

Assessing the Performance of the Competition Commission of Bangladesh: A Qualitative Content Analysis

Dr. Arif Jamil* and Ahmed Ragib Chowdhury**

Abstract: *This study was conducted among the experts having good knowledge of the competition law and experience of dealing with the Competition Commission of Bangladesh. This first-of-its-kind study found certain interesting needs to be fulfilled for the better functioning of the Commission and the Competition Act 2012 in Bangladesh. Certain phenomena were reported as common flaws requiring attention by the respondents and they are: manpower, financial issues/ budget, logistics, and ambiguity/‘lack of precision’ of the law. Some unique flaws were identified by rather a minority number of the respondents but deserve attention: Appeal issues/authority, overlapping of power, enforcement hurdles, independence, motivation and bureaucracy, and ‘lacking in sector specific experts’. Furthermore, companies holding ‘significant market power position’ could be a concern for the Regulators. The respondent supported that the Commission should get involved in price-controlling of essential medicine to foster access to healthcare. Respondent underscored the importance of the ‘drug control law and drug policy’ in Bangladesh context, to control the rising cost of medicine. The respondents viewed the Act and the Commission from ‘unsuccessful’ to ‘partially successful’ and ‘successful’; therefore, mixed and varied responses were observed. Multiple respondents recommended the amendment of the Act, including the Appeal provision.*

Key Words: Bangladesh, Qualitative Content Analysis, Competition, Antitrust

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1. Introduction

The article reports the Qualitative Content Analysis (QCA) results of five (05) questions of the Key Informant Interviews (KII) conducted among the eleven

* Professor, Department of Law, University of Dhaka

** LL.M., University of Dhaka; LL.M. candidate, University of British Columbia.

(11) respondents; but only nine (09) could be available for the data analysis, as two (02) respondents did not complete their responses. The questionnaire was comprised of 10 questions but the questions directly testing the performance of the Competition Commission were chosen for this publication. The QCA results of question nos. 1¹, 2², 5³, 7⁴, 8⁵ of the questionnaire are published here in this article. These research questions underscored *the issues of regulating the market behavior, price controlling, and price negotiation*. The questions also tested *the Commission's role and ability to maintain the right balance between the Intellectual Property (IP) monopoly and access to IP protected goods and services*. One particular question tested *the Commission's role in controlling the drug price for fostering access to medicine*. This particular question is a timely one, as post-COVID Bangladesh experienced a surge of long COVID patients, healthcare facilities are stressed and poor populations are already financially constrained as healthcare costs during the COVID-19 drained out their savings.

The purpose of this study is to *observe the performance of the newly established institution, explore recommendations for the organization to function better in future and identify the areas that might require legislative reforms*. The study reports the Qualitative Content Analysis (QCA) of the interviews conducted amongst the expert respondents. The data analysis process and outcome can be found throughout the paper. For the purpose of interpretation of Major Key Themes (MKT), quoted words, phrases, and sentences from the respondents were utilized without citing their names, as the identity of the respondents was not disclosed.⁶ It has come to our attention that multiple respondents from the same profession or organization had differing opinions on the same issue. The words 'competition law' and 'anti-trust law' are used alternatively to mean the same thing throughout the work.

Chapter 1 introduces the study and the premise upon which it is situated. Chapter 2 provides a brief overview about the Competition Commission organogram. Chapter 3 briefly discusses the key competition laws of Bangladesh.

¹ Question No. 1: Do you think that the Competition Act 2012 and the Bangladesh Competition Commission were successful in controlling the prices of essential goods and services?

² Question No. 2: What impact the Commission has in controlling the anti-competitive behavior in the market?

³ Question No. 5: Do you suggest that the Commission should be engaged in price controlling and price negotiation with the IP owners or monopolistic (market condition where there is only one manufacturer of a particular product) producers?

⁴ Question No. 7: Do you think the Commission played a significant role in price controlling of essential medicine to foster access to healthcare?

⁵ Question No. 8: What are the obstacles for the Commission to perform better in the future?

⁶ The table containing the list of the respondents/interviewees were submitted to the reviewer.

Chapter 4 provides the data analysis results along with the methodology applied to conduct the study. This chapter contains the preparation/presentation of the results step-by-step, employing both the researchers as two analysts who derived the key words and key themes separately in the first phase and later formed the major key themes, interpretation of the major key themes and its summary. Chapter 5 contains findings and recommendations. Though it heavily relies on data analysis outcome, researchers' opinions/suggestions can also be found complementing the study findings. Chapter 6 is the conclusion. It contains researchers' unique observations that may be considered to be connecting the purpose of the study and the ground reality.

2. Brief Idea about the Organization

Established under section 5 of the Competition Act 2012⁷, The Competition Commission of Bangladesh is a statutory body, consisting of the following seven wings/departments⁸, namely, the Chairperson's Confidential Wing;⁹ Advocacy, Policy and International Relation Wing;¹⁰ Inquiry and Investigation Wing;¹¹ Business, Economy and Research Wing;¹² Law and Enforcement Wing;¹³ Administration and Human Resources Wing;¹⁴ and the ICT Wing.¹⁵

The Commission provides a form to submit complaints by the member of the public.¹⁶ The Commission's website informs that there is a provision to file a complaint to the Competition Commission of Bangladesh if you have noticed

⁷ The Bangladesh Competition Act, 2012 (Act No 23 of 2012) s 5.

⁸ Competition Commission < <https://ccb.gov.bd/site/page/bab76c90-2146-48fc-82e7-51f6d7f6c383/->> accessed 24 March 2023.

⁹ Competition Commission <<http://www.ccb.gov.bd/site/page/8fbc9695-f919-4536-9ca0-7dfcea8d18f9/>>accessed 24 March 2023.

¹⁰ Competition Commission < <http://www.ccb.gov.bd/site/page/b4ba37fb-2cac-49e6-97a8-43242900104f/->>accessed 24 March 2023.

¹¹ Competition Commission<<http://www.ccb.gov.bd/site/page/1d1400be-5c1b-425a-a217-990d5826032e/->>accessed 24 March 2023.

¹² Competition Commission<<http://www.ccb.gov.bd/site/page/7bb4c978-7ca2-4d59-85a0-2987d2d71c1b/->> accessed 24 March 2023.

¹³ Competition Commission<<http://www.ccb.gov.bd/site/page/54a808b5-a867-4735-9067-3dfa45c85ea3/->> accessed 24 March 2023.

¹⁴ Competition Commission< <http://www.ccb.gov.bd/site/page/472e9a18-d3d4-435f-b325-eb57f1428361/->> accessed 24 March 2023.

¹⁵ Competition Commission < <http://www.ccb.gov.bd/site/page/966ab53f-40b2-46c4-b9ce-5ff29e5d87cb/->>accessed 24 March 2023.

¹⁶ Competition Commission < <https://ccb.portal.gov.bd/site/page/74cbf4ed-f613-4782-9a3c-43926d02bf53>>accessed 24 March 2023.

anti-competitive activities, monopolistic business¹⁷, and collusion in the market of your vicinity or any other area.¹⁸ The complainant has to pay the prescribed fee in order to file the complaint.¹⁹ The Commission claims that its mission is to prevent, control and eliminate anti-competitive behavior such as collusion, monopoly, oligopoly, merger, and abuse of dominant position in the market.²⁰ It also aims to build a knowledge-based, research-oriented, and ICT (information and communication technology) dependent Commission.²¹

3. Brief Discussion on the Key Competition Laws Comprising of se Legal Framework

A. The Competition Act 2012

Important definitions include cartel, monopoly, and collusion. But the Act does not make a direct link between ‘Intellectual Property’, hereinafter referred to as IP, and ‘anti-competitive effects’ for ‘mala fide exploitation of IP rights’. Many important sections were introduced for the first time in Bangladesh to encourage competition and regulate abuse of the dominant position in the market.

Section 2c defines *oligopoly* as any situation wherein a group of people or organizations controls the market of any particular product or service. *Cartel* under section 2(e) corresponds to when any person or group of persons by express or implied contract, for the purpose of establishing a monopoly in the market, controls or attempts to control the production, distribution, sale, price or transaction or limits any type of service in the market. Section 2(o) defines *monopoly* as a situation where a person or an enterprise controls the market of any particular product or service. Section 2 (q) explains *collusion* as any written or unwritten contract or agreement to facilitate or further the dishonest intention of disrupting a healthy and normal competitive atmosphere in the market and to control such market.

