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Competition Law and Policy

CAPACITY BUILDING IN DEVELOPING COUNTRIES

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Competition Law and Policy

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In this paper, an attempt has been made to analyse competition policy from two perspectives, namely, *global perspective* and *Bangladesh perspective*. Bangladesh is primarily a homogenous country and more importantly, Bangladesh is a liberal democracy with a population of about 130 million, living in total harmony for thousands of years. The geographical location of the country is ideal for global trade with access to international sea and air route. Apart from that, the country is endowed with abundant natural resources like natural gas, water and fertile soil etc. Although Bengali is the official language, English is also widely used and spoken.

2.0 Competition Policy: Global Perspective

2.1 Competition policy refers to those governmental measures that directly affect the behaviour of firms and the structure of the industry. A competition policy should include both:

- i) Economic policies adopted by Government, that enhance competition in local and national markets and

¹ The views expressed in this article are those of the Author and not the Ministry or the Government.

- ii) Competition law designed to stop anti-competitive business practices.

2.2 Types of hurdles to fair competition can be classified as under:

- Collusive Agreement for
 - a) Price fixation
 - b) Market allocation
 - c) Output restriction
 - d) Bid-rigging
- Refusal to buy or supply
- Tie -in arrangement
- Exclusive-dealing arrangement
- Territorial allocation between supplier and dealer
- Mergers & acquisitions resulting in dominance in market
- Misleading advertisement or false representation

2.3 In the market, competition means a method or a process whereby firms compete with one another in order to attract customers for their products.

2.4 Types of competition:

Price Competition: It relates to competition among suppliers where the suppliers attract customers by offering them a product at a price which is lower than that of their competitors.

Non-price Competition: This is another form of competition where the suppliers try to win customers not by lowering price but by advertising, offering after-sales service, using sales-promotion tools, etc.

2.5 Generally, there are four forms of competition:

Large number of sellers and buyers, identical goods: Perfect Competition: In this form of competition, firms are the price takers and not the price setters.

Single seller, large numbers of buyers & no close substitutes:

Monopoly: Here, the monopolist (i.e. the only seller) is the price and output setter.

Large number of sellers and buyers, existence of close substitutable products, no entry barrier: Monopolistic Competition: In order to remain in competition, the suppliers actively engage in product differentiation to win customers.

Few sellers, large number of buyers, large number of branded products:

Oligopolistic Competition: In this form of competition, the suppliers formulate their strategies taking into account other competitors` reactions.

3.0 Competition Policy: Bangladesh Perspective

3.1 Investment in Bangladesh is protected by law with a guarantee of fair and equitable treatment to foreign private investment. Such national treatment is also provided in bilateral treaties for the promotion and protection of foreign investment. In addition to WTO, Bangladesh is also a signatory to Multilateral Investment Guarantee Agency (MIGA), Overseas Private Investment Corporation (OPIC) of USA, International Centre for Settlement of Investment disputes (ICSID). Bangladesh also ensures adequate protection to intellectual property rights, such as Patents, Industrial Layout-designs, Designs, Trade Marks, Copyrights etc.

3.2 Presently, four sectors of industry have been reserved only for public sector investment, these are *ammunitions and other defence equipments, plantation and mechanised extraction of forest within the bounds of reserved forests, production of nuclear energy, and security printing and minting*. For obvious reason, these sectors are very

sensitive from national security point of view. Such reservation should not be regarded as anti-competitive considering the vulnerability of a least developed country, particularly its lower level of socio-economic development, financial and trade needs, administrative and institutional capabilities.

3.3 The state owned Bangladesh Biman enjoyed full monopoly in the domestic air transportation sector in the recent past. Now the private sector has also been allowed to operate in domestic routes.

3.4 A few years back, the production and distribution of energy and power were the sole property of the public sector; but recently, agreements have been concluded with foreign firms for exploration of oil and gas from the main land and offshore. The power sector is now open to private sector. At present, private sector is generating 1290 MW power out of country's total production of 3800 MW power (source: Bangladesh Power Development Board). Both power generation and gas extraction require huge investment, competition in this sector may come from foreign entrepreneurs. Previously the local telecommunication services were in the public sector "Bangladesh Telegraph and Telephone Board" (BTTB). Now BTTB is providing more than 760,000 fixed phone connections out of its installed capacity of 950000 (Source: BTTB). The UK based Worldtel is expected to launch 300,000 fixed line telephones in the Bangladesh capital of Dhaka by January, 2005. A Bangladeshi private investor titled M/S Bashundhara Communications Network Limited (BCNL) has been provided with a licence to run fixed line phones. Some other private companies have

also been permitted to set up digital telephone services at rural areas. Four private cellular telephone companies² namely, M/S. Grameen Phone Limited (customer base 11,70,000 with a market share of 66.29%), M/S. Telecom Malaysia International Limited Pacific *Aktel* (customer base 3,45,000, with a market share of 19.55%), M/S. Pacific Bangladesh Telecom Limited (customer base 2,05,000 with a market share of 11.61%) and M/S Sheba Telecom (customer base 45,000 with a market share of 2.55%) have been provided with licences.

