

Anti-Cartel Enforcement in Bangladesh: Challenges and Prospects from Asian Experience

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Abstract: *A competition-friendly environment is a must for steady economic growth, which is a driving force for developing countries such as Bangladesh. A cartel is a potential barrier to promoting consumer welfare and overall market development. Hence, competition law is vital in supervising the market with its anti-cartel enforcement policies. Since this is a global phenomenon, countries have experimented and taken different strategies to combat cartels in their jurisdiction accordingly. Being a young competition jurisdiction, Bangladesh has a simple enforcement policy restricted to fines, but the cartel detection rate is quite unsatisfactory. This article aims to find the loopholes for anti-cartel enforcement in Bangladesh. It looks for a sustainable solution, especially introducing dawn raids, leniency mechanisms, and some other structural modifications, taking inspiration from global practices to address cartels in the Bangladeshi market.*

1. Introduction

In this era of globalisation, the number of participants and potential size of markets have increased significantly, urging a level playing field for all the competitors to sustain. For the steady growth of a developing country, sustainable development is very much needed. To ensure sustainability in the market, competition law plays a great role in making an impact on all competitors and consumers. There was an act¹ in Bangladesh that dealt with competition matters, but there was no practical implication of that act in independent Bangladesh. Due to its non-affectivity, guided by the IMF, World Bank, and OECD, steps were taken to promulgate a new Competition Act in Bangladesh in 2012. It took a further 4 years to establish the Bangladesh Competition Commission (hereinafter “BCC”) to regulate and supervise competition issues in Bangladesh.

Anti-cartel enforcement is one of the driving forces of competition policy since cartels are a global phenomenon. Bangladesh is also not an exception regarding cartel complications; it has also been a concern for the Bangladeshi Competition Act. Despite having specific anti-cartel enforcement in the Act, the BCC has failed to break market syndicates for ages. There are numerous challenges to BCC while addressing cartels.

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¹ The Monopolies and Restrictive Trade Practices (Control and Prevention) Ordinance, 1970 (repealed by Competition Act, 2012).

Hence, this article focuses on examining existing anti-cartel enforcement in Bangladesh, followed by challenges and finding durable solutions that have been successfully experimented with by other jurisdictions. The study is conducted mainly based on qualitative data using both primary and secondary sources. As primary sources, domestic and international competition legislations have been consulted, and data from official sources have been used. Secondary sources in the form of books, academic journals, documents, working papers, articles, and internet sources are reviewed.

To maintain the flow of the discussion and ease of understanding, I will first discuss the prevalent provisions regarding cartel and anti-cartel enforcement. Then, I will scrutinise the fundamental challenges of those provisions. Finally, I will show some Asian references and how they are implying their anti-cartel enforcement and how it can be effective in the Bangladeshi context.

2. Anti-Cartel Provisions in Bangladesh

The journey of the Bangladeshi Competition Act has been more than a decade without any revisions since its inception. The Act has provisions relating to cartels and their enforcement as well. Generally, cartels are regarded as horizontal agreements between the cartel participants who try to control the market illicitly through their anti-competitive behaviour. In simple understanding, cartels are horizontal agreements that occur at the same level of business, for instance, rice manufacturers or oil distributors in the commodity market, through explicit or implicit agreements. Let us see how cartel has been defined in the Bangladeshi Act. A cartel has been defined as:

“Cartel means any person or association of persons who, by explicit or implicit agreement, limit or control or attempt to limit or control [sic] the production, distribution, sale, price or transaction of goods or services to establish a monopoly in trade”².

Again, section 15 of the Act prohibits anti-competitive agreements. This section does not specify which agreements are horizontal or vertical. Section 15(1) says:

“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 hurt competition or creates monopoly or oligopoly in the market”³.

This is broader in the sense that it includes other anti-competitive behaviour as well. While section 15(2) of the Act says:

² The Competition Act 2012, s 2(e).

³ *ibid* s 15(1).

*“The practice or decision of any person or association of persons engaged in any agreement, any trade of identical or similar goods or in any provision of services shall be deemed to have an adverse effect on competition in the market of goods or services if it (a) directly or indirectly (i) determines abnormal purchase or sale prices...”*⁴

The above part is narrower, which directly aligns with the cartel definition enshrined in the act and attracts price-fixing cartels. So, “the horizontal anti-competitive agreements under that ambit, which are cartels, shall be subject to outright prohibition, as 15(2) presumes them to harm competition”⁵.

Now, we will see the existing anti-cartel enforcement mechanism enshrined in the Competition Act, 2012 of Bangladesh. The enforcement power has been given to the Bangladesh Competition Commission through substantial regulatory, adjudicatory, and administrative functions set out in the Act.