Section 15 prohibits any person from entering into any contract or collusion concerning the production, supply, distribution, storing, or acquisition of any

¹⁷ The web page mentions the terms ‘ek chetia bebsha’ which we translated as ‘monopolistic business’. Competition Commission< <https://ccb.portal.gov.bd/site/page/74cbf4ed-f613-4782-9a3c-43926d02bf53>>accessed 24 March 2023. But that term would not criminalize legal ‘monopoly’ such as intellectual property rights per se, according to our understanding of the Competition Act 2012.

¹⁸ Competition Commission< <https://ccb.portal.gov.bd/site/page/74cbf4ed-f613-4782-9a3c-43926d02bf53>>accessed 24 March 2023.

¹⁹ Ibid.

²⁰ Competition Commission<<http://www.ccb.gov.bd/site/page/bab76c90-2146-48fc-82e7-51f6d7f6c383/About-Competition-Commission>>accessed 20 March 2023.

²¹ Ibid.

product or service, directly or indirectly, to disrupt or cause disruption to the competition in the market or create a situation of monopoly or oligopoly.²²

The provision also states that any contract, practice, or decision of any person or association of persons involved in the provision of same or similar goods or services shall be deemed to be prejudicial to competition in the market for goods or services if such contract directly or indirectly determines the sale or purchase price abnormally or fraudulently determines the price through forgery in the tender and all other matters; limits or controls production, supply, market, technical development, investment or service facilities, or divides the source of production or service facilities on the basis of class, geographic market, the number of market consumers or on any other basis.²³

Furthermore, the following are considered anti-competitive behavior under section 15 of the Bangladesh Competition Act, 2012, conditional arrangement²⁴ (agreement while purchasing any product from any vendor to accept goods or benefits by the buyer from any other person or organization employed by the vendor), exclusive supply agreement²⁵ (any agreement which restricts the buyer in any way from acquiring the goods from any person other than the seller or otherwise dealing in the goods), exclusive service agreement²⁶ (any agreement which limits, restricts or suspends the supply of any product or quantity of product or specifies any territory or market for the sale or transfer of any product), refusal to deal²⁷ (any agreement restricting the person to whom the goods are sold or from whom the goods are purchased, or any class thereof, from buying or selling the same by any means), reservation of resale price²⁸ (any contract which provides that the price to be charged by the buyer on resale of any goods shall be the price fixed by the seller, unless it is expressly stated that a lower price may be fixed).

No business enterprise or organization deemed to be dominant in any market (dominant position means a position of advantage enjoyed by a business in a relevant market that allows it to operate independently of the influence of other competitive forces in the market and is able to influence competitors, consumers, and markets to its favour)²⁹ shall abuse its position.³⁰ Such an enterprise will be

²² The Bangladesh Competition Act, 2012 (Act No 23 of 2012) s 15 (1).

²³ The Bangladesh Competition Act, 2012 (Act No 23 of 2012) s 15 (2).

²⁴ The Bangladesh Competition Act, 2012 (Act No 23 of 2012) s 15 (3) (a).

²⁵ The Bangladesh Competition Act, 2012 (Act No 23 of 2012) s 15 (3) (b).

²⁶ The Bangladesh Competition Act, 2012 (Act No 23 of 2012) s 15 (3) (c).

²⁷ The Bangladesh Competition Act, 2012 (Act No 23 of 2012) s 15 (3) (d).

²⁸ The Bangladesh Competition Act, 2012 (Act No 23 of 2012) s 15 (3) (e).

²⁹ The Bangladesh Competition Act, 2012 (Act No 23 of 2012) s 16.

³⁰ The Bangladesh Competition Act, 2012 (Act No 23 of 2012) s 16 (1).

deemed to have abused its position when it³¹

- a) directly or indirectly imposes unfair or discriminatory conditions in the purchase and sale of goods or services or sets discriminatory prices or artificially reduced prices (predatory prices, sale price of product lower than cost of production to eliminate competition) in the purchase and sale of goods and services;
- b) limits or impedes the production of goods or services or their market or consumer preconceived technical or scientific development of the goods or services;
- c) adopts and continues any practice that impedes the access of others to the market;
- d) makes any contract which is conditional upon the assumption by the other party of additional obligations that by their nature or commercial practice are not connected with the subject matter of the contract; or
- e) uses its dominant position in the market to enter into or secure another relevant market.

Section 44 of the Act specifies that the Commission shall draft, and enact regulations to fulfill the purposes of this Act. Accordingly, the Bangladesh Competition Commission (Inquiry, Investigation, Revision, and Appeal) Regulation 2022³² and the Bangladesh Competition Commission (Fund) Management Regulation 2022³³ have been promulgated. The Fund Management Regulation outlines the process of accountancy, and grant management including the sectors where expenditures may be made from the funding sources. The Inquiry, Investigation, Revision, and Appeal Regulation underscores the process for initiation of an inquiry upon reception of a complaint, including the timeline, process, and report submission at the end of an inquiry³⁴; the procedure for forming an investigative team, the procedure of investigation³⁵, its timeframe, the powers vested on Commission officials, the rules they are required to follow during an ongoing investigation including hearing, and report submission upon conclusion of investigation. The Regulation also specifies the procedures for

³¹ The Bangladesh Competition Act, 2012 (Act No 23 of 2012) s 16 (2)

³² Bangladesh Competition Commission (Inquiry, Investigation, Revision, and Appeal) Regulation 2022 available at <https://ccb.portal.gov.bd/sites/default/files/files/ccb.portal.gov.bd/page/a5aa1064_9e73_4092_816b_1bdb0660e41b/2023-02-08-04-54-65f3906d61242c4fbed54c9832cc721.pdf> accessed 23 February 2024.

³³ Bangladesh Competition Commission (Fund) Management Regulation 2022 available at <https://ccb.portal.gov.bd/sites/default/files/files/ccb.portal.gov.bd/page/a5aa1064_9e73_4092_816b_1bdb0660e41b/2023-02-08-05-05-9343fcb11db26c5f4a52a74458575178.pdf> accessed 23 February 2024.

³⁴ Bangladesh Competition Commission (Inquiry, Investigation, Revision, and Appeal) Regulation 2022, r 6-14.

³⁵ Ibid, r 15-23.

revision³⁶, appeal³⁷, and interim measures³⁸.

B. Bangladesh Competition Commission Employee Service Rules 2019: Rules 37, 38

Under rule 37³⁹, No employee shall pay or receive a dowry or induce anyone to pay or receive a dowry. No dowry in applicable cases can be claimed directly or indirectly from the parents or guardians of the daughter or groom. This rule explicitly prohibits taking or inducing any person from the bride's side to provide a dowry. However, the consequences of any such act are not mentioned in the rule itself. However, since a dowry is a criminal act under the Dowry Prohibition Act 2018⁴⁰, and criminal proceedings can be intimated against commission employees under rule 57, there remains scope for the aforementioned consequences.

According to rule 38⁴¹, except in the case of bona fide dealings with bona fide traders, an employee shall buy, sell, or sell any immovable or immovable property worth more than two hundred and fifty thousand rupees to any person residing, possessing immovable property or carrying on business in his place of work, district or local area for which he is assigned. If desiring to transfer by any other method, the concerned employee, if applicable, shall inform the competent authority of the intention, the statement of the intention shall contain the complete details of the transaction including the reasons for the transaction and the fixed price and if the transfer is done by any method other than purchase and sale, there shall be the complete details of the transaction including the method of the said transfer, then the concerned employee will work as per the order given by the competent authority.⁴²

Provided that the employee concerned shall inform the next superior authority in all transactions with his subordinate employees. Notwithstanding anything contained in sub-rule (1), no employee or any member of his family shall, without prior approval, acquire or transfer any immovable property situated outside Bangladesh by purchase, sale, donation, bequest, or otherwise and enter into any kind of business transaction with any foreign government or foreign agency or entity.⁴³

³⁶ Ibid, r 28-30.

³⁷ Ibid, r 31-32.

³⁸ Ibid, r 25-27.

³⁹ Bangladesh Competition Commission Employee Job Rules, 2019, r 37.

⁴⁰ The Dowry Prohibition Act, 2018 Act No. XXXIX of 2018.

⁴¹ Bangladesh Competition Commission Employee Job Rules, 2019, r 38.

⁴² Ibid, r 38 (1).

⁴³ Ibid, r 38 (2).

