Status of Competition in Nepal

INTERNET VERSION

SAWTEE

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His Majesty's Government
National Planning Commission

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2 September 2005

FOREWORD

Competition policy and law are an integral part of policies required in an open market-based economy. Realising this, more than hundred countries have already adopted competition law and some others are in the process of doing so. The government of Nepal also realises the importance of an effective competition regime in fostering a competitive environment and is committed to enacting a Competition law.

Trade liberalisation and open market have the potential to benefit the consumers. But this is neither automatic nor guaranteed. Anti-competitive practices like abuse of monopoly power nullify the benefits of trade liberalisation unless an efficient mechanism is in place to check such activities. We realise that the government needs to ensure such a mechanism. The government of Nepal is keen to adopt a Competition law and I am sure in due course of time would also put its efforts towards developing a comprehensive Competition policy.

Against this backdrop the study undertaken by South Asia Watch on Trade, Economics & Environment (SAWTEE) is most appropriate and timely. This study includes the economic performance and policies in different sectors like agriculture, trade and industry and move on to analyse the provisions of Competition law, which is currently being drafted. The study also covers sectoral policies, consumer policies and anti-competitive practices prevalent in Nepal. An empirical study has also been undertaken to probe the extent of awareness on competition issues among the stakeholders, which makes an interesting reading. The recommendations and suggestions are worth taking note of since it comes after such an extensive study.

I am confident that this study would be useful to all and help the concerned stakeholders to identify pertinent competition issues as the study specifically focuses on competition issues in Nepal. Lastly, I would like to express my admiration for SAWTEE for taking up an issue of public interest for study.

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Preface

'Invisible hands' of market economy work and economic activities thrive only in a perfectly competitive environment. In such a situation, absence of entry barriers forces economic actors to be efficient, enterprising and innovative. In addition, in a competitive economy, consumers get better quality services and goods. However, in real life market is imperfect. Market failure is a rule rather than an exception. It also puts social efficiency in the periphery. Thus, concerted effort is a must to make an economy competitive and the market socially desirable. In this regard, creation of competitive culture, building proper institutional and legal mechanisms and their effective functioning would go a long way. Realising this, till date more than 100 countries, including developed and developing countries, have enacted competition law.

Nepal became a member of the World Trade Organisation(WTO) on 23 April 2004. During its accession negotiations, along with general pro-competition commitments, Nepal also made commitment to enact competition law by 31st July 2004. Enacting a competition law is not mandatory for WTO members.

WTO membership is not the only reason for Nepal to enact a competition law. Economic liberalisation in Nepal started in the mid eighties, long before Nepal applied for WTO membership. With the gradual liberalisation of the economy, government's role has shifted from producer and provider of public goods and services to that of a regulator and facilitator. The government can not and should not monitor and regulate economic actors in a vacuum without adequate and appropriate laws and institutions. Competition law and an independent body to implement it are one of the many mechanisms to help the government perform its new role effectively and efficiently.

However, the government alone is not responsible for building a competitive culture and all relevant stakeholders viz. the private sector, civil society and consumers have to contribute in this process. Realising this, South Asia Watch on Trade, Economics & Environment (SAWTEE) has been implementing a project entitled Competition Advocacy and Education Project (CAEP), which aims at inculcating competition culture among the stakeholders. A good understanding of the present competition scenario is a prerequisite for building a competitive culture. In this context, SAWTEE conducted this research entitled "Status of Competition in Nepal". The research also aims at serving as a tool for developing future activities of this project.

Effort has been made to include all relevant aspects of competition in the report. The report gives an overview of the situation of competition in the Nepalese economy with, among others, information on the policies and laws affecting competition, stakeholders' perceptions and salient features of proposed competition law. The report includes the findings of a survey conducted among 50 consumers, 25 policy makers and 25 business people to assess their perception on various aspects of competition. Prevalent anti-competitive practices in Nepal have also been included in the report. Suggestions for developing a competition culture in Nepal have also been listed down.

Competition is a vast subject and this research cannot claim to be covering all relevant aspects in detail. However, this study is likely to help policy makers, researchers and students to identify issues for further study and investigation.

I would like to thank all those who provided their valuable support in preparing this report. We received valuable inputs from Ms Bindra Hada, Dr Hemanta Dawadi, Ms Ila Sharma, Mr Jyoti Baniya, Mr Ojaswi Gautam, Dr Pushpa Raj Rajkarnikar, Mr Rajendra Khetan, Mr Ranjan Krishna Aryal , Mr Sajjan Bar Singh Thapa and Mr Tikaram Bhattari. We would also like to thank CUTS Centre for Competition, Investment & Economic Regulation (C-CIER), Jaipur, India and particularly Mr. Nitya Nanda and Ms Alice Pham for their support in preparing the outline of the report, the questionnaires for the survey and also providing their comments and suggestions on the draft report. I would also like to acknowledge the valuable guidance and support provided by Mr Ratnakar Adhikari and Dr Dhrubesh Chandra Regmi throughout the study.

The dedication and hard work put in by the research team led by Mr Navin Dahal with members Mr Bhaskar Sharma, Ms Dikshya Thapa and Ms Neelu Thapa, is highly appreciated. Last but not the least, I would also like to thank Mr. P. Kharel for editing this document.

Finally, I would be failing in my duty if I do not forward my sincere gratitude to the Department for International Development (DFID), Nepal not only for supporting this research but also the CAEP project.