Theoretically, anti-cartel provisions in Bangladesh have been developed into three stages, namely, pre-inquiry, inquiry, and post-inquiry phases. During the pre-inquiry stage, “using the regulatory power, if the commission is satisfied that immediate prevention is expedient to obstruct any activity which contravenes the spirit of the Competition Act of Bangladesh, then hearing the necessary parties, it may issue proper directions as it deems fit.”⁶ Utilising its investigatory power while conducting an inquiry procedure by ‘*suo moto*’ or ‘upon receipt of complaint’ by anyone, the commission, having its adjudicatory power, can direct a “cease and desist” order until the conclusion of such inquiry or further orders by allowing the accused to present his defence.⁷

Another vital adjudicatory role played by BCC is ascribed in section 20(b) of the Competition Act, 2012, which directly deals with cartels. It narrates that after the inquiry if it appears before BCC that any person has entered into an ‘anti-competition agreement’ or ‘misused his dominant position’, “BCC may impose every cartel participant an ‘administrative financial penalty’ of either ‘up to 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 three preceding financial years’, whichever is higher”⁸. Failure to submit the penalty results in further payment of a fine of not more than one lac BDT per day. Moreover, the act deals with individual liability in case of direct involvement with cartel activities “unless the individual

⁴ *ibid* s 15(2) (a) (i).

⁵ Tania Sharmin and Bilkis Afroza, ‘Competition Law in Bangladesh: Towards Achieving Inclusive Sustainable Development’ (2021) 21(2) Australian Journal of Asian Law 159, 165 <<https://ssrn.com/abstract=3875215>> accessed 14 January 2025.

⁶ The Competition Act, 2012 (n 2) s 17.

⁷ *ibid* s 19.

⁸ *ibid* s 20(b).

fails to prove that the offence has been committed beyond his knowledge or he left no stone unturned to deter that occasion from happening”⁹.

From the above-mentioned discussions and legal provisions under the statute, the nature of the cartel, definitions, prevalent provisions against anti-cartel enforcement, and statutory roles of the BCC against cartel actions have been illustrated.

3. Fundamental Challenges of Anti-Cartel Enforcement in Bangladesh

In my previous discussions, I have demonstrated how cartels have evolved through our statutory provisions and anti-cartel enforcement mechanisms as well. However, there are various kinds of challenges while enforcing anti-cartel provisions in Bangladesh. The challenges need to be identified to find a solution to an effective anti-cartel enforcement mechanism.

Despite having enforcement mechanisms, the official data collected from the commission depicts that the overall disposal rate by the BCC is comparatively low. Since the establishment of the BCC to date, it has given “final orders in 21 cases”,¹⁰ some of which were advanced by *suo moto* or upon receiving information from the daily newspaper. Among those, the BCC has dealt with 87 cases so far, and 66 cases are pending at different stages.¹¹ So, the BCC, on its motion, filed 48 cases, and it received 6 complaints only in 2023.¹² The ratio of receiving complaints is less than the *suo moto* cases of the BCC. There might be various reasons for such a low rate of complaints, but one of the reasons might be a lack of incentives through providing information to the authority concerned.

In my previous discussion, while defining cartels, I mentioned that Section 15 of the Bangladeshi Competition Act does not specify the nature of horizontal and vertical agreements. Cartels are regarded as horizontal agreements, but it is not explicitly mentioned in the Act, which creates a gap in interpreting cartel natures.

The absence of immediate action is another loophole in the Act. In the pre-inquiry and inquiry stage, if the BCC finds a *prima facie* case of cartels, it can impose an interim order against the offenders, giving reasonable opportunity to be heard. However, sometimes the nature of the allegation itself requires immediate action to be taken by the authority. In this process, civil courts’ procedures are followed, and that’s why, like civil court action, the BCC ought to

⁹ *ibid* s 35.

¹⁰ Bangladesh Competition Commission, ‘Orders and Judgments’ (*Bangladesh Competition Commission*) <<https://ccb.gov.bd/site/page/297cbd94-89ce-4133-a966-d889bdd3ca0b/%E0%A6%86%E0%A6%A6%E0%A7%87%E0%A6%B6>> accessed 18 January 2025.

¹¹ *ibid*.

¹² *ibid*.

issue an interim order without hearing the accused till his appearance before the court during the pre-inquiry and inquiry stage if there is a strong *prima facie* case.

As regards punishment, there is only one remedy available in the Competition Act, and that is the fine imposed by the BCC after the inquiry procedure. There is no other remedy available against cartel offences except the administrative financial penalty. Therefore, this Act lacks other punitive actions like imprisonment and other sanctions.