Rule 38 elaborates the limitations and transparency requirements of financial dealings (except in case of *bona fide* dealings with a genuine businessman) between a commission employee and a third party (based in his/her place of employment or resident in his/her assigned area). This rule places a cap on the amount an employee of the Commission can deal with the third party without notifying the appropriate authorities. Anything above that would need elaborate documentation such as a statement of intention, corresponding deeds, and the mode of transfer to attest to the ingenuity of the dealings. However, the rule does not specify the standard of proof the authorities will follow in terms of determining ingenuity. Furthermore, the rule does not specify the consequences for contravention of this provision. Rule 49 specifies that an employee is deemed to be corrupt if such an employee of the commission is found to have undisclosed wealth and is unable to justify its acquisition or if his/her disclosed sources of income diverge from their lifestyle. The penalties include censure, a moratorium on promotion or increment, demotion of the salary scale, etc. in case of minor offenses, and for major offenses, mandatory retirement, dismissal, or removal from employment, in which case, such employee will be ineligible for further employment in the commission.⁴⁴ There is also scope for temporary dismissal in case of probability of major infarction and the concerned authorities deem such dismissal necessary.⁴⁵

4. Conducting the Key Informant Interviews and Presentation of the Data Analysis Results

A. Reporting the KII

The technique used to conduct our Key Informant Interview (KII) is the ‘face-to-face interview’. The data collection starts from March 29, 2023 (the date of the first KII) and ends on June 19, 2023. The informants/respondents were chosen from a diverse background but relevant to the Competition Act 2012 and the Competition Commission of Bangladesh. The interviewees/respondents were lawyers, judges, academic (having expertise in intellectual property and competition law), and the employees of the Commission. Respondent T1 expressed intention to edit/modify his/her response and later never submitted the edited/modified response by email. Therefore, despite our team had conducted 11 interviews (1 half done (T11 did not complete) and 1 did not submit the edited/modified response), only 9 responses could be analysed.

The questionnaire, apart from asking general questions on the performance, functioning, and effectiveness of the Competition Commission and Competition Law of 2012, also enquired about the nexus between Intellectual Property Rights

⁴⁴ Ibid, r 50.

⁴⁵ Ibid, r 55.

(IPR) and the high price of goods and services. The questionnaire highlighted the ‘price issues of essential medicine’ relevant for access to healthcare and enquired if the respondents believe that there is more to learn from anti-trust law enforcement in other jurisdictions. Researchers believed that a Qualitative Content Analysis (QCA) would be appropriate for this type of categorical text data and hence, QCA was chosen to analyze the text data.

The questionnaire being a mixed-type, semi-structured one, allowed room for further development during the course of the interview. The Researchers took notes and as and when necessary, recorded. Both researchers extracted ‘key words’ from the responses separately in different MS Word files, followed by the ‘patterns/themes’ (content categories) derived from the text data, while keeping the ‘original responses in quotation’ for every question. Major key themes and their interpretations also contain respondents’ words/phrases in quotations, apart from the data transformation done by the analysts. Subsequently, both files were used to identify, develop, analyze, and accomplish the following tasks and sequence:

- Common Key Words (words of the respondent quoted by both analysts)
- Common Key Themes (discerned by both analysts)
 - Unique Key Words (words of the respondent quoted by one analyst)
 - Unique Key Themes (discerned by one analyst)
 - Major Key Themes
 - Interpreting the Major Key Themes
- ❖ Overall Summary of the Qualitative Content Analysis (QCA)

B. Data Analysis Results

As the respondents were anonymous, their words were quoted without citing in the footnote for developing the major key themes and their interpretation. The appendices supplied to the reviewer comprising of the data analysis files contain the original responses of the respondents. The reviewer had access to all files. As the QCA seemed to be the most appropriate method of presenting the qualitative data derived from the interviews conducted amongst the expert respondents, *the researchers painstakingly analyzed each of their responses, often involving supplementary questions’ response to clarify the opinion of the respondents.*

I. Qualitative Content Analysis

Major Key Themes derived from the responses to question 1:

- Commission has a ‘wide range of power and duties’;
- Not yet played any ‘proactive role’;

- Commission ‘yet to play an effective role’;
- Commission has passed 9 years since the establishment;
- Commission is still very premature nature;
- Competition Commission has lack of expertise in highly technical issues;
- It needs to engage its resources;
- BTRC (Bangladesh Telecommunication Regulatory Commission) ‘issued regulations for Grameenphone Ltd’;
- Competition Commission should engage in identification of ‘significant market powers’;
- Commission was unsuccessful until now;
- Need enacting further Rules and Regulations;
- ‘[H]onest intention behind the law’;
- Alternative existing recourses and platforms;
- Overlapping in exercising the jurisdiction and mandate;
- ‘[E]nforcement creates awareness’;
- Resource constraint;
- ‘[A]wareness development presents a significant hurdle’;
- Commission ‘did not have the know-how’;
- Positive impact is demonstratable though not entirely successful;
- ‘[I]nvolvements in cases before the Commission’;
- Commission has wide jurisdiction;
- Can regulate also the ‘anti-competitive behaviour of the state-owned corporations’;
- ‘Commission has been successful in regulating the market’;
- Structural limitations;
- ‘[U]ndefined organogram’;
- Practical constraints such as the Covid-19 pandemic;
- Resorting to all available avenues;
- ‘Not at all’ successful;
- In general, no impact except certain effects in the telecom sector;
- SMP rules to install healthy competition in the telecom sector;
- Partially successful;
- More expertise needed.

Interpretation of the Major Key Themes derived from the responses to question 1:

Respondent thinks that the commission has passed 9 years since the establishment and has not yet played any 'proactive role' to prevent anti-competitive acts. Respondent outlined that the law provides a lot of power to the Commission. Instead of 'subject' specific reaction, the Commission should play a 'proactive role'. Respondent outlined that the Competition Act, 2012 'vests wide range of power and duties on the Bangladesh Competition Commission (BCC)'. Respondent does not think that BCC 'play[s] any role in controlling prices of essential goods and services'.

Respondent noted that the 'efforts the Bangladesh Competition Commission is putting to control the prices of goods and services are still very premature nature' and yet to be more effective; it needs to engage its resources. Respondent further noted that the Commission does not have the technical particulars and expertise and is already struggling to deal with technical issues. BTRC (Bangladesh Telecommunication Regulatory Commission) 'issued regulations for Grameenphone Ltd. controlling its activities considering its significant market power position'. The respondent suggested that the Competition Commission should engage in the identification of 'significant market powers' in other sectors and issue regulations to control their affairs so that 'the prices of goods and services do not rise'. The respondent, currently employed by the telecom operator as a legal professional emphasized that the Competition Commission lacks expertise in highly technical issues, such as the telecom industry, and opined that the regulatory affairs in telecom should be left with BTRC.

Respondent addressed the Commission as a 'toothless paper tiger' that 'utterly failed to have good grip over the competitive market' and have any 'significant impact.' Commission was unsuccessful, according to the respondent, though the respondent has not conducted any empirical study.

The respondent noted that there was 'an honest intention behind the law'. However, 'the law remains inactive' due to the absence of 'rules and regulations which are yet to be formed'. Respondent questioned whether an enactment is the solution to a problem. Respondent reminded alternative existing recourses and platforms, such as 'mobile courts, market monitoring cell of the ministry of commerce, CAB', etc.

In the early few years, the Commission had confusions/uncertainties on how to proceed. Respondent outlined that creating awareness regarding the law was a challenge in the early stage and supports the idea that 'enforcement creates awareness'. Respondent informed that 'in 2022, a total of 69 suo motu cases were filed before the Commission' and claimed that those cases had an association

with the ‘impact on the market’ and ‘creating a sense of awareness among the businesspersons and stakeholders’. Respondent claimed that the Commission is ‘in preliminary stages’ and underscored limitation saying the ‘team is [sic.] here quite small in contrast with the scope of our workload’. Respondent believes that the Commission has wide jurisdiction and it can regulate also the ‘anti-competitive behaviour of the state-owned corporations’ but there is resource constraint. Respondent portrayed a positive image regarding the success of the Commission and mentioned ‘involvements in cases before the Commission’ of ‘Kazi Farms, Poppy Library, Meghna Group of Industries, Bashundhara Group and BRAC’ for example.

Despite the Act was Promulgated in 2012, the Commission got its full functioning committee in 2019, the respondent informed, and also mentioned that certain other practical constraints such as the Covid-19 pandemic had an impact on the Commission’s ‘functioning’. Respondent claimed that considering the practical constraints, ‘Commission has been successful in regulating the market’. Respondent mentioned that it is necessary to ‘remedy’/overcome ‘structural limitations’ to ‘ensure full functioning of the Commission’.

The respondent stated that the Act and the Commission were ‘[n]ot at all’ successful in controlling the prices of essential goods and services but claimed that the Commission is ‘trying its best’. The respondent indicated room for improvement.