Posh Raj Pandey

President, SAWTEE

List of Acronyms

ADB/N	Agriculture Development Bank of Nepal
BIMSTEC	Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation
BOP	Balance of Payments
CAAN	Civil Aviation Authority of Nepal
CAEP	Competition Advocacy and Education Project
C-CIER	CUTS Centre for Competition, Investment & Economic Regulation
CFRL	Central Food Research Laboratory
CPC	Competition Promotion Commission
DDC	Dairy Development Corporation
DFID	Department for International Development
DoED	Department of Electricity Development
DoFTQC	Department of Food Technology and Quality Control
ETFC	Electricity Tariff Fixation Commission
FDR	Fixed Deposit Rates
FY	Fiscal year
GATS	General Agreement on Trade in Services
GDP	Gross Domestic Product
GMPCS	Global Mobile Personal Communications by Satellite
GSM	Global System of Mobile Communications
HMG/N	His Majesty's Government, Nepal

IPP	Independent Power Producers
IPRs	Intellectual Property Rights
M & A	Merger and acquistitions
NEA	Nepal Electricity Authority
NOC	Nepal Oil Corporation
NPC	National Planning Commission
NRB	Nepal Rastra Bank
NT	Nepal Telecom
NTA	Nepal Telecommunications Authority
NTC	Nepal Telecommunication Corporation
RNAC	Royal Nepal Airlines Corporation
SAFTA	South Asian Free Trade Area
SAWTEE	South Asia Watch on Trade, Economics & Environment
SOEs	State Owned Enterprises
UNIDO	United Nations Industrial Development Organisation
UTL	United Telecom Limited
WEC	Water and Energy Commission
WLL	Wireless Local Loop
WTO	World Trade Organisation
MOF	Ministry of Finance
MOICS	Ministry of Industry, Commerce & Supplies
MOPE	Ministry of Population and Environment
MTNL	Mahanagar Telecom Nigam Limited
NIDC	Nepal Industrial Development Corporation
TCIL	Telecom Consultants India Limited
VDC	Village Development Committees
VSAT	Very Small Aperture Technique
VSNL	Videsh Sanchar Nigam Limited

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Introduction

It is difficult to define competition. Perhaps that is the reason for the lack of a standard definition of competition as the term relies on relative comparisons of different economic actors (private sector, government, consumers etc.) for its evaluation. The presence of competition in an economy can be gauged at different levels. At the national level, the absence of policy-induced entry and exit barriers in different sectors of the economy can be an indicator of competition. At the firm level, competition results in businesses that rely on efficiency and creating consumer value rather than indulging in anti-competitive practices. At the consumers level, the availability of choices and opportunity to “maximize their utility” can be taken as indicators of competition in an economy.

Nepal, which has a long history of inward-looking economic and trade policies, started liberalising its economy in the mid 1980s. Since then, it has been allocating greater role to the private sector. It is a well-known fact that competition forms the basis of a free market economy and the lack of the “social conscience” of the public sector is compensated by a “competitive environment” in which private firms can survive only by respecting customers. The lack of competition is likely to lead to consumer exploitation and inefficient use of scarce resources.

Historically, the government has played a major role in the industrial and trade sector in Nepal. The main focus of the policy makers prior to the start of the liberalisation process in the mid 1980s seems to have been on delivery of goods and services by the public sector. In this regard, the government in many cases promoted monopolies and even today important sectors of the economy such as the telecommunication and the electrical power sectors are dominated by state monopolies. The priority of the government was the supply of goods and services, not ensuring that there is enough competition in the market. This resulted in low priority to competition in the national policy sphere and a lack of competition culture among the different agents of the economy.

Realising this, South Asia Watch on Trade, Economics & Environment (SAWTEE) and Nepal office of the Department for International Development (DFID),UK have together started Competition Advocacy and Education Project (CAEP) with the objectives of building competition culture among different stakeholders in Nepal. This study was conducted as it was felt that a study on the "Status of Competition in Nepalese Economy" would greatly help in understanding different aspects of competition in Nepal and would also be a valuable tool for advocacy.

Against this background, this publication gives an overview of competition in the Nepalese economy. The first chapter introduces the reader to the Nepalese economy, and gives brief information on recent economic performance, agricultural sector, trade and industry and the country's investment and foreign exchange situation. This chapter also highlights the industrial, trade, investment and privatisation policies adopted by the government at various stages.

The second chapter focuses on the nature of competition in the Nepalese economy. As the nature of competition in one sector can be completely different from that in another sector, this chapter has been divided into three sections viz. manufacturing, utilities and services. Within each section analysis has been done to identify the entry and exit barriers and nature of competition in different industries. As it was not within the scope of this study to cover all the industries, only few industries have been analysed.

The third chapter looks at some specific sub-sectors and analyses the evolution of regulatory regime. Due to their importance in the national economy the telecommunications, financial, electrical power and civil aviation sectors have been chosen for closer scrutiny. All these sectors have their own Sectoral regulators and have seen changes in the policy and market structures in the last couple of years.

Consumers are the *raison d'être* of all business activities and strong consumer movement puts pressures on businesses to be competitive, to avoid unfair and restrictive business practices and to respect customers. Hence, any discussion on competition is incomplete without an analysis of consumer policy and movement. Chapter Four thus, looks at the current laws and regulations that ensure consumer protection. This chapter concludes by looking at the complementarities between consumer policy and competition policy.

The fifth chapter is an attempt to document the prevailing anti competitive practices in Nepal. Anti competitive practices are activities that firms engage in to restrict or eliminate competition. The main reason for indulging in such activities is to gain and then abuse monopoly power.