The expert investigation team is a must for any successful cartel detections and operating dawn raids. In some cases, the BCC was unable to prove its case due to investigating lacunas and a dearth of evidence. In one case,¹³ the respondent, along with six other bodies, was alleged to have price fixing in the rice market by forming a syndicate. Being informed by different forms of media, BCC decided to bring the case on its motion against a giant group, namely the Bashundhara Group in Bangladesh. However, the BCC could not impose an administrative penalty since the investigation team failed to establish adequate evidence against the alleged corporation. The BCC, in its observation, held that the investigation team miserably failed to complete the investigation with due diligence, and the investigation report was incomplete. In this way, the alleged rice syndicate escaped its liability due to the investigational failure of the BCC team.

The investigation procedure operated by the inquiry and investigation department under BCC has structural complications. The complication is that there is a chance of being influenced by the members of BCC while doing investigations by subordinates, because the same member of the BCC will play the role of adjudication as a part of the adjudicatory body. Therefore, a specified and separate investigation unit should be launched where adjudicating members of the BCC will not be able to influence the investigations.

The absence of judicial engagement is another obstacle to the implementation of the Bangladeshi Competition Act. When the BCC passes any order, it can be appealed to the Ministry of Commerce.¹⁴ For transparency, the decentralisation of power is very important. Therefore, there should be a separate appellate forum other than the executive body of the State. In my opinion, the appellate authority shall be any High Court bench designated by the Honourable Chief Justice of Bangladesh to deal with orders passed by the BCC in necessary cases where there is provision for appeal.

¹³ *Bangladesh Competition Commission v Bashundhara Food and Beverage Industries Ltd* (Suo Moto Suit 27/2022, BCC, 18 June 2023) <https://ccb.portal.gov.bd/sites/default/files/files/ccb.portal.gov.bd/page/86298a48_bc4b_46d1_a5ea_3d23f69d5f7e/2023-06-18-10-43-8fb89a0a25316ee8640bab9d6f7b5478.pdf> accessed 23 January 2025.

¹⁴ The Competition Act, 2012 (n 2) s 29(1).

The Competition Act, 2012 does not grant the BCC the power to undertake unannounced inspections and to search business or private premises if they have potential information about any anti-competitive matter or cartel allegations, and that kind of sudden inspections are popularly known as “dawn raid”. Many countries in their jurisdiction have been using this tool based on suspected anti-competitive conduct. Even the BCC, in its latest annual report, has admitted that “they should introduce dawn raids and other innovative mechanisms according to the best practices of the world”¹⁵.

The present Act does not have a provision for private enforcement. This can be another remedy for anti-cartel enforcement. The BCC also thinks that “private enforcement and damage compensation are to be included as part of supplementary enforcement”¹⁶.

Finally, the prevalent anti-cartel enforcement is not quite satisfactory due to its lower cartel detection rates. So far, only five cases have dealt with direct allegations of the cartel. Among the five cases, the BCC imposed administrative financial penalties on the accused in three cases.¹⁷ My finding behind this lower cartel detection is a lack of cartel information and insufficient evidence to prove the case. These deficiencies can be filled by introducing a leniency mechanism in our Competition Act, and the BCC is hopeful of introducing a leniency mechanism, which is also depicted in its last annual report.¹⁸

These are the basic challenges that I found while analysing the Competition Act 2012 to enforce anti-cartel mechanisms. So, there is some scope for improvement in our anti-cartel enforcement mechanisms.

4. Global References for Anti-Cartel Enforcement

Combating cartels has been a global phenomenon for ages. Every country has faced cartel problems in different ways. As for punishment, competition

¹⁵ Bangladesh Competition Commission, ‘Annual Report 2022-2023’ (*Bangladesh Competition Commission*, 20 May 2024) <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> accessed 23 January 2025.

¹⁶ *ibid.*

¹⁷ (Suo Moto Suit 44/2022, Bangladesh Competition Commission, 22 January 2024) <https://ccb.portal.gov.bd/sites/default/files/files/ccb.portal.gov.bd/page/86298a48_bc4b_46d1_a5ea_3d23f69d5f7e/2024-01-24-09-01-19f210860bd0a1c6d954b2729ae66204.pdf> accessed 23 January 2025; (Suo Moto Suit 45/2022, Bangladesh Competition Commission, 09 October 2023) <https://ccb.portal.gov.bd/sites/default/files/files/ccb.portal.gov.bd/page/86298a48_bc4b_46d1_a5ea_3d23f69d5f7e/2023-10-12-09-49-8b9915df7e5c1866ecdff09f3b87a3f11.pdf> accessed 23 January 2025; (Suo Moto Suit 46/2022, Bangladesh Competition Commission, 09 October 2023) <https://ccb.portal.gov.bd/sites/default/files/files/ccb.portal.gov.bd/page/86298a48_bc4b_46d1_a5ea_3d23f69d5f7e/2023-10-12-09-52-29ed9201f922ad3541fb8abdbfa90684.pdf> accessed 23 January 2025.

