proof that such combination resulted adverse effect on competition.

#### **v. Training and human resources under CCB**

Annual report of FY 2022-2023 shows that CCB has approved capacity of 78 staffs under its organogram but currently only 46 staffs are working there leaving 32 vacant posts.<sup>83</sup> With vast activities and monitoring functions, such vacancies should be fulfilled immediately to maintain a decent strength in human resource for the CCB. Most of the current senior staffs like directors, deputy directors, assistant directors, and other officials as observed by UNCTAD are relatively new to the organizations and only few of them have acquired competition related training in university degree and there has not been enough comprehensive in-house staff training.<sup>84</sup>

Unnayan Samannoy and CUTS International with the aid of OECD organized a nine-day training of trainers (TOT) program on 'Competition Policy and Law Issues in Bangladesh in July 2009 with 70 participants. It is not clear whether CCB is utilizing them for training. Authorized person from CCB is reluctant to provide any type of travelling allowances to trainer if he/she's is outside the capital city.<sup>85</sup>

#### **vi. Limited funds for broad mandate**

Competition Framework especially in young countries, rely on administrative authorities for the enforcement of competition law. Administrative agencies or statutory bodies are preferred over the courts because the complexity of anti-competitive matters which may require time and

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<sup>81</sup> These includes that investigation teams do not share anything with the CCB prior to final report. Both inquiry and investigation reports are submitted to the Commission in a sealed envelope. Only the Commission *en banc* can see the report. Commission members are not allowed to view the reports on their own. Moreover CCB has asked for amending its organizational structure adding a Director-General, more officer and staff to the Inquiry and Investigation Division to ensure separation of the said division. *Supra* note 72, p 7.

<sup>82</sup> *Supra* note 6, sec 21.

<sup>83</sup> *Supra* note 38, p 27.

<sup>84</sup> *Supra* note 72, p 10.

<sup>85</sup> The Author is a trainer under that program with having 17 years of teaching experience on competition law at university level. He refused to attend workshop for training of the staffs of the CCB when travelling allowance is denied by authorized contact person over telephone conversation.

resources unavailable to judges. For these reasons it is suggested that administrative agencies or statutory bodies should be adequately staffed and should have enough resources to fulfill the conditions for implementing relevant competition law.<sup>86</sup>

For fiscal year 2022–2023, the CCB, which covers a country of more than 164 million people, had a budget of approximately US\$726,808<sup>87</sup> which is low compared to peers in the region. For example, the Philippine Competition Commission, which operates in a country of approximately 110 million people, had a budget in 2018 that exceeded US\$9 million.<sup>88</sup>

### **vii. Caseloads and light on the reform of the adjudication framework for CCB**

In FY 2022-2023, 54 cases have been lodged before the CCB where 48 cases are CCB's *suo moto* proceedings and 6 cases are lodged upon complaints.<sup>89</sup> Pending cases moves to 66 in number where 47 cases are in hearing stage while 19 others are at investigation stage.<sup>90</sup> 12 writ petitions are pending in the Supreme Court of Bangladesh where case from 2017 has not been settled yet.<sup>91</sup> It's evident that CCB has undergone massive case pressure in this FY (2022-2033) which is higher than last 5 years (2017-2022).<sup>92</sup>

In practice, Ministry of Commerce Acts as the appellate authority against the decision of the CCB and aggrieved parties, in generally, seek remedy through writ petition<sup>93</sup> in Supreme Court under article 102 of the Constitution of the People's Republic of Bangladesh.<sup>94</sup>

Such frequent resort to apex court with delayed adjudication therein is slowing down the adjudication framework under the CA2012. We have already mentioned about cases from 2017 being pending before the Supreme Court. To avert such situation, we can recommend adjudication model from India with two-tier body, the first tier being the Competition Commission of India (CCI) and the second tier the Competition Appellate Tribunal (CAT). The National Company Law Appellate Tribunal acts as the CAT that hears appeal against the decision of the CCI comprising of chairman selected from judges of the District Judge or High

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<sup>86</sup> Tomás Serebrisky, 'What Do We Know about Competition Agencies in Emerging and Transition Countries? Evidence on Workload, Personnel, Priority Sectors, and Training Needs' WPS 3221, World Bank Policy Research WP at <http://econ.worldbank.org>.