The sixth chapter is a result of a survey conducted among 50 consumers, 25 policy makers and 25 business people on different aspects of competition policy and law. Three separate sets of questionnaire were used for the survey, each for business community, policymakers and consumers. The different aspects covered in the survey included the extent of awareness on competition issues, their perception of prevalence of anti- competitive practices in Nepal, actions taken while faced with anti-competition practice, extent of knowledge on the existing legal mechanism to address anti competitive practices and views on the need and coverage of a comprehensive Competition Law.

The seventh chapter looks at the various laws that affect competition. In this regard, this chapter analyses the impact of the Industrial Enterprises Act, and the Foreign Investment and Technology Transfer Act on competition. While acquiring the World Trade Organisation (WTO) membership, Nepal made a voluntary commitment to enact Competition Law. Accordingly, the government has prepared a draft Competition Law. The salient features of this draft have also been documented in this chapter.

The eighth chapter includes some recommendations to develop a competition culture in Nepal. These include mainly two types of activities: those related to policy/legal changes and those related to capacity building requirements of different stakeholders.

CHAPTER 1

Economic Performance and Policies

Nepal, with a population of 23 million and 147,181 square kilometers of land area, is a small landlocked kingdom in the foothills of the Himalayas. It is surrounded by China in the north and India in all other sides. With a per capita income of US $ 269, Nepal is one of the poorest countries in the world. Nearly half of its population lives below the poverty line and there are large disparities among income groups, among socio-ethnic groups, and between urban and rural areas. Nepal still has a highly underdeveloped economy, with agriculture still accounting for 37 percent of the Gross Domestic Product (GDP) and 76 percent of the employment.

1.1 Economic Performance

Nepal's macro economic trend shows a mixed picture, especially since Nepal saw a major shift in economic strategies towards greater market orientation in the early 1990s. Improving balance of payments(BOP), adequate foreign exchange reserves, modest inflation, and narrowing fiscal deficits are some of the features displaying soundness of the economy. However, in the growth of the productive sectors, the economy depicted erratic trends (HMGN/MOICS 2002, 13). Following the economic reforms, Nepal made good progress initially in improving macroeconomic stability and accelerating economic growth in the early 1990s. However, the favourable initial effect resulting from policy reforms has not been sustained. The economy has slowed down starting in the later half of the 1990s (HMGN and UNIDO 2002, 10).

Except for the fiscal year(FY) 2001/02, Nepal has had positive GDP growth in the last decade. The Nepalese economy in FY 2003/04 was expected to register a growth rate of 3.6 percent against 2.7 in 2002/03 (HMGN/MOF 2004, 5). The average growth rate in the last decade was approximately 4 percent. In the FY2003/04, share of the agriculture and non-agriculture sectors to GDP was 39 percent and 61 percent respectively.

1.1.1 Agriculture Sector

Nepal's economy is highly dualistic, with a backward agricultural sector and a relatively modern non-agricultural/urban sector. The agricultural sector is still the backbone of the rural economy and accounts for about two-fifths of the value added in the economy.

Agriculture achieved a 3.7 percent growth in FY 2003/04 against 2.5 percent in FY 2002/03 (HMGN/MOF 2004, 5). During the 1990-2000 decade the average annual growth rate of the agriculture sector that stood at 2.7 percent was marginally above the population growth rate of 2.3 percent and unable to alleviate poverty and unemployment plaguing the rural economy. Around 80 percent of the economically active population in Nepal is dependent on agriculture. In the last 40 years, agriculture productivity in major grains has gone down from being the highest in South Asia to being the lowest (HMGN / NPC / MOPE 2003, 7).

1.1.2 Trade and Industry

Industry and services together (non-agriculture sector) account for nearly 60 percent of the GDP. Prior to 1990, Nepal followed the state-driven industrialization, and the trade and industry sector was dominated by state-owned enterprises. Liberalisation and privatisation were given priority by the governments that came to power after the restoration of multiparty democracy in 1990. Political instability and policy inconsistency following the first wave of economic reforms, effects of open border with India, high cost of capital borrowing, lack of infrastructure especially power, and weak civil service delivery have all obstructed a fuller growth potential of this sector (HMGN / NPC / MOPE 2003, 9).

1.1.3 Trade and Economic Integration

Nepal's integration with the global economy is steadily increasing and trade (export and import of goods and services) constitutes about 40 percent of GDP. However, Nepal's ability to trade globally in manufactured goods is restricted by its landlockedness. Nepal's WTO membership has exposed it to the global trading system. Similarly, membership of regional trading arrangements like South Asian Free Trade Area (SAFTA) and the Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation (BIMSTEC) are likely to help Nepal's integration with the rest of the world. Nepal also has bilateral trade agreements with 17 countries.

1.1.4 Foreign Exchange

Though Nepal Rastra Bank (NRB) publishes exchange rates for its internal purpose, the market rate is determined by the foreign exchange market. Nepal's exchange rate system is presently free from restrictions on making payments and transfers for current international transactions, except those on payment for personal travel. As far as capital transaction is concerned, the Ban on Investment in Foreign Countries Act, 1964, prohibits any form of investment including purchase of property, bank deposits, investments in shares and bonds by Nepalese citizens in foreign countries. The repatriation of capital investments and profits by foreigners is allowed in accordance with the Foreign Investment and Technology Transfer Act 1992 (WTO 2003, 4).

1.1.5 Balance of Trade and Balance of Payments

Nepal's import is nearly two and a half times higher than exports. Nepal's export to import ratio has historically been low—below 30 percent. The increase in exports to India helped to improve this situation after 1989. However in the first six months of FY 2003/04 the total imports increased at a rate much higher than total exports. As a result, the trade deficit in the review period has increased by 15.4 percent to Rs. 39.3 billion (Nepal Rastra Bank 2004, 20).