¹⁸ Bangladesh Competition Commission, ‘Annual Report 2022-2023’ (n 15).

jurisdictions have multi-dimensional mechanisms, including corporate sanctions, fines, and imprisonment. Cartel detection and evidence collection are the prime focus for all antitrust authorities. In this part, I will seek anti-cartel enforcement mechanisms followed by some jurisdictions.

In Japan, the Japan Fair Trade Commission (JFTC)¹⁹ has been dealing with competition matters exclusively under the “Antimonopoly Act (AMA), 1947”.²⁰ Regarding anti-cartel enforcement, “there are criminal sanctions led by the JFTC and public prosecutors, cease and desist orders passed by the JFTC after investigation, and administrative fines or surcharges by the JFTC”.²¹ Besides that, the aggrieved victims have an option for private enforcement of antitrust laws and claims for damages.²² Moreover, the AMA has provisions for cross-border cartel enforcement, and “JFTC has entered into international agreements with Canada, the EU, and the USA”.²³ For cartel detection, the JFTC operates dawn raids from time to time, and there is a structured leniency mechanism that has been popular among informants. Since its inception, “approximately 1500 leniency applications have been filed before JFTC, and it took legal steps against 191 cartels till 2022”.²⁴

In **India**, “the Competition Commission of India (CCI) is responsible for combating cartels and other anti-competitive matters, which consists of a maximum of seven members, including the chairperson, and CCI has nine divisions having separate working capacities”.²⁵ Bangladesh has taken inspiration from the Indian Competition Act while enacting its own Competition Act. For cartel enforcement, India has different methods. Whenever there is a prima facie case, the “commission delegates the matter to the Director General for investigations having the power of search and seizure”.²⁶ The CCI can conduct

¹⁹ Japan Fair Trade Commission, ‘About the JFTC’ (*Japan Fair Trade Commission*) <<https://www.jftc.go.jp/en/index.html#mission>> accessed 24 January 2025.

²⁰ (Act on Prohibition of Private Monopolization and Maintenance of Fair Trade) Shiteki Dokusen No Kinshi Oyobi Kōsei Torihiki No Kakuho Ni Kansuru Hōritsu (Japan).

²¹ Kagenori Sako, Yuichi Oda and Kosuke Yoshimura, ‘Cartels Laws and Regulations 2024 – Japan’ (*Global Legal Insights*, 19 April 2024) <<https://www.globallegalinsights.com/practice-areas/cartels-laws-and-regulations/japan/#>> accessed 24 January 2025.

²² *ibid.*

²³ Atsushi Yamada, Anderson Mōri and Tomotsune, ‘Japan: Evolving JFTC cartel regulation continues to target unreasonable restraint of trade’ (*Global Competition Review*, 12 April 2024) <<https://globalcompetitionreview.com/review/the-asia-pacific-antitrust-review/2024/article/japan-evolving-jftc-cartel-regulation-continues-target-unreasonable-restraint-of-trade>> accessed 24 January 2025.

²⁴ Antonio Capobianco, ‘The Future of Effective Leniency Programmes – Note by Japan’ (*Japan Fair Trade Commission*, 25 May 2023) <https://www.jftc.go.jp/kokusai/kaigai/oecd_file/0506_leniency%20programmes.pdf> accessed 24 January 2025.

²⁵ Competition Commission of India ‘Institutional Framework’ (*Competition Commission of India*) <<https://www.cci.gov.in/contents/institutional-framework>> accessed 24 January 2025.

²⁶ Competition Commission of India, ‘Provisions Relating to Cartels’ (*Competition Commission of India*) <https://cci.gov.in/public/images/publications_booklet/en/provisions-relating-to-cartel1652176944.pdf> accessed 24 January 2025.

dawn raids, and “during the pendency of inquiry, it can issue interim orders”.²⁷ The CCI can impose penalties upon the offenders that are like the Bangladeshi Act. For cartel detections, India has introduced a leniency mechanism and promulgated the “lesser penalty regulation”.²⁸ In a recent round table conference, a delegate from India confirmed that using the leniency mechanism, “60% of uncovered cartels have been detected”.²⁹

In **China**, the Anti-Monopoly Law (AML)³⁰ is the driving force for enforcing anti-cartel activities, and the State Administration for Market Regulation (SAMR).³¹ It is the responsible authority in this aspect. The features regarding anti-cartel enforcement in China include public enforcement, imposing severe penalties, and leniency mechanisms. While doing investigations, the SAMR can conduct dawn raids, seize documents and other credentials, and impose interim orders in applicable cases. The Chinese competition law opts for “penalties of 1% to 10% of the company’s annual revenue in the relevant market, and where revenue cannot be determined, fines of up to RMB 5 million (approximately USD 700,000)”³² may be imposed.