<sup>87</sup> *Supra* note 38, p 40.

<sup>88</sup> *Supra* note 72, p 10.

<sup>89</sup> *Supra* note 38, p 70.

<sup>90</sup> *Id.* p 71.

<sup>91</sup> *Id.* pp 89-90.

<sup>92</sup> *Supra* note 72, p 11.

<sup>93</sup> On the ground that Commission or any statutory body 'made a finding upon no evidence or without considering material evidence/facts causing prejudice to the complaining party or that it had acted mala fide or in violation of any principle of natural justice' (Bangladesh v Md. Abdul Jalil, 48 (1996) DLR (AD) at 13.

<sup>94</sup> Art 102. The Constitution of the People's Republic of Bangladesh, P.O. 76 of 1972, 1972 (Bangladesh)

Court Judge of India.<sup>95</sup> Further appeals against orders of decisions of CAT can be sought to Supreme Court of India.<sup>96</sup> We can replace government or ministry of commerce with an appellate body like CAT.

In another study, a unified and separate tribunal for consumer protection, food safety and drugs had been suggested as courts of such jurisdictions are non-functional in Bangladesh.<sup>97</sup> In CA2012, a link between consumer protection and competition has already been established where the CCB is empowered to hear review form consumer legislation under section.<sup>98</sup> So we can suggest another model adding appeals from CA2012 to such unified tribunal in addition to consumer protection, food safety and Drugs dispute. Creation of such unified tribunal can be fruitful as it can facilitate speedy justice.

#### **viii. Extra-territorial power of the CCB**

Under section 22 of the CA2012, the CCB can make an inquiry when an anti-competitive conduct is committed outside of Bangladesh which has an adverse effect on competition in the relevant market in Bangladesh.<sup>99</sup> The provision recognises the need for greater international cooperation among the regulators for the enforcement of competition law when large-scale international anti-competitive conduct affects several countries. CCB should actively participate and contribute to international framework like International Competition Network (ICN), share and compare best practices so that its institutional capacity can be raised.

## **VI. CONCLUSION**

From the abovementioned study, it's evident that the CCB, entrusted with the responsibility of enforcing the provisions of the Act, has faced resource constraints, institutional weaknesses, and procedural complexities, which have hampered its ability to effectively investigate and penalize anti-competitive behavior. As a result, instances of market distortion and abuse of market power continue to persist, undermining the objectives of the legislation. Despite these challenges, the CA2012 holds immense potential to shape the future trajectory of Bangladesh's economic landscape. By addressing the existing gaps in the regulatory and adjudication frameworks, enhancing enforcement mechanisms, and fostering greater awareness and compliance among stakeholders, the legislation can pave the way for a more competitive and

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<sup>95</sup> Sec 53A. The Competition Act, 12 of 2003, 2002 (India)

<sup>96</sup> *Id.* sec 53T.

<sup>97</sup> For details, Ahmad Rajib Chowdhury & Homaira Nowshin Urmi, *Assessing the Need for a Unified Adjudication Framework for Consumer Protection, Food Safety and Drugs: Perspective Bangladesh*. International Journal of Law, Management and Humanities, 6(6), 2023, pp. 693-704 at <https://doi.org/10.1000/IJLMH.116157>

<sup>98</sup> *Supra* note 6, sec 8(1)(j).

<sup>99</sup> *Id.* sec 22

inclusive market environment. Moreover, by aligning with international best practices and leveraging technological advancements, Bangladesh can position itself as a regional hub for investment and innovation, driving sustainable economic growth and prosperity.