Because of the developments in current, capital and financial accounts of the external sector of the economy, reserve assets increased by Rs. 12.5 billion in the first six months of FY 2003/04 and the overall BOP remained in surplus by Rs. 8.6 billion (Nepal Rastra Bank 2004, 23). In the last few years, the increase in remittance from Nepalese nationals working abroad has helped to strengthen the BOP situation.

1.2 Policies

1.2.1 Industrial Policy

The year 1951 saw the end of the more than hundred years' (1846-1951) autocratic Rana regime in Nepal. The Ranas had isolated Nepal from the rest of the world, and in 1951 Nepal entered the "modern era" without schools, roads, electricity, telecommunications, industry or civil services. During the Rana period no serious attempt was made for economic and industrial development. Except for the establishment of a few agro-processing units, industrialisation was totally absent. Until 1951, the Company Act had no provision for private limited companies. The enactment of new act in 1951 made the establishment of private limited companies possible and around hundred joint stock companies were established between 1952 and 1964. However, it is only with the formulation of the first five-year plan in 1956 that serious attempts to economic and industrial development started.

Influenced by the prevailing import-substituting industrial policy in the world, Nepal's industrial development was also dominated by establishment of import substituting, public enterprises. The generous helps from Russia and China, which helped to establish industries, aided this process. The first five decades of modern Nepal saw the establishment of government-owned industries that produced jute, sugar, cigarettes, cement, bricks, shoes etc. Though the 1974 Industrial Enterprises Act shifted the focus of the government from the public to the private sector, the industrial sector remained dominated by the public sector enterprises till the early 1990s. In fact, the state is still involved in many public sector enterprises. Till the early 1990s the utilities area was completely in the hands of the state and there was virtually no involvement of the private sector in the areas such as power, telecommunications and water supply. The generation of electricity power was opened to the private sector in the early 1990s and the private sector was allowed in the telecom sector in 2003.

It can thus be seen that the history of industrial development in Nepal is very short and has been dominated by the public sector. The focus of the planners seems to have been on supply of goods and services by the public sector. Understandably, ensuring competition was not a priority for the architects of modern Nepal and in many cases they promoted public monopolies. The restoration of multi-party democracy in 1990 saw the shift in government policies in favour of economic liberalisation and privatisation of the public sector enterprises.

The adoption of the Industrial Policy, 1992, and the enactment of the Industrial Enterprises Act, 1992, and the Foreign Investment and Technology Transfer Act, 1992 were major steps in the liberalisation process. One of the goals of the Industrial Policy was "to develop industries through healthy competition in order to utilize the comparative advantage of the country." The new policy also brought to an end the licensing by liberalising and simplifying the procedures for the establishment, expansion and modernisation of industries, as license was not required for establishment, expansion and modernization of industrial enterprises except for those related with defense, public health and environment.

1.2.2 Trade Policy

Prior to the liberalisation measures adopted in the mid 1980s, the objective of trade policy in Nepal was export promotion, import control and trade diversification (Maskay 1999, 44). Before 1992, most of the items required import licensing, and the availability of foreign exchange were specified for each license. Effectively, the foreign exchange licensing system was tantamount to quantitative restrictions on imports (Maskay 1999, 45). The quantitative restriction on imports and the licensing system provided more or less "monopolies" to those who were able to get the licenses through auctions. Nepal's import policy prior to the initiation of liberalisation measures in the mid-1980s had a built-in anti-competitive bias. This system was found to be inconsistent with the economic liberalisation policies adopted by the government in the early 1990s and necessary changes were made to complement liberalisation in other sectors—industrial and financial.

The key measures of trade liberalisation included reduction and restructuring of import duties, elimination of most quantitative restrictions and import licensing requirements, and introduction of full convertibility for current account transactions (HMGN / MOICS 2003, 18). These measures have played an important role in enhancing competition in the domestic market. Due to the reforms of the early 1990s the unweighted average tariff rate fell from nearly 40% in 1990 to 14% in 2002. Most tariff rates now fall in the range of 5-25 percent while more than 70 percent of the rates exceeded 25 percent in 1990 (HMGN / MOICS 2003, 19).

1.2.3 Privatisation Policy

In line with the government's "import substitution through public enterprises" policy, a number of enterprises were established in Nepal by the government in the decades of '60s, '70s and '80s. The democratically elected government, after the restoration of democracy in 1990, inherited these state-owned enterprises (SOEs) from the old regime. The enterprises produced goods ranging from shoes to cigarette and offered services such as telecommunication and air transport. The utilities sector was also dominated by the SOEs. The government investment in SOEs stood at about US $ 2 billion in 1996-97, but the return on such investment was about one percent only (Adhikari and Adhikari 2000, 49). To withdraw from providing goods and services and allow the private sector to take the major role in the economy, the government started privatizing these enterprises in 1992. Until the end of 2003, the government had privatized 23 enterprises. The enterprises that were privatized are, among others, those producing paper, brick, shoes, textile, jute, sugar, agriculture tools etc. It is, however, difficult to ascertain why these particular SOEs were chosen for privatisation and not others. The government seems to have given little consideration to competition aspects while choosing the SOEs or the method of privatization. The fact that the government has not reentered into the sectors which have been privatised and also does not impose any restriction on opening of new enterprises in these sectors can be taken as a positive step towards ensuring greater competition in the economy, at least at the policy level.

1.2.4 Investment Policy

The Industrial Policy of 1992 identified foreign investment promotion as an important strategy in achieving the objectives of increasing industrial production. Commensurate to this policy, the Industrial Enterprises Act, 1992, the Foreign Investment and Technology Transfer Act, 1992, and the One Window Policy of 1992 were enacted by HMG/N. Foreign investment is open in all sectors except a few such as cottage industries, arms and ammunition, security printing, currencies and coins, retail business, travel and trekking agencies. Foreign investors are allowed to hold up to 100 percent ownership in industries.