Singapore is another noteworthy example of enforcing anti-cartel mechanisms. A cartel is prohibited under the Singapore Competition Act,³³ which is administered and enforced by the Competition and Consumer Commission of Singapore (CCCS).³⁴ The Act has provided several anti-cartel mechanisms, including the “leniency mechanism”³⁵ from the very beginning, having “wide investigating powers including dawn raids”³⁶ and taking actions like “interim measures”,³⁷ “civil penalties and sanctions”.³⁸ Being a cost-effective and less time-consuming procedure, Singapore has a “fast track procedure”.³⁹ In this

²⁷ *ibid.*

²⁸ Competition Commission of India (Lesser Penalty) Regulations 2024 (India).

²⁹ Antonio Capobianco, ‘Summary of Discussion of the Roundtable on the Future of Effective Leniency Programmes: Advancing Detection and Deterrence of Cartels’, (*OECD*, 20 March 2024) <[https://one.oecd.org/document/DAF/COMP/WP3/M\(2023\)1/ANN1/FINAL/en/pdf](https://one.oecd.org/document/DAF/COMP/WP3/M(2023)1/ANN1/FINAL/en/pdf)> accessed 24 January 2025.

³⁰ Anti-monopoly Law of the People’s Republic of China 2007 (China).

³¹ See State Administration for Market Regulation (SAMR) <<https://www.samr.gov.cn/>> accessed 02 February 2025.

³² Anti-monopoly Law of the People’s Republic of China 2007 (n 30) art 56.

³³ Competition Act 2004 (Singapore), art 34.

³⁴ Competition and Consumer Commission Singapore, ‘Who We Are’ (*Competition and Consumer Commission Singapore*, 8 July 2025) <<https://www.cccs.gov.sg/about-cccs>> accessed 09 July 2025.

³⁵ CCCS Guidelines on Lenient Treatment for Undertakings Coming Forward with Information on Cartel Activity 2016 (Singapore).

³⁶ Competition Act 2004 (n 33) arts 61A-65

³⁷ *ibid*, art 67.

³⁸ *ibid*, art 69.

³⁹ See CCCS Practice Statement on the Fast Track Procedure for Section 34 and Section 47 Cases <<https://www.cccs.gov.sg/-/media/custom/cccs/files/legislation/legislation-at-a-glance/cccs->

process, “if the applicants are voluntarily inclined to cartel confession and cooperate with the CCCS thoroughly, such revelation from the applicant leads the commission to streamlined processes”.⁴⁰ This is a negotiated deal between the commission and the applicant after the admission of liability and “upon consent final decision is made by the CCCS either a financial penalty or remedial procedures, which is published on the website as well”.⁴¹

From my above-mentioned references, it is quite clear that Asian jurisdictions have adopted multi-functional anti-cartel enforcement. Being a trusted mechanism, the leniency mechanism has been followed in most Asian jurisdictions to combat cartels. Besides that, antitrust authorities are frequently inclined to operate dawn raids (unwarranted inspection by competition authorities being informed of anti-competitive deals), and sanctions are imposed upon the alleged corporations in terms of cartel collusions.

5. Lessons for Bangladesh to Enhance Anti-cartel Implications

In my previous discussions, I have discussed the prevalent anti-cartel provisions and the challenges of those implications in Bangladesh. Additionally, I have tried to demonstrate some global references, especially Asian experiments on combating cartels. Considering those experiments, I will try here to propose some strategies for better anti-cartel enforcement in Bangladesh.

First, the BCC is the sole executing body of the Bangladeshi Competition Act. Therefore, in combating cartels, the BCC has a significant role to play. From this aspect, we must strengthen our commission for better functioning. If we consider legal independence, we can see that the appellate authority of the BCC’s orders is the Ministry of Commerce⁴². The Government can influence the adjudicatory role played by the BCC since the alleged cartel syndicates are big guns and influential. If we could include the judiciary as of appellate authority, there would be checks and balances. For example, India has a “Competition Appellate Tribunal”⁴³ and in Japan, “decisions taken by the JFTC can be appealed to the Tokyo District Court and further appeal can be made to the Tokyo High Court, and finally to the Supreme Court”.⁴⁴ Therefore, for functioning impartially, there should be scope for judicial intervention as the appellate authority of the BCC instead of the Government.

guidelines/cccs-fast-track-procedure-for-section-34-and-section-47-cases.ashx> accessed 05 February 2025.