Respondent could not identify any impact of the law and the Commission in Bangladesh except for the ‘SMP rules’ to ‘install healthy competition’ in the ‘telecom sector’.

Respondent believes that the Act and the Commission were partially successful in controlling the prices of goods and services but emphasized that ‘more expertise is needed’.

Overall Summary of the QCA *shows how the respondents commented on the success of the Competition Act 2012 and Bangladesh Competition Commission in controlling the prices of essential goods and services:*⁴⁶

Diverse opinions were observed in response to this question. Different interviewees made very different responses that may have some associations with their professional experience. As this study interviewed independent law practitioners, corporate lawyers, and the Commission’s employees, response to the question testing the Competition Act 2012 and the Commission’s performance may vary dramatically. *Respondents portrayed the law and the Commission*

⁴⁶ Question No. 1: Do you think that the Competition Act 2012 and the Bangladesh Competition Commission were successful in controlling the prices of essential goods and services?

from unsuccessful to partially successful and successful. Certain respondents underscored the prevailing limitations of an early-stage institution. Multiple respondents believe that the Commission has a wide jurisdiction (power).

Respondent outlined that the Competition Act, 2012 ‘vests wide range of power and duties on the Bangladesh Competition Commission (BCC)’. Instead of ‘subject’ specific reaction, the Commission should play a ‘proactive role’. Companies holding ‘significant market power position’ seem to be a concern for the Regulators.

Respondent noted that the Commission is still very premature in nature and yet to be more effective, it needs to engage its resources. Respondent further noted that the Commission does not have the technical particulars and expertise and is already struggling to deal with technical issues.

Though the respondent has not conducted any empirical study claimed that the Commission and the Competition Act 2012 was unsuccessful.

Respondent emphasized the impact assessment and implementation of the law by enacting further rules and regulations and indicated that there may be overlapping in exercising the jurisdiction and mandate.

Respondent opined that there has ‘definitely been some positive development and awareness building’ concerning competition law and the Commission; its ‘work and positive impact is demonstratable though not entirely successful.’ Respondent mentioned a number of important cases pending before the Commission involving notable business enterprises as an indication of its positive achievement.

Respondent reported that the ‘Commission has been successful in regulating the market’ by undertaking certain initiatives despite inadequate manpower, ‘structural limitations’, and undefined ‘organogram’ (at the initial stage).

Respondent underscored that the Commission is resorting to all available avenues.

Respondent thinks that the Act has, in general, no impact except certain effects in the telecom sector.

Respondent iterated that the Act and the Commission as partially successful with more expertise needed for continued success.

Major Key Themes derived from the responses to question 2:

- No impact;
- Work on the basis of any complaint received from any sources;

- Lengthy justice procedure;
- Number of complaints;
- No general impact;
- Have significant impact on the market;
- '[S]uo moto proceedings against 17 market giants';
- Impact for sectors;
- The 'market leaders' and the law;
- Unsure and negative;
- SMEs 'being rule out by the big players';
- Commission's activities not visible;
- Definition not 'inclusive';
- Modifications in the definition;
- '[O]nline businesses';
- Pragmatic regulation on 'syndicate and cartel';
- Impact in creating deterrent effect;
- '[F]ine' and 'imprisonment' as means of causing the deterrent effect;
- The 'increase ...[of] activities [of the Commission]';
- '[S]ustainable impact on the market';
- Outlined three main responsibilities of the Commission;
- '[M]erger regulations';
- '[M]oderate impact';
- Unsure of the impact of the Commission;
- '[H]eightedened public awareness';
- Impact only on telecom sector;
- '[C]ompetitive market in other industries';
- '[W]idespread syndication';
- Price hike during the month of Ramadan;
- Control of the syndicates;
- Commission is 'working';
- Jurisdiction of the Commission.

Interpretation of the Major Key Themes derived from the responses to question 2:

Respondent expressed that the BCC has not been able to create any impact in controlling anti-competitive behavior in the market. They work based on any complaint received from any sources and the justice procedure is 'quite lengthy' and the number of complaints is also few, hence, no general impact but few instances of punishment against entities involved in anti-competitive behavior can be observed.

Respondent thinks that the Commission and the Act have a significant impact on the market (in particular consumer goods) in controlling anti-competitive behavior and cited the example of 'suo moto proceedings against 17 market giants or business enterprises ... to [combat] abnormal rise of prices of daily commodities'. Respondent is hopeful that their impact will be felt in other sectors too' and 'the 'market leaders' will care about the law.

The respondent is unsure and negative about the Commission's performance. Citing the example of the bakery industry stated that SMEs are 'being rule out by the big players'. The Commission's activities are not visible to him/her.

The Definition in the Act is not 'inclusive'. Respondent recommended modifications in the definition to make it more 'holistic' and suggested to include 'online businesses'. The respondent suggested more pragmatic regulation on 'syndicate and cartel'.

Respondent thinks that the Commission has a great/significant impact in creating a deterrent effect. Respondent referred to 'fine' and 'imprisonment' as means of causing the deterrent effect. Respondent while citing the 'ruling concerning BIWTA and a shipping company' referred to the opinion of the High Court Division supporting the 'increase ... [of] activities [of the Commission]' had stated that '[t]his single judgment had a significant impact on BIWTA and they understood that any anti-competitive behaviour would result in them being held accountable and liable to fines'. Respondent emphasized that the Commission 'need to increase ... capabilities and address ... shortcomings to have a sustainable impact on the market'.

Respondent outlined three main responsibilities of the Commission: '1. Anti-competitive agreement deterrence, 2. Collusion prevention and 3. Merger deterrence'. Respondent informed that 'Commission is [currently] focused on anti-competitive behaviour regulation since [the] merger regulations have yet to be established'. Respondent thinks that the Commission has 'a moderate impact to deter market players/producers from being involved in collusion, syndication or other activities'.

Respondent is unsure of the impact of the Commission but underscored ‘overall heightened public awareness about the law and the oversight of the Commission’ as an invisible impact.

Respondent believes that the Commission has an impact only on the telecom sector. Respondent thinks that the Commission ‘failed to create a competitive market in other industries’. Respondent identifies ‘widespread syndication in each sector’ as the reason for the increase of ‘product prices’ which according to him, ‘the Commission has failed to address’. Respondent cited the price hike during the month of Ramadan as example of the Commission’s failure in price controlling. Respondent reported that ‘the Commission has not been able to reign in these practices (control of the syndicates) and make its presence known.’

Respondent thinks that the ‘Commission is ‘working’ to ‘control anti-competition [anti-competitive] practices’. Respondent thinks that the ‘Commission has a powerful jurisdiction’.

Overall Summary of the QCA *shows how the respondents commented on the impact of the Commission in handling anti-competitive behaviour in the market.*

The responses to this question have been diverse. The respondents have expressed their opinion on both sides of the spectrum in terms of whether the Commission has had any impact in controlling the anti-competitive behaviour in the market.

Respondent noted that the Commission due to their ‘rather reactive roles’, and ‘lengthy proceedings’, ‘has not created any impact in controlling anti-competitive behavior in the market’, but, they ‘can and have so far punished some of the entities involved in anti-competitive behaviour.’

Respondent observed that the Commission is indeed ‘significantly impacting the market to control anti-competitive behavior,’ resulting in ‘market leaders to care about the requirements in the Competition Act including anti-competitive behaviours.’

Respondent could not provide an ‘exact answer to this question’ but expressed that the Commission is not undertaking any initiative ‘that is visibly impacting competition in a positive manner.’

Recommending modifications to the definition clause of the Act, the respondent opined that the definition of ‘anti-competitive behaviour’ is ‘not inclusive’ for not covering ‘online businesses’ and that ‘there has to be mass awareness to make a law more functional.’

Respondent underscored that the Commission garners 'huge' impact and cited 'a ground-breaking ruling' by the High Court Division that the Commission 'should increase' its 'activities' even though the Commission needs to 'increase' its 'capabilities' and 'address' its 'shortcomings'.

Respondent outlined the 3 principal responsibilities of the Commission, '1. Anti-competitive agreement deterrence, 2. Collusion prevention and 3. Merger deterrence' and that its main function at present is 'on anti-competitive behaviour regulation' wherein it has 'been successful in having a moderate impact' due to 'merger regulations' not having been drafted yet.

Respondent noted that the Commission in certain cases 'has invisible impact' that can be discerned from 'overall heightened public awareness about the law and the oversight of the Commission.'

Respondent stated that the Commission 'has not been successful in regulating competition in the market' except for 'the telecom sector', the only sector where they could create an impact, and that they 'ultimately failed to create a competitive market in other industries'.