Likewise, the enactment of the Industrial Enterprises Act, 1992 has created a better environment for domestic private sector investment. The major thrust of these Acts lies in their openness, with emphasis on market-driven strategies, and dominant role for private initiatives and enterprises. The telecommunication and power sectors have also been opened for private investment.

CHAPTER 2

Nature of Market / Competition

State dominance in commerce and industry prevailed in Nepal till the early 1990s. Privatisation and liberalisation policies adopted by the governments that came to power after the restoration of multiparty democracy in 1990 resulted in fundamental changes in the economy. Against this background, this chapter analyses the nature of competition in the manufacturing, utility and services sectors in Nepal.

2.1 Manufacturing Sector

The Industrial Enterprises Act, 1992, brought to an end the "license raj" and made the establishment of industries easier. It limited the list of industries that required permission to those affecting security and public health. Government permission is required to establish industries that produce explosives including arms, ammunition and gun powder, security printing, bank notes, coins, cigarettes, bidi, cigar, chewing tobacco and khaini or goods of a similar nature utilizing tobacco as a basic raw material, and alcohol or beer producing industries. Hence today, except for a few industries concerned with national security and health, there are no policy-induced entry barriers in the manufacturing sector for national investors.

Foreign investors are not allowed to invest in some sectors that have been reserved for Nepali investors. The Foreign Investment and Technology Transfer Act, 1992, prohibits foreign investment in cottage industries, arms and ammunition industries, explosives and gunpowder industries, industries related to radioactive materials, and currency and coinage business. The Industrial Enterprises Act, 1992, defines cottage industries as “the traditional industries utilizing specific skill or local raw materials and resources, and labour intensive and related with national tradition, art and culture” and includes industries such as carpet and hand-made paper. Even though there are no policy-induced entry barriers in most of the manufacturing sectors, many factors such as Nepal’s small market and technological backwardness make big investment in capital-intensive industries unattractive.

The following section describes the market situation in selected manufacturing industries. As the actual production figures were not available, the installed capacities have been used in the analysis. It should, however, be noted that the actual production might be lower than the installed capacity.

In addition to competition from local enterprises, industries in most of the selected sectors also face competition from imports as low tariff and virtually no non-tariff barriers have resulted in a liberal import regime.

2.1.1 Sugar

Sugar industry in Nepal has been historically dominated by government owned enterprises. After the liberalisation of the Nepalese economy in the early 1990s, licenses were given to private sector industries and consequently Sri Ram Sugar Mill, Eastern Sugar Mill, Vashulinga Sugar Mill, Shree Mahalaxmi Sugar Mill and Everest Sugar Mill were established. Table 2.1 gives the list of major sugar industries and their production capacities and market shares.

Table 2.1: Production of Sugar Industries and their share

S.N.	Company Name	Tons (crushed per day)	% Share
1.	Vashulinga Sugar Mill	1750	9
2.	Sri Ram Sugar Mill	3000	15
3.	Lumbini Sugar Mill	1250	6
4	Everest Sugar Mill	3000	15
5	Shree Mahalaxmi Sugar Mill	2500	13
6	Birgunj Sugar Mill	1250	7
7	Bagmati Sugar Mill	1250	7
8	Indushankar Sugar Mill	3000	15
9	Eastern Sugar Mill	2500	13
	TOTAL	**19500**	**100**

Source: Department of Industry & Industry experts

Based on the data available, the share of the top three industries is 45 percent. The liberalisation of this sector has, however, not resulted in optimal competition in the market and the consumers are often forced to buy sugar at high prices due to frequent shortages of sugar in the market.

2.1.2 Cement

The construction boom of the 1990s resulted in a very high growth of demand for cement resulting in establishment of many cement industries, mainly by the private sector. Based on the data available, this sector seems highly competitive, having many suppliers and not a single dominant firm. Table 2.2 gives the list of cement industries in Nepal, their production capacities and market shares.

Table 2.2: Production of Cement Industries and their share

S.N.	Company Name	Annual Capacity (MT)	% Share
1	Hetauda Cement	65666	10
2	Udaypur Cement	51636	7
3	Panch Ranta Cement Pvt. Ltd.	15000	2
4	Butawal Cement Mills Pvt.Ltd	30000	5
5	Dynasty Industry Nepal Pvt. Ltd.	30000	5
6	Mittal Cement Industry. Pvt. Ltd.	30000	5
7	Kosmos Cement Industries Pvt. Ltd.	90000	14
8	Buddha Cement Pvt. Ltd.	15000	2
9	Pashupati Cement Pvt. Ltd.	20000	3
10	Vijaya Cement Pvt. Ltd.	90000	14
11	Chitwan Cement Udhyog Pvt. Ltd.	30000	5
12	Jagadamba Cement Ind. Pvt. Ltd.	66000	10
13	Narayani Cement Udhyog Pvt. Ltd.	15000	2
14	Brija Cement Ind. Pvt. Ltd.	60000	9
15	Bishwokarma Cement Pvt. Ltd.	30000	5
16	Suprim Cement Pvt. Ltd.	15000	2
	TOTAL	**653302**	**100**

Source: Department of Industry & Discussion with industry experts

In addition to the liberal import regime, competition among local manufacturers also seems to be high because the combined market share of the top three firms is only 38 percent and there is no dominant firm in the industry.