⁴⁰ *ibid.*

⁴¹ *ibid.*

⁴² The Competition Act 2012 (n 2) s 29.

⁴³ National Company Law Appellate Tribunal, ‘About Us’ (*National Company Law Appellate Tribunal*) <<http://compatarchives.nclat.nic.in/About.aspx>> accessed 24 February 2025.

⁴⁴ Simon Vande Walle and Tadashi Shiraishi, ‘Competition Law in Japan’ in John Duns, Arlen Duke and Brendan Sweeney (eds), *Comparative Competition Law* (Edward Elgar 2015) <<https://ssrn.com/abstract=2219881>> accessed 24 February 2025.

Second, for cartel enforcement, the BCC plays both prosecutorial and adjudicatory roles. In terms of cartel investigations, inquiry teams are led by a member authorised by the BCC.⁴⁵ Therefore, there is a chance of being influenced by the BCC while doing cartel investigations. To enhance investigative efficiency and impartiality, the investigation and inquiry wings of BCC should be separate entities. For instance, in India, for investigation, “the Central Government appoints a Director General and other officials who have expertise in investigation and relevant subject knowledge and experience”.⁴⁶ Therefore, from this reference, two points are worthy: one is a separate investigation entity without affiliation with the competition commission, and another is the qualifying elements of investigators (field knowledge, academic and practical experience). These things are absent in the Bangladeshi Competition Act for conducting cartel investigations.

Third, after getting complaints of cartel allegations, while doing the pre-inquiry and inquiry stage, the BCC has the power to give interim orders. However, the BCC cannot pass any order without hearing from the other party. Since the procedures of civil courts are followed here, the BCC should have given the option to act immediately if there is a prima facie case of the cartel. In this regard, my suggestion is to include a fast-track procedure where the BCC can take immediate action for a certain period in the pre-inquiry and inquiry stage in case of potential cartel allegations. Besides that, if the alleged offender pleads guilty, then a summary trial might be started to avoid regular proceedings.

Fourth, the sole remedy available for cartel allegations is the imposition of a fine by the BCC. Though the fine is three times that of other allegations in terms of a cartel, I think the BCC should think of other sanctions as well. Private enforcement can be inserted in our Competition Act so that a compensation scheme can be awarded by the competent authority, and a portion of such damages can be reserved in the competition fund as well.

Fifth, in my global reference discussion, I have found that dawn raids are common in almost every competition jurisdiction. In the EU, it has been a common phenomenon and has been empowered by their Act as well.⁴⁷ In India, “the DG has been empowered by the act to conduct dawn raids,”⁴⁸ and search warrants need to be issued with due process from the Magistrate Court. “Till 2022, CCI conducted 14 dawn raids,”⁴⁹ and it has been on the rise recently. Considering

⁴⁵ Bangladesh Competition Commission (Inquiry, Investigation, Review and Appeal) Regulations, 2022.

⁴⁶ The Competition Act 2002 (India), s 16.

⁴⁷ Council Regulation (EC) No 1/2003 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty [2003] OJ L 1/4.

⁴⁸ The Competition Act 2002 (n 46), s 41.

⁴⁹ Toshit Shandilya, Chandni Anand and Ileina Srivastav, ‘India: CCI looks to build a culture of compliance through rigorous cartel regulation’ (*Global Competition Review*, 12 April 2024) <<https://globalcompetitionreview.com/review/the-asia-pacific-antitrust->

these, in Bangladesh, the BCC can delegate dawn raid power to the investigation wing for operating unannounced inspections in any premises where a suspected anti-competitive matter is happening, i.e. contrary to the Competition Act. If Bangladesh can introduce dawn raids and make some MOUs with other countries, then BCC can conduct global dawn raids to crack down on cartels.

Sixth, cartel patterns are being shifted into digital transformations, and it will cause hassles for the BCC unless it is digitally equipped, keeping pace with this change. The BCC must utilise data analytics tools, machine learning algorithms, and data platforms to detect suspicious pricing patterns and analyse them to obtain proper evidence against those cartels. In this regard, BCC must be equipped with technological experts and infrastructure as well.

Seventh, from the official website of the BCC, I have found that out of 21 final ordered cases, five cases are related to cartel allegations directly.⁵⁰ Moreover, the ratio of receiving complaints is comparatively lower than suo moto cases by the BCC. So, the basic challenges of lower cartel detection are obtaining evidence and proof of that evidence before commission. Another important aspect is that incentives are absent from our existing Act. To overcome those barriers, a tested tool experimented with globally can be launched in Bangladesh, and that is the “leniency mechanism”⁵¹. We have seen that “more than 64 jurisdictions around the world have been using leniency mechanisms”⁵². Being a cost-effective mechanism, this system has been very popular among competing jurisdictions. Since there is a problem of resources in Bangladesh, it will be very helpful in this regard. This whistleblowing mechanism, on one hand, will award incentives to the successful leniency aspirants; on the other hand, by their reveal of cartel syndicates, BCC will be aware of cartels and be able to detect and prove those cartels in the end, which is very tough in traditional enforcement mechanisms.