Respondent undergirded that the Commission is presently working to 'control anti-competitive practices and behaviour' and that it 'has a powerful jurisdiction' to deter or control such 'anti-competitive practices.'

Major Key Themes derived from the responses to question 5:

- Does not support the idea that the Commission should be engaged in price controlling and price negotiation;
- Regulate the 'single manufacturer';
- The corruption, malpractice and 'associated risk';
- Market has too many products to regulate the prices;
- Commission should be engaged in price controlling and price negotiation;
- '[A]bsence of regulatory regime';
- '[M]anagement of prices';
- '[C]onsumer goods market';
- '[F]luctuating prices';
- '[O]ther departments';
- '[I]n research and analysis of the current market trends';
- '[P]lace it before the policy makers to make compatible rules';
- Commission should be engaged in price controlling and price negotiation;

- Actual power;
- '[E]xtended function';
- '[E]nsure [...] bargaining power';
- The Commission should not be 'involved in price negotiation';
- '[T]he market itself will determine the price automatically';
- Play its 'designated role' and 'resist' any attempted monopoly;
- '[E]nsure competition in the market';
- '[D]eter any arbitrary' exorbitant price fixation of products;
- Prevent any 'entry barriers to the market';
- Disagreed that the Commission be involved in price controlling or negotiation;
- '[I]n some cases [...] under the Competition Act 2012 Section 15(4)';
- Commission should be engaged in price controlling and price negotiation;
- '[C]ontrol and monitoring';
- 'IP has been exempted';

Interpretation of the Major Key Themes derived from the responses to question 5:

Respondent *does not support the idea that the Commission should be engaged in price controlling and price negotiation with the IP owners*. However, the respondent thinks that *there can be rules in the Act to regulate the 'single manufacturer'*. Respondent thinks that the market has too many products to regulate the prices and the Commission will not have sufficient resources to do that. Besides, corruption, malpractice, and 'associated risk' would be a concern too.

Respondent supports the idea that the Commission should be engaged in price controlling and price negotiation with the IP owners or monopolistic producers. Respondent cited the 'absence of regulatory regime' as the justification for the Commission to get involved in price control and negotiation and referred to it as the 'management of prices'. Respondent recommended that 'consumer goods market' should be regulated 'due to its fluctuating prices'.

Respondent thinks that 'there are other departments for controlling and monitoring the market prices' and Commission should be more engaged 'in research and analysis of the current market trends and place it before the policymakers to make compatible rules and regulations'.

Respondent supports the idea that the Commission should be engaged in price controlling and price negotiation with the IP owners or monopolistic producers.

Respondent referred to this action of the Commission as ‘extended function’ and questioned that ‘[i]f it cannot ensure that bargaining power, how can it maintain competition in the market?’. Respondent expressed doubt regarding the power of the Commission in bargaining with the business enterprises.

Respondent does not support that the Commission should be ‘involved’ in price controlling and price negotiation with the IP owners, rather believes that ‘the market itself will determine the price automatically’. The respondent suggested that the Commission should play its designated role to resist the ‘attempt of creating monopoly in the market’.

Respondent reminded that it is the ‘responsibility of the Commission’ to ‘ensure the competition in the market’ and prevent any ‘entry barriers to the market’. Respondent stated ‘price controlling or price negotiation are not under the purview of the Commission’. Respondent thinks that ‘if there is any monopoly in the market’, the Commission should be involved ‘to deter any arbitrary high price’.

Respondent does not suggest that the Commission should be engaged in price controlling and price negotiation with the IP owners or monopolistic producers but mentioned that ‘in *some cases* [italics added] it can be under [linked with] the Competition Act 2012 Section 15(4)’.

Respondent agrees with the idea that the Commission should be engaged in price controlling and price negotiation with the IP owners or monopolistic producers. Respondent emphasized on ‘control and monitoring’ for the regulation ‘of the prices to deter monopoly and oligopoly’.

Section 15(1) of the Bangladesh Competition Act, 2012 (Act No 23 of 2012) prohibits any person from entering into any contract or collusion concerning the production, supply, distribution, storing or acquisition of any product or service, directly or indirectly, to disrupt or cause disruption to the competition in the market or create a situation of monopoly or oligopoly. But section 15(4) (1) is read as an exception to the general restrictions imposed by section 15(1). The respondent underscored that ‘[i]n the Competition Act 2012, IP has been exempted under Section 15(4) [italics added]’ which means that ‘*anti-competitive agreement*’ to enforce IP rights or to prevent IP infringement is valid, and hence, the monopolistic impacts caused by IP rights can not be considered as a violation of section 15(1).

Overall Summary of the QCA shows the respondents commented on Commission’s involvement in price controlling and price negotiation with IP owners or monopolistic producers.

Respondent noted that it was not the Commission's duty to engage in such negotiations though it 'may introduce necessary rules' concerning setting the prices of products provided by single manufacturers. Further noted that 'associated risk' would be 'high' with providing the Commission to engage in such activities due to increased 'workload', risk of 'bribery', and the possibility of the Commission 'losing its purpose'.

Respondent agreed that 'Commission must play the [this] role' in 'regulating the market' owing to the 'absence of regulatory regime'.

Respondent opined that '[t]his [Commission's involvement in price controlling and price negotiation] should not be the sole authority of the Commission' and that it should 'focus on research and analysis of current market trends' to help inform 'policy makers'.

Respondent expressed that the Commission should be engaged in bargaining with 'businesses to fix prices' but doubted 'whether Commission actually has the power' to do so.

Respondent did not think that the Commission should not be 'involved in price negotiation' which would be determined by the market 'automatically'. The Commission should play its 'designated role' and 'resist' any attempted monopoly in the market.

Respondent underscored that the role of the Commission is to 'ensure competition in the market' and 'deter any arbitrary' exorbitant price fixation of products.

Respondent disagreed that the Commission be involved in price controlling or negotiation but signaled the amendment of S. 15(4) of the Competition Act 2012 (in the context of abusive anti-competitive practices by the IP owners).

Respondent affirmed that the Commission should be engaged in price controlling through 'a control and monitoring authority' to 'deter monopoly', 'oligopoly' and control and monitor prices.

Respondent is of the opinion that under Section 15(4) of the Act (Competition Act, 2012), 'IP has been exempted' from the purview of the Commission.

Major Key Themes derived from the responses to question 7:

- Not aware of any instance of price controlling of essential medicine;
- Commission can take such measures to ensure price controlling of essential medicines;
- Has not experienced any instance of price controlling of essential medicine;

- ‘They [the Commission] are legally authorized’;
- Identified as practical constraint: ‘operational challenges, syndicates and political issues’;
- Has not experienced any instance of price controlling of essential medicine;
- ‘[P]harmaceutical industry’ plays a role in price controlling of essential medicine;
- Bangladesh ‘still enjoying the benefit of the TRIPS special clause’;
- Not been successful in controlling the price of essential medicine;
- Overlapping of jurisdictions and grey areas of jurisdiction;
- Referred to the ‘Department of Drug (Directorate General of Drug Administration)’;
- Necessary to assess ‘the impact of those [new] laws’;
- ‘[W]ide jurisdiction’;
- ‘[A]fter graduating from LDC Bangladesh becomes susceptible to ... cases being filed against it before the DSB’;
- ‘IP infringements’;
- ‘Commission will be overloaded’;
- ‘[C]apacity building of the Commission’;
- ‘[C]alled upon entities such Beximco, and Drug Essentials’;
- ‘[P]roliferation of resources’;
- Respondent is skeptical about the jurisdiction of the Commission regarding medicine’s price control;
- ‘[P]rice parallelism’ (similar price for the same product);
- Investigate cartel or syndicate;
- New producers entering the market;
- ‘[K]eep the market open’;
- Expressed inabilities;
- Does not think that the Commission is active in drug price control;
- Drug prices were competitive in the past;
- ‘CSOs and NGOs need to play role ... along side the media and other activists’;
- ‘[F]ree, fair and competitive price’.

Interpretation of the Major Key Themes derived from the responses to question 7:

The respondent is not aware of any instance of price controlling of essential medicine by the Commission but recommended that the Commission can get involved ‘as they have the valid power ... to ensure fair competition’.

The respondent has not experienced any instance of price controlling of essential medicine to foster access to healthcare by the Commission and believes that the Commission should get involved in this sector [essential medicine and healthcare]. The respondent thinks that ‘[t]hey [the Commission] are legally authorized’ but cited the following things as practical constraint: ‘operational challenges, syndicates and political issues’.