2.1.3 Iron and Steel

This sector is dominated by the private sector; the government has never been involved in this sector. Himal Iron and Steel industries with 29 percent market share is the market leader.

Table 2.3 gives the list of iron and steel industries in the country, their production capacities and market shares. The market share of the top three companies is 62 percent.

Table 2.3: Production of Iron and Steel Industries and their share

S.N.	Company Name	Annual Capacity (MT)	% Share
1	Swodeshi Iron & Steel Udyog Pvt. Ltd.	9000	9
2	Narayani Rolling Mills Pvt. Ltd.	7500	7
3	Himal Iron and Steel Industries	30000	29
4	Panchakanya	19000	18
5	Ashok Steel	16000	15
6	Maruti Nandan Rolling Mill	4700	5
7	J D Steel Mills	1200	1
8	Hama Iron Industries	2300	2
9	Jagdamba Steel Pvt. Ltd.	15000	14
	TOTAL	**104700**	**100**

Source: Compiled from information from Department of Industry and Adhikari and Regmi 2001

2.1.4 Textiles

The liberalisation measures adopted in the early 1990s resulted in the establishment of many small-scale textile-manufacturing industries in the country. Table 2.4 gives the list of textiles industries, their production capacities and market shares.

Table 2.4: Production of Textile Industries and their share

S.N.	Company Name	Annual Capacity '000 mtr.	% Share
1	Prabhat Textile	1599	4
2	Gopi Textile	1129	3
3	Ashok Textile	1632	4
4	Eastern Textile	1155	3
5	Himgiri Textile	1440	4
6	Olampia Textlie	1475	4
7	Aligent Textile	1140	3
8	RP Textile	1100	3
9	Star Processor	6000	15
10	Sabitri Textile	6000	15
11	Sutex Industries	4000	10
12	Rapti Kapda Udyog	1200	3
13	Bhagwati Textile	1100	3
14	Rinchin Rangi Kapda Udyog	1180	3
15	Himalay Terry Fabric	1250	3
16	Siddi Textile	3000	7
17	Others	5331	13
	TOTAL	**39731**	**100**

Source: Department of Industry

The private sector dominates this industry and the market share of the top three enterprises is 40 percent. This sector seems quite competitive as there are many firms with small market shares and the sector is not dominated by one or two enterprises.

2.1.5 Paper

Everest Paper Mills, a private sector firm, was the first paper industry in the country. Bhrikuti Paper Mills, which was initially established by the government and later privatised, dominates the market with 50 percent market share. Table 2.5 gives the list of paper industries in the country, their production capacities and market shares.

Table 2.5: Production of Paper Industries and their share

S.N.	Company Name	Capacity MT/DAY	% Share
1	M K Paper Mills Pvt. Ltd.	10	12.5
2	Baba Paper Mills	10	12.5
3	Bhrikuti Pulp & Paper Nepal Ltd.	40	50
4	Everest Paper Mills Pvt. Ltd.	20	25
	TOTAL	**80**	**100**

Source: Industry experts

The tariff on import of writing and printing paper at 25 percent is relatively high. Experts feel that tariff has been kept high to protect the domestic manufacturers and they face little competition from imports.

2.1.6 Vegetable Ghee

The vegetable ghee market in Nepal is export-oriented with most of the production being exported to India. Favourable duty structures on raw material as compared to those in India have resulted in the establishment of many vegetable ghee industries by the private sector. Table 2.6 gives the list of vegetable ghee industries in the country, their production capacities and market shares.

Table 2.6: Production of Vegetable Ghee Industries and their share

S.N.	Company Name	Annual Capacity (MT)	% Share
1	Narayani Vegetable Ind. Pvt. Ltd.	6000	5
2	Shree Ganesh Ghiu Udyog Pvt. Ltd.	14000	11
3	Narayani Oil Refinery Udyog Pvt. Ltd	4680	4
4	Nandan Ghee and Oil Ind. Pvt. Ltd	6000	5
5	Ganapati Banaspati Pvt. Ltd	12000	10
6	Nepal Banaspati Ghee Udhoyg	2362	2
7	Shiv Shakti Ghee Udhyog	7920	7
8	Annapurna Vegetable Products	8896	7
9	Shree Krishna Oil Refiner	6350	5
10	Arun Vanaspati Udhyog	5511	4
11	Sushil Banaspati Udhyog	6560	5
12	Others	43000	35
	TOTAL	**123279**	**100**

Source: Department of Industry & Discussion with industry experts

This industry seems to be fairly competitive with the top three firms having only 28 percent market share.

2.1.7 Dairy

The dairy industry is dominated by the public sector. Milk processing was a monopoly of the government owned Dairy Development Corporation (DDC). Private sector investment was allowed in this industry after the liberalisation of the early 1990s. Table 2.7 gives the list of dairy industries in the country, their production capacities and market shares.

Table 2.7: Production of Dairy Industries and their share

S.N.	Company Name	Capacity Utilisation/DAY ('000 liters)	% Share
1	Sita Ram Gokul Milk Pvt.Ltd	30	8
2	Integrated Dairies And Agro Products	14	3
3	Kabeli Daires Pvt.Ltd	4	1
4	Eastern Dairy Pvt. Ltd	3	1
5	Jaya Ganesh Dairy Pvt. Ltd	3	1
6	Nepal Dairy Pvt. Ltd.	1	0
7	G.S. Dairy Udhyog Pvt. Ltd.	3	1
8	Dairy Development Corporation	247	63
9	Kathmandu Dairy	4	1
10	Bhaktapur Dairy	5	1
11	Himalayan Dairy	35	9
12	Others	41	11
	TOTAL	**390**	**100**

Source: National Milk Marketing and Strategy Study, National Dairy Development Board.