Eighth, in my above discussion, I have highlighted the incorporation of a leniency mechanism as an enforcement mechanism to detect cartels. In this regard, the Government needs to make a simple amendment to our existing Competition Act. After the introduction of the hard law instrument, the BCC can make leniency guidelines for soft law instruments. It will be easier for the BCC to promulgate incentive structures, conditions, and procedures for leniency applications following the best practices and international guidelines offered by the OECD, ICN, UNCTAD, and ASEAN. Due to this soft law instrument, it will

review/2024/article/india-cci-looks-build-culture-of-compliance-through-rigorous-cartel-regulation#footnote-011-backlink> accessed 27 February 2025.

⁵⁰ Bangladesh Competition Commission, ‘Orders and Judgments’ (n 10).

⁵¹ Shuvadeep Paul, ‘Time to Enable the Competition Commission to Dismantle Syndicates’ *The Daily Star* (Dhaka, 29 October 2024) <<https://www.thedailystar.net/opinion/views/news/enable-competition-commission-syndicates-3738811>> accessed 27 February 2025.

⁵² Despina Pachnou, ‘Challenges and Co-Ordination of Leniency Programmes - Background Note by the Secretariat’, (OECD, 01 June 2018) <[https://one.oecd.org/document/DAF/COMP/WP3\(2018\)1/en/pdf](https://one.oecd.org/document/DAF/COMP/WP3(2018)1/en/pdf)> accessed 27 February 2025.

be easier for the BCC to modify whenever any design flaws arise. Hopefully, this global concept of anti-cartel enforcement will enhance the detection of cartels and dismantle syndicates in Bangladesh.

Ninth, advocacy of anti-cartel enforcement should be implemented widely. The pro-competition policies adopted by the BCC should be consulted with all stakeholders from time to time so that all can be aware of their responsibilities and actions taken by the BCC. Mass awareness is a crying need in this regard. The BCC should take initiatives to educate businessmen, consumers, and policymakers about anti-cartel enforcement mechanisms. This could be a part of the education curriculum in colleges and universities as well. There should be an internal evaluation system to measure the impact of the BCC's awareness and advocacy programmes on the targeted audience, and for further improvement.

Tenth, resource allocation is equally important for developing countries like Bangladesh, where there are limited resources. In Japan, "the number of total staff employed in the JFTC was 520 during 1995, which reached over 900 recently";⁵³ in contrast, "BCC has 84 approved posts, and out of that 46 persons are employed till FY 2022-2023".⁵⁴ This shows us the deficiency of manpower in our executing team. For anti-cartel enforcement, we need to increase manpower and depute judicial officials, legal practitioners, academicians, and persons who excel in business, economy, competition law, AI, and relevant knowledge. However, suppose we want to initiate dawn raids and leniency mechanisms at this stage. In that case, it is possible to launch those programmes by internal staff relocation and depute officials and staff for their designated and delegated tasks.

Eleventh, since the BCC plays the dual role of enforcing anti-cartel provisions, its capacity-building power must be enhanced proportionately. Investigators and adjudicators should be different entities, and their power, training, and aids should be increased. Financial independence is also important, and in that case, the competition fund should be increased as per the demand of the BCC. However, proper scrutiny and accountability to the superior authority need to be ensured for checks and balances.

Twelfth, the BCC must make an MoU with other competition authorities to evade cross-border cartels like other jurisdictions. This will have a great impact on making foreign investigations to combat extra-territorial cartels. Besides that, such an MoU will provide staff training to the BCC, and they can learn real-time experience of cartel investigations, evidence collections, building digital databases, and so on from foreign antitrust authorities in the long run.

Thirteenth, in Bangladesh, alongside the BCC, there are other agencies like the National Consumer Rights Department working for market monitoring.

⁵³ Japan Fair Trade Commission, 'Staff and Budget' (*Japan Fair Trade Commission*, 30 July 2025) <https://www.jftc.go.jp/en/about_jftc/statistics.html> accessed 05 August 2025.

⁵⁴ Bangladesh Competition Commission, 'Annual Report 2022-2023' (n 15) 27.

Nevertheless, there is a lack of coordination between those departments. For strict market monitoring, sudden inspections in business premises, coordination among all relevant departments of the Government is essential.