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## VII. REFERENCES

- Pradip S Mehta & Manish Agarwal, Time For A Functional Competition Policy And Law In India: Mainstreaming Competition Principles Into Policy And Legal Framework Is Pro-Development, Cuts International 1 (2006), at <https://www.cuts-international.org/pdf/compol.pdf>
- Umut Aydin & Tim Buthe, *Competition Law & Policy in Developing Countries: Explaining Variations in Outcomes; Exploring Possibilities and Limits*, Law and Contemporary Problems, 2016, at 3.
- The Competition Act 2012, No. 23, Acts of Parliament, 2012 (Bangladesh).
- The Monopolies and Restrictive Trade Practices (Control and Prevention) Ordinance, 1970, Order 5 of President (Bangladesh)
- Selim Raihan, Competition Policy And Competitive Markets In Bangladesh', In Paul Cook, Raul Fabella & Cassey Lee (Eds. 2007), *Competitive Advantage And Competition Policy In Developing Countries*. Cheltenham And Northampton: Edward Elgar Publishing Ltd.
- Unctad, Model Law On Competition: Unctad Series On Issues In Competition Law And Policy, Substantive Possible Elements For A Competition Law, Commentaries And Alternative Approaches In Existing Legislations 3 (2007). New York And Geneva: United Nations.
- Annual Report (FY 2022-2023), Competition Commission of Bangladesh (2023), at [https://ccb.gov.bd/sites/default/files/files/ccb.portal.gov.bd/annual\\_reports/6ec93ed9\\_5616\\_4be3\\_8da2\\_ad5c5271f2a4/2024-05-20-06-09-ced677d4c00d0f664e03825350bd4a4b.pdf](https://ccb.gov.bd/sites/default/files/files/ccb.portal.gov.bd/annual_reports/6ec93ed9_5616_4be3_8da2_ad5c5271f2a4/2024-05-20-06-09-ced677d4c00d0f664e03825350bd4a4b.pdf)
- Office Order, Competition Commission of Bangladesh , No 26.12.0000.104.22.021.17-251 (October 30, 2017), at [https://ccb.gov.bd/sites/default/files/files/ccb.portal.gov.bd/office\\_order/f1b46632\\_36a2\\_439a\\_a505\\_1cda47132f3c/Inquiry%20and%20Investigation.pdf](https://ccb.gov.bd/sites/default/files/files/ccb.portal.gov.bd/office_order/f1b46632_36a2_439a_a505_1cda47132f3c/Inquiry%20and%20Investigation.pdf)
- Barrister M Sarwar Hossain v. Chairman, Executive Committee of the RAOWA and Iqbal Hossain Catering Services Ltd (Competition Case no 1/2018)
- Pacific International Trading v. Chittagong C&F Agents' Association Case (Competition Case No 2/2018)

- Saddam Hossain, 'Foodpanda hit with 10L fine for abuse of monopoly power', Dhaka Tribune, 16 January 2024, at <https://www.dhakatribune.com/business/336902/foodpanda-hit-with-10l-fine-for-unfair-market>
- Senior correspondent, 'Bangladesh Competition Commission fines CP, Diamond Tk 35m for egg price gouging', Bdnews24.com, 24 January 2024, at <https://bdnews24.com/business/xsmm8f5w6x>
- Sharmin Tania & Afroza Bilkis, *Competition Law in Bangladesh: Towards Achieving Inclusive Sustainable Development*, Australian Journal of Asian Law, Vol 21 No 2, 2021, pp. 159-179.
- UNCTAD, Voluntary Peer Review Of Competition Law And Policy Of Bangladesh: Overview (2022). New York And Geneva: United Nations.
- Terry Calvani & Angela Diveley, 'The FTC at 100: A Modest Proposal for Change', 21(5) George Mason Law Review, (2014).
- Tomás Serebrisky, 'What Do We Know about Competition Agencies in Emerging and Transition Countries? Evidence on Workload, Personnel, Priority Sectors, and Training Needs' WPS 3221, World Bank Policy Research WP at <http://econ.worldbank.org>.
- Bangladesh v Md. Abdul Jalil, 48 DLR (AD) (1996).
- The Constitution of the People's Republic of Bangladesh, P.O. 76 of 1972, 1972 (Bangladesh).
- The Competition Act, 12 of 2003, 2002 (India)
- Ahmad Rajib Chowdhury & Homaira Nowshin Urmi, *Assessing the Need for a Unified Adjudication Framework for Consumer Protection, Food Safety and Drugs: Perspective Bangladesh*. International Journal of Law, Management and Humanities, 6(6), 2023, pp. 693-704 at <https://doij.org/10.10000/IJLMH.116157>

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