DDC still has a 63 percent market share while the private sector enterprises are still small and hold a very small market share of the organised milk industry.

2.2 Utilities

The utilities sector is still dominated by the public sector. Nepal Electricity Authority (NEA), a 100 percent government-owned enterprise, dominates the electric power sector. It owns 79 percent of the installed generation capacity and has monopoly in the transmission and distribution of electricity. The opening up of the generation sector has resulted in a gradual increase in the number of Independent Power Producers (IPPs). NEA, nonetheless, is the only buyer for the electricity generated by IPPs.

The telecommunication sector is still dominated by Nepal Telecom (NT), yet another 100 percent government owned enterprise. Today there are two providers of basic telephone service in the country—NT and United Telecom, a private sector firm. At present NT is the only provider of mobile telephone services in the country though license has been recently awarded to a private sector firm to provide mobile telephone service. A major barrier to entry in this sector is the "safeguard clause" in the 1998 Telecom Act, prohibiting more than two operators of basic and mobile telephone services. In addition to the duopoly clause, other barriers to entry are the heavy sunk costs of the industry, including high access charges for use of NT infrastructure, which discourages new operators.

Nepal Oil Corporation (NOC), a public sector company, enjoys exclusive rights to import of petroleum products in Nepal. The sale and distribution of the products are being done by the private sector. However, the retail price of petroleum products is fixed by NOC.

The management of drinking water, and sewerage are also in the hands of public enterprises.

2.3 Services

The Foreign Investment and Technology Transfer Act, 1992, does not allow foreign investment in the following services sectors: personal services business such as hair cutting, beauty parlour, retail business, travel agency, trekking agency, water rafting, tourist lodging and consultancy services such as management, accounting, engineering and legal services. However, during its accession to the WTO, Nepal has opened up most of the services sectors, including those in which foreign investment is not allowed at present.

Today, 17 commercial banks and 57 finance companies are serving the market. In spite of the entry of a number of private banks, two public banks Nepal Bank and Rastriya Banijya Bank still dominate the market with a combined market share of 32.95 percent in deposits and 31.92 percent in loans. These two combined with the third largest commercial bank, Himalayan Bank with a 9.74 deposit market share and a 9.44 credit market share constitute almost half of the banking sector. In aggregate, the three largest banks possess 50.36 percent of total assets of all commercial banks (Pernia 2004).

Entry barriers are also quite high in this sector. The capital requirement has been raised to NRs 1 billion for all new commercial banks while existing ones are given until 2009 to fulfill this criterion. Branch banking is currently not allowed in the nation, although this will have to be eliminated under the GATS (General Agreement on Trade in Services) Agreement of the WTO by 2010[1]. The discretionary powers vested in NRB (Nepal Rastra Bank) to issue licenses by NRB Act, 1955 also serves to limit the openness of the market as there is no mechanism for ensuring transparency and fairness in the decision making process, allowing for potential anti-competitive practices to prevail. Many banks have closed their branches in the rural area, which has had negative impact on competition in the banking sector in these areas. In fact, in many rural areas, people are deprived of any banking service due to the absence of banks.

There are altogether 17 insurance companies in Nepal. Among them two are composite companies transacting life as well as general insurance business, three are Life Insurance Companies and 12 are General Insurance Companies. They operate as per the norms and values of the Insurance Act, 1992, and Insurance Rules, 1993. The Beema Samiti, the regulator for the insurance sector is responsible for issuing license to new insurance companies. As the granting of license is subject to "economic needs test", Beema Samiti has considerable amount of discretionary power in granting the license (Adhikari and Regmi 2001). The paid-up capital for life insurer is fixed at Rs 250 million and general insurer at Rs 100 million according to the insurance regulations amended in 2001. However, most of the general insurers are operating with a paid-up capital of Rs 30 to 50 million.

The monopoly of the government-owned Royal Nepal Airlines Corporation (RNAC) was broken after the government adopted the open sky policy in the early 1990s. In the first phase, three private airlines—Necon Air, Everest Airlines and Nepal Airlines—were allowed to operate in the domestic sector. Within a few years, many other new airlines entered the market. By the year 2000, around 30 companies were registered as airlines and 15 were actually in business. Today there are 13 airlines in the domestic sector and five in the international sector. It is, however, noteworthy that the airlines have, barring a few short- lived incidents, not competed on the basis of fare and all the airlines charge identical fares for all the domestic sectors. Due to this fact, the Airlines Operators Association has also been accused of being a cartel. However, the entry barrier in this sector seems to be low, which is evident from the high number of airlines that acquired license from the government after the adoption of open sky policy.

There are a high number of small operators in the surface transportation sector. However, the entry barrier is high in this sector due to the prevalence of cartels. Operators have formed syndicates in almost all the sectors and only the syndicate members are allowed to ply on the designated routes. This is despite of the fact that the Consumer Protection Act, 1997, has outlawed the syndicate system in delivery of any service.

CHAPTER 3

Sectoral Policies

Sectoral regulators regulate the major sub-sectors of the Nepalese economy. Most of the regulators are preoccupied with operational issues such as giving license to new operators, and ensuring fair competition is not the objective of most of the regulators. This chapter deals with the sectoral policies and regulators in four large sectors of the economy: telecommunication, banking, civil aviation and electricity.

3.1 Telecommunications Sector

The telecommunications industry in Nepal lacks any sign of healthy competition till date. The industry is relatively young with the first telephone exchange established only in 1960. Since then, the market consisted of only one state-owned monopoly: Nepal Telecommunication Corporation (NTC), which had been dominating the market since its inception in 1975, principally by means of donor assistance for its operations and capital expansion. Following the decision for privatisation in 1997, a few more players have been able to enter the industry, which has a tiny foothold in the market. As such, it has not made much difference in the competition scenario. The lack of a comprehensive competition legislation coupled with regulatory inefficiency contributes to some extent to this situation.