The respondent has not experienced any instance of price controlling of essential medicine to foster access to healthcare by the Commission but recommended that the Commission should play a role in this regard. Respondent thinks that the ‘pharmaceutical industry’ played a role in price controlling of essential medicine. Respondent mentioned that ‘we [Bangladesh] are ... enjoying the benefit of the TRIPS special clause concerning lifesaving medicines’.

The respondent thinks that the Commission had not been successful in controlling the price of essential medicine to foster access to healthcare but questioned if they have the authority to do that. Respondent expressed doubt regarding who is the authority to control the price of essential medicines in Bangladesh and referred to the ‘Department of Drug (Directorate General of Drug Administration)’ as the authority to focus on price controlling of essential medicine. Respondent indicated that there are overlapping jurisdictions and there are grey areas of jurisdiction between the departments of the Government. To make the Government’s departments functional, it is necessary the divide and distribute the power/jurisdiction/authority in clear terms. Furthermore, the respondent is concerned that there are plenty of laws enacted and new institutions formed but it is necessary to assess ‘the impact of those laws’.

Respondent thinks that ‘[t]he Commission has been granted a wide jurisdiction’. Respondent reported that ‘we have called upon entities such Beximco, and Drug Essentials regarding the prices of drugs and essential medicines’ and believes that ‘in the near future with proliferation of resources we will be able to have a sustainable impact on this sector’. Respondent reported that ‘after graduating from LDC, Bangladesh becomes susceptible to several cases being filed against it before the DSB’ and it is ‘currently enjoying the protection clause’. But before taking that recourse ‘[u]sually countries first inform the respective government through proper channels regarding the IP infringements and to take steps accordingly’. Thereafter, ‘[w]hen any communication is made

and steps are requested to be taken, such matters are usually resolved through the Competition Commission.’ Respondent emphasized on the ‘capacity building of the Commission’. Respondent reported that ‘[c]urrently, we have 10 officers who are handling multiple cases among the 70 that are ongoing here’. Respondent cited the limitation and inabilities acknowledging that ‘[t]here is scope for at least one hundred more cases to be filed and if such incident happens, the Commission will be overloaded’. Respondent recommended ‘capacity building of the Commission is needed through revision of the organogram mentioned in the Act’.

Respondent reported that ‘the Commission still has not played any role in price controlling of essential medicine. ... [A]nd such role does not necessarily fall within its jurisdiction.” Respondent provided an interesting piece of information stating that ‘in the medicine sector, there is rampant *price parallelism* [italics added] where every product is being priced similarly’. Respondent recommended that ‘the Commission can play a role in *identifying the causes of this* [italic added] and to *keep the market open* [italic added] so that *new producers can enter the market* [italic added] as well as *investigating any syndication or cartel* [italic added] in this sector that may be deterring lower prices of medicines from being placed’.

Respondent reported that they are ‘trying’ but expressed inability stating ‘but it still cannot play a significant role in this sector’.

Respondent does not think that the Commission is active in drug price control. Respondent thinks that the drug prices were competitive in the past for the ‘drug control law and drug policy [National Drug Policy]’. Respondent thinks that cost of the ‘medicine and healthcare services is growing day by day and the Commission or other drug control authority has failed to control such rising costs’. Respondent recommended that the ‘CSOs and NGOs [italics added] need to play role here to bring this issue to light alongside the media and other activists [italics added]’.

The respondent suggested that the ‘BCC is working to ensure a free, fair and competitive price of the essential medicines’.

Overall Summary of the QCA exhibits respondents’ opinion on whether the Commission played a significant role in price controlling of essential medicine to foster access to healthcare.

Respondent is ‘not aware of any step’ being undertaken by the Commission. However, noted that the Commission can take such measures to ensure price controlling of essential medicines as ‘they have the valid power’ to do so.

Respondent noted that there was ‘not seen activity of the Commission in this [price controlling of essential medicine to foster access to healthcare] sector’ even though ‘[t]hey are legally authorized’ to do so.

Respondent opined that the ‘investment of businessmen in pharmaceutical industry that has contributed to the price controlling of essential medicines’ and not the Commission due to Bangladesh ‘still enjoying the benefit of the TRIPS special clause’.

Respondent observed that the Commission ‘has not succeeded at all’ in this sector due to ‘legislative and institutional proliferation’ and ‘jurisdictional lacunae’.

Respondent noted that the Commission has ‘had involvement and consequential impact’ in this sector where it has ‘called upon entities ... regarding the prices of drugs and essential medicines’ which ‘had an impact and created awareness’. Respondent was also hopeful that in the ‘near future with proliferation of resources’ there will be a more ‘sustainable impact’.

Respondent is skeptical about the jurisdiction of the Commission regarding medicine’s price control. However, identified ‘price parallelism’ (similar price for the same product) as a problem and recommended: keeping the market open, allowing new producers to enter the market, and investigating cartels or syndicates.

Respondent observed that the Commission ‘still cannot play a significant role in this sector’.

Respondent identified that drug prices were ‘competitive 10 years ago due to the drug control law and drug policy’ and recommended that the ‘CSOs and NGOs need to play role here to bring this issue to light alongside the media and other activists’.

Respondent expressed that the Commission is ‘working to foster access to healthcare’ and ‘ensure a free, fair and competitive price of the essential medicines’.

Major Key Themes derived from the responses to question 8:

- ‘[C]areer centric personnel who strive for growth’;
- ‘Lack of independence’;
- ‘Lack of manpower and resources’;
- ‘Lack of skilled and educated staff’;
- ‘Lack of motivation’;
- Just ‘awareness’ may not be sufficient;
- Emphasized developing ‘expert resources’;
- ‘Unchecked bureaucracy’;

- Financial resource constraint;
- '[C]ivil service employees';
- '[C]onsumer friendly atmosphere';
- '[C]onflict of jurisdiction amongst organizations';
- The absence of a settled policy and operational rules;
- Commission 'lack some sort of jurisdiction';
- Confusion as to 'who is the real authority?';
- 'Lack of manpower';
- Law enforcement challenges;
- Logistics;
- '[M]anpower, technology' and infrastructure;
- The 'law itself';
- The 'appealing authority';
- 'Proper training';
- '[A]dequate staff';
- '[F]inancial scarcity';
- '[C]ompetition policy';
- '[R]oom for development';
- '[W]ork independently from the Government';
- '[M]anpower, skills, expertise and training';
- '[L]acking in sector specific experts';
- 'Expertise on competition issues';
- 'Adequate funding'.

Interpretation of the Major Key Themes derived from the responses to question 8:

Respondent identified multiple challenges for the Commission to perform better in the future such as: '[I]lack of independence' which is detailed by the respondent as '[i]nfluence by controlling authorities, political influences', '[I]lack of manpower and resources', '[I]lack of skilled and educated staff', and '[I]lack of motivation'. Respondent stressed developing 'permanent staff that would have allowed them to undertake competition specific training to develop their skill sets'. Respondent underscored that '[t]he appointments [of the staffs] should be [from among the] career centric personnel who strive for growth'.

Respondent opined that ‘building through awareness can be a challenge’ due to a persistent lack of awareness of the mass population. Furthermore, ‘developing expert resources’ should be considered so that the Commission can effectively ‘deal [with] complex and technical competition matters’.

Respondent identified ‘[u]nchecked bureaucracy’ as a significant hurdle as the Commission ‘mostly consists of civil service employees’ who follow ‘a particularly ghost law process’ in the majority of their decision-making. Furthermore, ‘financial issues’ and lack of ‘financial resources’ was also identified as essential to be addressed ‘to create a more consumer friendly atmosphere’.

Respondent stated that the Commission ‘lack some sort of jurisdiction’ and that there was ‘conflict of jurisdiction amongst organizations’ over the same sector creating confusion as to ‘who is the real authority?’. Another huge task identified by the respondent was ‘creating awareness among people’ about the Commission and addressing the absence of a settled policy and operational rules.

The respondent identified the following obstacles for the Commission to perform better in the future: 1. ‘Lack of manpower’ that may have probable association with ‘case burden’; 2. Law enforcement challenges and to overcome in particular ‘[l]ack of assistance and coordination’, respondent suggested ‘[t]he Act could be amended to specify the roles in which law enforcement agencies will assist the Commission, it would help in empowering the Commission’; and 3. Logistics. Respondent emphasized ‘logistics and law enforcement support’ to increase the ‘investigative efficacies’ and fulfill the ‘objective’ of the Commission.