3.5 The Bangladesh Railway, a state-owned enterprise enjoys some monopoly in the railway sector; it covers about 32% (2706 Kilometer) of the total area of Bangladesh. In Bangladesh, it is basically a service sector leaving a little scope for the private sector investment, considering its huge investment cost. However, some private companies have been entrusted with the management of several trains /locomotives with a view to raising the efficiency in railway services. To be honest, most of the trains still run under the government management. This sector is not a profitable one for which, it is thought, the local or foreign investors have not shown keen interest for massive investment in this sector.

3.6 The Standard Chartered Bank, acquiring the Grindlays business in the Middle East and South Asia including Bangladesh from ANZ Banking corporation for an amount of about USD 1.34 billion in cash in 2000, has

² Source: Simens Bangladesh Limited, December 2003

become the leading foreign bank in respect of credit and business in Bangladesh.

3.7 Some foreign Missions and Institutions in Dhaka sometimes put a condition that the requisite fees for visa or examination fees, as the case may be, should be deposited in a particular bank. It is also a kind of monopoly in trade.

In some cases, foreign buyers do not accept Letters of Credit (LC) of local banks unless it is endorsed by a local branch of a foreign bank for which the importers from Bangladesh are to pay an additional charge. Moreover, some foreign banks prefer to finance for trading, and not for industrial purpose. Such practices are also anti competitive.

Table No.1. Banking System structure in Bangladesh (In year 2000)

Bank types	No. of Banks	No. of branches	Total assets (billion taka)	% of industry assets	Deposits (billion taka)	% of deposits
Nationalised Commercial Bank (NCB)	4	3496	662.08	45.56	515.06	50.32
Development Finance Institution	5	1311	166.63	11.47	59.53	5.82
Private Commercial Bank (PCB)	30	1398	525.46	36.16	377.08	36.84
Foreign Commercial Bank	10	31	98.89	6.81	71.86	7.02
Total	49	6236	1453.06	100.0	1023.53	100.0

Source: Annual Report 2002-2003; Bangladesh Bank.

A particular brand of toothpaste manufacturer is now offering a pack of tissue paper free of cost if someone buys a pack of toothpaste. A milk food manufacturer is offering a dozen of drawing pencils with a pack of milk powder. A section of manufacturers of 'mosquito killer spray' are offering a bottle of toilet liquid cleaner free of cost, with a container of mosquito spray. Some real estate agents are offering a set of colour TV with every booking for a residential plot. Some Cement (construction material) sellers are offering with the purchase of a certain quantity of cement, a lottery coupon giving a

chance to the buyer of winning a motor car. Some airlines are also offering a lottery coupon with a provision for winning a free ticket. A supplier of dried juice powder (e.g., orange juice powder) is offering a piece of tablecloth free when a jug of dried juice powder is purchased. These are all the examples of anticompetitive practices.

3.8 In health services, some physicians sometimes compel their patients to take the services of some fixed diagnostic centres for medical tests, which is undoubtedly anti-competitive. A few educational institutions also force their students to buy books from a particular library or to make school uniform from a fixed tailoring shop. A section of bankers offer personal loans to its clients for buying specific goods of particular brand or from fixed company. This is another example of tying-arrangement of anti-competitiveness.

4.0 The monopolies and restrictive trade practices (Control and Prevention) Ordinance promulgated in 1970 is still in force in Bangladesh, which provides for taking action against any unfair competition or concentration of economic power, or illegal trade practices.

4.1 Competition Policy is much talked about and discussed throughout the world, but it is still a debated issue. There is a growing concern among the developing and the Least Developed Countries about the global competition policy. Considering the low level of economic activity, particularly narrow export base and low level of industrialisation, there is a strong feeling against the global competition policy. It is to be noted that the LDC Trade Ministers during their meeting in Dhaka did not agree on the commencement of

negotiation on the Singapore issues (Trade Facilitation, Trade and Investment, Trade and Competition Policy and Transparency in Government Procurement).

4.2 The Doha Declaration (Paragraph 25) mandated the working group on Trade and Competition Policy to focus on the clarification of certain issues. Discussion on the working groups reveal that there are differences even among the *demandeurs* of a multilateral framework on Competition Policy. The views of the LDCs as enumerated in the Dhaka declaration are as under: “Most LDCs lack competition laws and regulations, and agencies that are able to implement the laws. This lack of exposure to, and experience in, competition laws have hampered the participation of LDCs in the current negotiations. Therefore, efforts aimed at assisting LDCs in formulating national competition laws and in establishing requisite institutions in LDCs shall be undertaken”.

4.3 In the third LDC Trade Ministers’ Meeting held in Dakar, Senegal from 4-5 May, 2004, the LDCs have reiterated their position to keep out of the Doha Work Programme the three Singapore Issues namely, *Trade and Investment, Trade and Competition Policy and Transparency in Government Procurement*.

4.4 The developing and the Least Developed Countries are of the opinion that exclusion of three out of four Singapore issues from the Doha Development Round agenda in the WTO General Council Meeting held from July 27-31, 2004 is a significant achievement.

Considering the peculiarities and limitations of an individual country, it would be difficult to go for a global competition policy rather than a

national policy. But it can be said with much distinctness that, to do away with the abuse of dominance, a national competition policy is the crying need of the hour.

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