Fourteenth, the institutional accountability of BCC must be ensured for the better functioning of anti-cartel enforcement. The annual report of the BCC needs to be presented before Parliament for evaluation and discussion since the BCC is under the Ministry of Commerce. For transparency, judicial accountability should be there as well. An efficient prosecution team must be developed under the BCC to prove cartel cases before the BCC.

These are some recommendations from my perspective to strengthen anti-cartel enforcement in Bangladesh. We must build some supplementary provisions like leniency mechanisms and dawn raids to combat cartels, which are a globally experimented tool. Besides, the BCC must work with independence and accountability, enforcement efficiency, a better regulatory framework, and proper advocacy and outreach of its overall implementations regarding anti-cartel enforcement for a sustainable future. However, the BCC must be ready for digital advancements in cartel sectors and cope with changing trends in competition law fields as well.

6. Conclusion

Bangladesh has passed more than a decade since the introduction of the present Competition Act. It is a real surprise that even before independence, there was an anti-monopoly law, but it had zero impact on the Bangladeshi market. Grabbing that benefit, market syndicates have been in a race to capture the market and manipulate it for their benefit. The government failed to combat those cartel conspirators, let alone make strong regulations. Guided by the international community, investors, and other stakeholders, the government enacted the Competition Act back in 2012, and the BCC came into force in 2016. Though Bangladesh is a young competition jurisdiction, it is high time to evaluate its functioning for a sustainable future. In this regard, in this paper, I have attempted to evaluate the prevalent anti-cartel enforcement of Bangladesh regarding some Asian jurisdictions and recommended some durable changes in our anti-cartel enforcement policy.

Every day, newspaper reports are flooded with price-fixing cartels of Bangladesh, and some common reactions are seen from the authorities. However, it is a matter of great regret that we have seen little effort in market research, academic discussions, or policy evaluations about the anti-cartel sector. To make a robust enforcement mechanism, we need to look at other jurisdictions and how they are making an impact on cartels in the competition field. Among Asian jurisdictions, Japan has marched a long way to combat cartels with some effective amendments in the Anti-Monopoly Act. Their radical change has been the increase in the level and effectiveness of anti-cartel enforcement. The fines

imposed by the JFTC are now multiple of the administrative financial penalties imposed even a decade ago. The amounts recovered through damages have also increased over time. The JFTC has been functioning well with supplementary mechanisms like dawn raids and structured leniency mechanisms. These have been disseminated to improve cartel detection rates and prove them to the authority.

Taking inspiration from those experiences, Bangladesh has a lot to do. Primarily, we need to make some simple amendments and incorporate dawn raids and leniency mechanisms to combat cartels. After that, the BCC will be able to make some guidelines and regulations for those implementations. This will serve the purpose of obtaining evidence and proving it before the BCC, which are the fundamental challenges of dismantling cartel conspiracies in the present context. A dedicated investigation and prosecution team must be built up, and there should be no influence from the commission while doing investigations and playing adjudicatory roles. In this aspect, like India, we should come up with a separate investigation unit with expert persons skilled in relevant fields. Since the BCC plays the dual role of prosecution and adjudication, it will lessen the burden on the BCC to be involved in every sector. The BCC should incorporate academicians, legal experts, and Judges as deputation in their organogram in different posts, which will be a good combination for playing better roles while adjudication and drafting regulations.

Nevertheless, whenever there are any design flaws, the BCC should modify those changes and be adaptive to newer patterns. We must keep in mind that price-fixing cartels are now shifting into digital platforms as well, which will make a revolutionary change shortly. That is why technological experts must be there permanently in the BCC for data analytics and using machine learning algorithms and other digital platforms.

With the updated policy and changes in anti-cartel enforcement, the BCC must take every possible measure for proper advocacy and information sharing with all stakeholders. Without this advocacy, no program can be successful, especially in the competition law field. This advocacy and outreach should be expanded to rural and urban areas among consumers, businessmen, and other stakeholders.

To sum up, it is undeniable that cartels are prevalent in Bangladeshi markets, and behind the price fixing and manipulation of the market, syndicates are implicitly and explicitly responsible. The existing anti-cartel provision is not sufficient to provide treatment for detecting cartels. Considering the basic challenges, we need to come up with innovative policies for combating cartels, taking inspiration from other Asian jurisdictions. Strict sanctions regarding cartels and supplementary mechanisms like leniency mechanisms and dawn raids can be a milestone in this regard, with other organisational and structural modifications. Public engagement and guilty pleaders bearing authentic information and

evidence against cartel conspiracies in exchange for incentives will bring about a great change in combating cartels in the context of Bangladesh; that is my hope in this paper at the end.

