

**Twentieth Session of the Intergovernmental Group of Experts on  
Competition Law and Policy,  
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**Room XVII, Palais des Nations, Geneva**

**Voluntary Peer Review of Competition Law and Policy of  
BANGLADESH**

*Presentation*

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INTERGOVERNMENTAL GROUP OF EXPERTS ON  
**Competition law and policy**

20 - 22 July 2022, Palais des Nations





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**Competition law and policy**

# VOLUNTARY PEER REVIEW OF THE COMPETITION LAW AND POLICY OF BANGLADESH

**Leni Papa**

Friday, 22 July 2022

10:00-12:00, Room XVII





# Outline

1. Introduction
2. Legal Framework and Institutional Setup
3. Issues
4. Role of Competition in the Promotion of Cottage, Micro, Small and Medium Enterprises in Bangladesh
5. International Cooperation
6. Policy Recommendations



# 1. Introduction

## Economic context

- ✓ Remarkable growth since independence in 1971 (>6%)
- ✓ Proclaimed by the World Bank as a global model for poverty reduction
- ✓ Vision 2041: Middle-income status by 2031; high-income status by 2041
- ✓ Impact of COVID-19: GDP growth slowed down to 3.51% in 2020, rebounded in 2021

## Evolution of competition law and policy

- ✓ Prior to 1971 – Monopolies and Restrictive Trade Practice (Control and Prevention) Ordinance of 1970
- ✓ Three phases of economic policies that shaped the competitive environment
- ✓ Bangladesh Competition Act of 2012



## 2. Legal framework and Institutional Setup

### Bangladesh Competition Act of 2012 (BCA)

- ✓ Scope
  - ✓ All enterprises involved in the purchase and sale, production, supply, distribution, or storage of goods and services for commercial purposes
  - ✓ Exempted: goods and services that are not open to the private sector and controlled by the government for national security purposes
  - ✓ Applies and binds the Government – definition of enterprises includes “any person or economic body or a department of the Government”
  - ✓ Act committed outside of Bangladesh which causes an adverse effect on the relevant market in Bangladesh
- ✓ Rules and Regulations implementing the BCA
  - ✓ Government may make rules to carry out the BCA - legal and administrative systems, hiring of staff
  - ✓ BCC may adopt regulations – must be approved by the Ministry of Commerce and the Ministry of Law, Justice and Parliamentary Affairs.



## 2. Legal framework and Institutional Setup

### Anti-competitive agreements

- Vertical and horizontal
- Enumeration is interpreted as exclusive

### Abuse of Dominant Position

- General prohibition
- Dominant position – position of strength enjoyed by an enterprise in a relevant market which allows it to operate independently of competitors or affect competitors/consumers in the relevant market in its favour

### Mergers and acquisition

- “Combinations” - trade acquisitions or taking control or amalgamation or mergers
- General prohibition of consolidations that have an adverse affect on competition

Chairperson

Member 1

Member 2

Member 3

Member 4

Director General  
(Administration)

Director General 1

Director General 2

Director General 3

Director General 4

Director (Administration)

Director  
(Business  
and Trade)

Director  
(Economics  
and  
Research)

Director  
(Advocacy  
and policy)

Director  
(International  
Relations)

Director  
(Inquiry)

Director  
(Investigation)

Director

Deputy  
Director  
(Human  
Resources)

Deputy  
Director  
(Admin and  
Finance)

Deputy  
Director  
(Business-  
Trade)

Deputy  
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and IT)

Deputy  
Director  
(Economics  
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Research)

Deputy  
Director  
(Advocacy  
and policy)

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Relations)

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(Merger  
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Deputy  
Director  
(Law)

Deputy  
Director  
(Implementation)

Assistant  
Director  
(Human  
Resources  
and  
Training)

Assistant  
Director  
(Public  
Relations)

Accounts  
Officer

Assistant  
Director

Assistant  
Deputy  
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(Business-  
Trade)

Assistant  
Deputy  
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Commerce  
and IT)

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(Advocacy  
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(Implementation)