The respondent identified the following obstacles for the Commission to perform better in the future: 1. ‘Manpower’; 2. ‘technology’ 3. ‘infrastructural implementation of the Competition legal regime’; and 4. The ‘law itself’. Regarding the legal limitation, the respondent stated and raised concern that ‘the appealing authority for the cases filed by the Commission is the Ministry of Commerce’. Respondent believes that ‘[t]hese Commissions are established to act independently and in a judicial manner’.

Respondent pointed out the lack of ‘proper training’ of officials, of ‘adequate staff’, of financial assistance, and of ‘a competition policy’ as the hurdles facing the Commission in the future.

Respondent identified certain obstacles for the Commission to perform better in the future and also made recommendations: ‘work independently from the Government’, ‘should have the manpower, skills, expertise and training to regulate oversight over all the products and services of the country to foster a competitive environment’, overcome the ‘lacking in sector specific experts such as for telecom sector and other sectors’.

Respondent identified the '[lack of] expertise on competition issues' and 'adequate funding' as hurdles for the Commission in the future. Lack of expertise on competition issues not only hinders the functioning of the Commission, it also hinders them from adequately identifying and addressing instances where market regulation or intervention is needed. Lack of required funding further hinders Commission functionality, effectively limiting it and thereby impinging on the objective of the Commission and the Competition Act.

Overall Summary of the QCA *shows the respondents' opinion on the obstacles impeding the Commission from performing better in the future.*

Respondent observed that '[l]ack of independence' of the Commission and its officials due to the influence of outsiders has an impact on the work of the Commission. There is '[l]ack of skilled and educated staff' and '[l]ack of manpower and resources'. Most Commission officials are placed on 'deputation', and 'are retired government officials' who are not motivated enough to bring about the changes needed.

Respondent thinks that just 'awareness' may not be sufficient. Emphasized developing 'expert resources to deal [with] complex and technical competition matters'.

Respondent considers '[u]nchecked bureaucracy' as a challenge. Respondent compared the Competition Commission with other commissions in Bangladesh and identified that financial resource constraint is an obstacle to performing better.

Respondent identified multiple challenges the Commission has to overcome and they are: 'conflict of jurisdiction amongst organizations' and 'creating awareness among the people'. The respondent suggested that 'policy lacunae has to be addressed', and 'operational rules or procedures have to be enacted'.

Respondent noted that '[l]ack of manpower, case burden', coordination between other law enforcement agencies, absence of logistical flexibility, and 'parallel support' is harming the efficiency of the Commission, its investigation, and its founding objective. Respondent further noted that the law 'could be amended to specify the roles in which law enforcement agencies will assist the Commission'.

Respondent specified 'manpower, technology and infrastructural implementation' of the Competition legal regime as obstacles for the Commission to perform better in the future. Further specified that 'the law which has its own drawbacks' also presents significant hurdles as the 'appealing authority ... is the Ministry of Commerce' that hinders the independence and judicial function of the Commission.

Respondent identified the following obstacles for the Commission to perform better in the future: ‘Proper *training of the officers* [Italics added], lack of *adequate staff* [Italics added], *financial scarcity* [Italics added], absence of a *competition policy* [Italics added].’

Respondent opined that there was ‘room for development’ for the Commission ‘lacking sector specific experts’ to assist them in dealing with the technicalities of various sectors thereby hindering the efficiency of the Commission along with adequate ‘manpower, skills, expertise and training’. Furthermore, the Commission should ‘work independently from the Government, which it currently is not’.

Respondent identified certain obstacles for the Commission to perform better in the future: ‘[f]und constraint’, lack of ‘[a]dequate funding’, and ‘[e]xpertise on competition issues or competition law’.

5. Findings and Recommendations

A. Findings from the question no. 1

The study found that the respondents viewed the Act and the Commission from ‘unsuccessful’ to ‘partially successful’ and ‘successful’. Some of them mentioned the existing limitations of an early-stage institution. Multiple respondents think that the Commission has a wide jurisdiction (mandate/power). Multiple respondents indicated that the *Commission is at a formation/early stage* and evolving while learning from other jurisdictions. Respondent underscored the *impact assessment and implementation of the law by enacting further Rules and Regulations* and cautioned that there may be *overlapping in exercising the jurisdiction* and mandate. Respondent reported that the ‘Commission’s limitation may lie in inadequate manpower, ‘structural limitations’ and undefined ‘organogram’ (at the initial stage).

B. Findings from the question no. 2:

Respondent noted that the Commission due to their ‘rather reactive roles’, and ‘lengthy proceedings’, ‘has not created any impact in controlling anti-competitive behavior in the market’, but, they ‘can and have so far punished some of the entities involved in anti-competitive behaviour.’ Respondent noted that the impact of the Commission is resulting in ‘*market leaders to care about the requirements in the Competition Act including anti-competitive behaviours.*’ Respondent opined that the *definition of ‘anti-competitive behaviour’ is ‘not inclusive’ for not covering ‘online businesses’.* Respondent underscored that *the Commission garners ‘huge’ impact and cited ‘a ground-breaking ruling’ by the High Court Division that the Commission ‘should increase’ its ‘activities’.* Respondent stated that *the main function of the Commission at present is ‘on*

anti-competitive behaviour regulation' wherein it has 'been successful in having a moderate impact' due to 'merger regulations' not having been drafted yet. Respondent stated that the Commission 'has not been successful in regulating competition in the market' except for 'the telecom sector'.

C. Findings from the question no. 5:

Respondent demonstrated differing opinions regarding the idea that *'the Commission should be engaged in price controlling and price negotiation with the IP owners/monopolistic producers'*. While certain respondents did not support the idea, but many did; two contrasting opinions deserve attention. While supporting the idea that the Commission should be engaged in price controlling and price negotiation, the respondent also suggested that they should exercise 'a control and monitoring authority' to 'deter monopoly' and 'oligopoly'. Respondent suggested:

[T]o prevent monopoly and ensure availability of products in a fair price, BCC may introduce necessary rules setting the principles for single manufacturers of any particular product and thereafter monitor the market to ensure that the rules are implemented and modify the rules time to time as needed.

Respondent also suggested:

"Yes [supports the idea that the Commission should be engaged in price controlling and price negotiation with the IP owners]. Due to the absence of regulatory regime for most of the monopolistic market in Bangladesh, Commission must play the role. The involvement of the Commission will play a role in regulating the market and contributing to management of the prices of goods and services. Consumer goods market would be an appropriate example due to its fluctuating prices.'

Furthermore, the respondent underscored that price controlling and price negotiation should be ancillary to the Commission's power. Respondent stated: 'One of the extended functions of the Commission should be to bargain with businesses to fix prices. If it cannot ensure that bargaining power, how can it maintain competition in the market?'

The respondent who did not support that the Commission should not be 'involved in price negotiation' thinks that the price would be determined by the market 'automatically' and believes that the Commission should play its 'designated role' and 'resist' any attempted monopoly in the market when it occurs ('there is attempt of creating monopoly in the market by resisting competition'). The respondent suggested that the Commission should 'ensure competition in the market' and prevent " 'arbitrary' exorbitant price fixation of products" and "any 'entry barriers to the market' ".

Though the respondent does not support that the Commission should be engaged in price controlling and price negotiation with the IP owners or monopolistic producers but mentioned that ‘in *some cases* [italics added] it can be under [making co-relation with] the Competition Act 2012 Section 15(4) [*to limit IP owner’s unrestricted rights* offered as the exceptions of the “abuse of anti-competitive agreements” and “abuse of the dominant position in the market”]’. Respondent signaled a desired amendment of the current provision of S. 15(4) of the Competition Act 2012. It is pertinent to mention here that S. 24(11) of the present Bangladesh Patent Act 2022, limits/restricts patent owner’s rights if certain malpractices/inappropriate conducts are observed in the commercial exploitation of the patented goods and services.

D. Findings from the question no. 7:

Respondent supports that the Commission should get involved in price controlling of essential medicine (to foster access to healthcare). The respondent believes that the Commission is ‘legally authorized’ but expressed doubt saying ‘operational challenges, syndicates and political issues may create some hindrance.’

Respondent reminded that Bangladesh is ‘still enjoying the benefit of the TRIPS special clause’ and thinks that ‘pharmaceutical industry’ played a role in price controlling of essential medicine.

Respondent raised the issue of overlapping of jurisdiction and ‘jurisdictional lacunae’. Respondent emphasized on impact assessment of the new laws and the institutions.

Respondent thinks that the Department of Drug (Directorate General of Drug Administration) is the authority to focus on price-controlling of essential medicine. Respondent aptly raised the concerns regarding IP infringement of medicines and stated that ‘after graduating from LDC, Bangladesh becomes susceptible to several cases being filed against it before the DSB’ and Bangladesh is ‘currently enjoying the protection clause’. Also stated that ‘[u]sually countries first inform the respective government through proper channels regarding the IP infringements and to take steps accordingly’. Thereafter, ‘[w]hen any communication is made and steps are requested to be taken, such matters are usually resolved through the Competition Commission.’

E. Findings from the question no. 8:

The question asking “what are the obstacles for the Commission to perform better in the future” leads to an open-ended conversation between the researcher and the interviewee. We were able to culminate information/data that could not

be derived from the fixed questions. The following phenomena were reported as common flaws (area to address) by the respondents:

- Manpower;
- Financial issues/Budget;
- Logistics; and
- Ambiguity/'lack of precision' of the law.

Some unique flaws (problem areas) were identified by rather a minority number of the respondents but deserve attention:

- Appeal issues/authority;
- Overlapping of power;
- Enforcement hurdles;
- Independence, motivation and bureaucracy;
- '[L]acking in sector specific experts'.

Respondent identified that '[t]he Commission also does not have permanent staff that would have allowed them to undertake competition specific training to develop their skill sets.'

F. Recommendations based on findings from the question no.1:

Respondent recommended that the Commission should play a 'proactive role' and opined that the companies holding 'significant market power position' could be a concern for the Regulators. As it was found that the Commission needs to raise its expertise involving different technical knowledge, *we recommend recruiting economists, statisticians, legal professionals*, and if necessary, work with *experts having scientific knowledge* to observe and analyse market data and prioritise actions based on empirical evidence derived from the statistical data analysis results. Based on the empirically proven priorities, the Commission needs to organize its human resources and recruit the right person for the right job.

G. Recommendations based on findings from the question no. 2:

- Respondent recommended *modifications to the definition clause* of the Act.
- The study revealed that the merger rules have yet to be drafted deterring the Commission to expand its activities and appropriately maintain competition in the market. Thus, *merger rules need to be drafted* to increase the overall effectiveness and efficiency of the Commission.
- The study further revealed that the *Commission has been successful in impacting the telecom market* but has not been similarly able to expand to other sectors. Respondent stressed increasing the capabilities of the Com-

mission and addressing its shortcomings. Therefore, it is imperative to address its shortcomings both in terms of its capability and effectiveness to holistically regulate and maintain competition in the market.

- Awareness of market leaders about the requirements of the Competition Act and anti-competitive behaviour is a further indicator of its impact which is offset by the Commission's reactive role and lengthy proceedings. Therefore, a rather '*proactive role*' along with a *re-modeled approach to the proceedings of the Commission* is needed.

H. Recommendations based on findings from the question no. 5:

It appears that as per Sec. 15(4) of the Bangladesh Competition Act, 2012 (Act No 23 of 2012), if the IP owners impose any restrictions to exercise their IP rights or to prevent infringement of IP rights that causes an anti-competitive effect, that restriction is valid provided they are '*necessary*' and '*rational/logical/just*'. Researchers recommend that this '*necessity*' and '*rationality/justification*' test is applied/examined seriously by the Commission and not given any flat/wide exemption on any major anti-competitive IP agreements resulting to: (1) significant negative impacts on accessibility or (2) unjust restrictions on access to IP protected goods and services linked to '*public health/essential facility*'. Furthermore, it has come to our (researchers) attention that Commission employees interpret this section very differently from each other as the drafting of the current law contains ambiguity. Furthermore, the Patent Act 2022 allows restrictions on patent monopoly if certain conditions prevail.

Arif Jamil and Ahmed Ragib Chowdhury previously reported in relation to this study:

The Bangladesh Patent Act 2022, under section 24(11), clearly does not allow *temporary injunction or specific relief* for the enforcement of the patent rights in the following circumstances:

- if *apprehension of a serious breach of public interest exists*, according to section 24(11) (*kha*) of the Bangladesh Patent Act 2022;
- if *the product is sold at a price above the average purchasing power of the consumer*, according to section 24 (11) (*ga*)(a) of the Bangladesh Patent Act 2022; and
- if *the particular product is sold at a higher price for the absence or existence of a competitive product*, according to section 24(11) (*ga*)(e) of the Bangladesh Patent Act 2022.

Since this law specializes in the exclusive commercial exploitation of patent rights and it is the latest one, *this provision can be interpreted to curtail the patent rights if the above market behavior is prevalent in the commercial exploitation of the patented goods and services in the*

markets of Bangladesh. This is NOT a violation of TRIPS obligation, as the use without authorization (TRIPS Agreement, Article 31, ‘Other Use Without Authorization of the Right Holder’) is allowed under the TRIPS Agreement, subject to coherent interpretation by the country making the application of the multilateral agreement in its domestic law. This provision of the Bangladesh Patent Act 2022 seems to be very consistent with the international legal regime on intellectual property rights to prevent anti-competitive behavior by the legal monopolistic right owner abusing their privilege to make excessive profit at the cost of exclusion (deprivation) of the consumer from the essential goods and services.⁴⁷

I. Recommendations based on findings from the question no. 7:

Interconnectivity has to be established and increased for the interdisciplinary functions between and among the different departments of the Government to increase interdepartmental coordination. Bangladesh should be able to invoke the general exceptions provided by the TRIPS agreement and there is room for further interpretation of the clause on compulsory licensing (in other words, use without authorization) available in the TRIPS Agreement and exceptions of enforcement of patent rights under the Bangladesh Patent Act 2022. Even if Bangladesh is promoted from the LDC, the economic constraints for the patient population largely remain as cutting-edge medical technologies and healthcare is massively accessed through private sources. Bangladesh is a heavily populated country and with long-covid, healthcare costs will increase poverty, if drug price is not regulated carefully.

While mentioning the ‘price parallelism ... every product is being priced similarly’ as a problem in the drug price industry respondent recommended that the Commission should identify the cause for this and ‘keep the market open so that new producers can enter the market as well as investigating [investigate] any syndication or cartel in this sector that may be deterring lower prices of medicines from being placed’.

Respondent underscored the importance of the ‘drug control law and drug policy’ in Bangladesh context, to control the rising cost of medicine and recommended that the ‘CSOs and NGOs need to play a role here to bring this issue to light alongside the media and other activists’. Researchers believe that *patient advocacy groups* in Bangladesh are not sufficiently active to bring this issue to national and international attention.

⁴⁷ Arif Jamil and Ahmed Ragib Chowdhury, ‘A Study on the Performance of the Competition Commission and Competition Law in Bangladesh: Qualitative Content Analysis of the ‘Other Opinion’ (2023) 34(2) Dhaka University LJ (accepted for publication; citations omitted).

J. Recommendations based on findings from the question no. 8:

Multiple respondents recommended the amendment of the Act, including the Appeal provision. Respondent made an interesting recommendation: ‘The appointments [of the Commission’s employees] should be [from among the] career centric personnel who strive for growth’. Respondent recommended overcoming ‘[u]nchecked bureaucracy’ and financial resource constraints for the Commission to perform better. Respondent recommended that the ‘Commission’s operational rules or procedures have to be enacted’. Respondent recommended developing ‘sector specific experts such as for telecom sector and other sectors’. Respondent recommended that the Commission should ‘work independently from the Government’, clearly indicating the need to bring changes in its current *modus operandi*.

6. Conclusion

We have conducted interviews of 11 expert respondents. Though only 9 responses could be analysed, we learned and understood how the competition law and the Competition Commission performed since inception, from the total experience. As a fairly new institution, it might not have fulfilled all the expectations yet; but by making adjustments such as amendments to the law, promulgating rules, and overcoming the currently prevailing challenges, this discipline may experience positive changes. However, political will is supremely important to implement the aspirations of the people in a resource-constrained setting where economic disparity is radically increasing. The cost of living, the rural population drawn into the cities, landlessness, and rising youth unemployment make the consumer reality complicated here in Bangladesh. If the missing dots among and between the cost of living, unemployment, and disparity are not addressed, the standard of rule of law will deteriorate. The uncontrolled price and cost of consumer goods are deeply interlinked with all the above factors. Competition law and the Commission can play a pivotal role in keeping the market stable for the accessibility of goods and services for different economic groups. That will eventually contribute to quality of life, respect for common goods, and a healthy condition for the maintenance of law and order.

Appendices⁴⁸

Appendix I: The Questionnaire

Appendix II: The Survey Table

Appendix III: Qualitative Content Analysis (Both Analysts)

⁴⁸ The appendices contain confidential information, as the respondents were anonymous. However, the reviewer had full access to all the appendices.