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# 3. Issue

## BCA

- ✓ Legal standards for anti-competitive agreements and abuse of dominance
- ✓ Notification and thresholds for merger control
- ✓ Autonomy of BCC
- ✓ Investigative tools
- ✓ Private enforcement



# 3. Challenges

## Bangladesh Competition Commission (BCC)

- ✓ 3-year term limit of Chairperson and Members of the Commission
- ✓ Need for the Ministry to endorse variation of working tools (operational guidelines, strategic programs, organizational structure)
- ✓ Investigative and adjudicative powers
- ✓ Prioritization of enforcement activities
- ✓ Expected frequent staff changes involving mid-level to senior-level officials due to government policy
- ✓ Budget
- ✓ Limited use of ICT
  - ✓ Planned technical assistance project
- ✓ Arrangements with sector regulators



# 3. Issues

## Culture of competition

- ✓ Limited awareness of the BCA and BCC
- ✓ Limited studies on competition
- ✓ Limited legal and economic expertise in competition law and economics



# 4. Role of competition in promoting CMSMEs

CMSMEs make up 99.9% of all enterprises in Bangladesh; Approximately 7.8 million CMSMEs

- ✓ Key element in the reduction of poverty
- ✓ Employ 86% of the labor force
- ✓ Contributes 25% to the GDP

## Challenges

- ✓ 90% of microenterprises are providing informal services
- ✓ COVID-19 – 50% experienced permanent or temporary closures
- ✓ Competition and CMSMEs
  - ✓ Low level of awareness
  - ✓ Access to digital markets



# 5. International Cooperation

- ✓ Active in international fora
- ✓ Working on agreements with Korea Fair Trade Commission, Japan Fair Trade Commission, Competition Commission of India
  - ✓ Internship program arranged by KFTC



# 6. Policy recommendations

- ✓ (1) Government; (2) BCC; (3) Government and BCC; (4) CMSME Agencies; (5) Judiciary
- ✓ Ways forward to be discussed by the Secretariat



# 6. Policy recommendations

## Recommendations to the Government

- ✓ Proposals for amending the law
  - ✓ Identify legal standards for anti-competitive agreements and abuse of dominance
  - ✓ Notification and thresholds for merger control
  - ✓ Autonomy of BCC
  - ✓ Additional investigative tools
  - ✓ Private enforcement
  
- ✓ Institutional framework and resources
  - ✓ Budget increase
  - ✓ Human resources – exemption from 3-year rule
  - ✓ Operational independence to vary working tools



# 6. Policy recommendations

## Recommendations to BCC – Enforcement, institutional framework, resources

- ✓ Publish guidelines on merger control, abuse of dominance, horizontal or vertical agreements, and sanctions to increase legal certainty, facilitate compliance and promote competition
- ✓ International best practices: market definition, assessment of market power, anti-competitive analysis
- ✓ Strategic plan / prioritization of activities
- ✓ Formal procedure that separates investigative and decision-making functions
- ✓ Strengthen ICT wing





# 6. Policy recommendations

## Recommendations to BCC – Advocacy

- ✓ Continue discussions with sector regulators
- ✓ Continue development of competition culture
- ✓ BCC internship programs



# 6. Policy recommendations

## Recommendations to BCC – CMSMEs

- ✓ Continue awareness-raising about the benefits of competition
- ✓ Continue to familiarize itself with challenges faced by CMSMEs



# 6. Policy recommendations

## Recommendations to the Government and BCC

- ✓ Provide tailored training on competition and training of trainers to staff, commissioners, other officials, and magistrates (handling appeals from the BCC decisions), sectoral regulators' staff and practitioners on a regular basis
  - ✓ Consultative workshops for the formulation of rules and regulations, legal instruments, etc.
  - ✓ Staff exchanges or secondment programs
  - ✓ Continued participation in different trainings, seminars, workshops
  
- ✓ Establish competition law and policy courses at local universities



# 6. Policy recommendations

## Recommendations to CMSME Agencies

- ✓ Formalize of BCC's involvement in the design of CMSME-related policies
- ✓ Monitor the impact of financial support
- ✓ Organize training on key emerging competition issues in digital markets

## Recommendations to the judiciary

- ✓ Attend workshops on competition law enforcement



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# Thank you

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