3.1.1 Policy Overview

The first National Communications Policy was adopted in 1992 and updated in 1999. Objectives of the policy were to liberalise the telecommunications sector, to increase private sector participation and to promote competition. A Telecommunications Act was passed in 1998 leading to the privatisation of NTC, and the establishment of a regulatory body: Nepal Telecommunications Authority (NTA) and a Radio Frequency Determination Committee in order to ensure that the efficiency gains were passed on to consumers. The NTA was entrusted with granting licenses, prescribing, fixing and approving quality of telecom plant and equipment, inspecting and monitoring services provided by operators, settling disputes between service providers and providing suggestions to the government on policy and optimal strategies to be adopted in the sector under the broad theme of making telecom services reliable and easily available to consumers, protecting the rights of consumers and promoting healthy competition in the market. However, a major barrier to entry in this sector is the “safeguard clause” of the 1998 Telecom Act prohibiting more than one operator in a particular service for a period of five years.

However, the policy was revised in April 2004 in accordance with the government's in- built agenda. The amended legislation could overrules the clause of the previous Act, depending upon whether NTA is able to pick up appropriate loopholes, for example, by showing that the demand for telephone services clearly outstrips supply and therefore the safeguard clause is hampering growth and development of the telecom sector and needs to be annulled. The new draft, crafted with international assistance, is a more rigorous schedule for rapid liberalisation and aims to remove restrictions on investment and accelerate broad market opening. It defines a liberal regulatory environment based on open licensing, widespread competition, specific service obligations for licensed operators, a proposed regime for non-compliance, reference to WTO obligations and a sketch of the NTC reforms—renamed NT in April 2004.

Selected recommendations specified in the new policy include[2]:

a) Opening of the telecom sector to new operators without restrictions but limited by the amount of radio spectrum frequency allowance. (Section 4.4)

b) Introduction of a multi-service and multi-operator system dependent upon the amount of radio frequency allowance. Operators are also allowed to resell activities. (Section 5.4.1)

c) Introduction of an open licensing regime with new and transparent licensing methods that create a level playing field. (Section 4.5)

d) Restructuring of NT to reduce government ownership. (Section 4.10 and 5.10.3)

e) Promotion of private sector participation, and of the role of the Ministry of Information and Communications and NTA to keep the private sector fully informed of sector reform developments and licensing opportunities in a transparent manner. (Section 4.6)

f) Introduction of new operators of mobile service through tenders on the basis of maximum rural coverage—defined as commercial coverage without subsidies. (Section 5.1.1)

g) Government to purchase services from several operators based on price and quality assessments instead of the incumbent NT. (Section 5.4.6)

Although the new draft is a relatively more rigorous step towards a progressive, liberal telecom sector, it is nevertheless plagued by vague clauses, which undermine this objective. For example, although the open licensing regime and multi-operator clauses should serve to increase competition, the vague "minimum requirements" and non- transparent mechanism for allocation of radio frequency allow for restrictive practices to prevail as well as create space for rent seeking and other directly unproductive profit-seeking (DUPE) activities.

3.1.2 Market Overview

As substantiated by policy, one can see that Nepal has adopted what maybe referred to as "global best practices" in legislation. However, the gap between policy and practice remains stark as healthy competition is still a distant realisation in the telecom sector and the incumbent NT largely dominates the market.

There are only two providers of basic telephone services (a legacy of the duopoly clause) in the country: NT and the United Telecom Limited (UTL) which is a joint venture of three Indian companies Videsh Sanchar Nigam Limited (VSNL), Mahanagar Telecom Nigam Limited (MTNL), Telecom Consultants India Limited (TCIL) and a Nepali partner—Bishal Group. UTL only has a license for WLL technology and is dependent on the NT network for all its trunk calls. Meanwhile, NT operates V-SAT as well as WLL technology, GSM mobile services, and many other value added services such as e-mail and internet, voice data and telegraph leased circuits, international subscriber trunk dialing services, Inmarsat Mini-M, international program TV, and home country direct dialing. A third operator of basic telephones, STM Telecom Sanchar Private Limited has recently entered the sector with a World Bank grant of 22.56 million dollars, however, with a clear and limited target market consisting of 535 Village Development Committees(VDCs) in the rural areas and with services confined to the usage of V-SAT technology.

The mobile telephone service market also has only two players for each type of service. NT and Spice Network hold licenses for GSM service, and the Constellations Limited and AVCO operate the GMPCS service. NT currently has a monopoly in GSM services as the Spice Network is yet to start its operation. Customers are currently facing immense network problems as NT has wittingly distributed more lines than the radio frequency allowance and has neglected the outcome. Value added services seem to show relatively more competition, especially in the Internet Service providers' category, with a total of 27 operators.

Table 3.1: ICT Service Providers In Nepal

Service	Quantities
Basic Telephone (fixed line)	1
Basic Telephone (WLL)	1
Mobile Telephone	2
Internet Service Providers	27
Cable Internet	2
Radio Paging	8
V-SAT Providers	10
Fax mail	6
Video Conferencing	1
GMPCS	2
Rural Telecommunication Services	1

Source: Nepal Telecommunication Authority

Efforts to bring about a competition regime seems to have halted at the legislative level with poor institutions, weak checks and balances and vested interests hindering implementation of the legislation. For example, there is already a debate on whether the Telecommunications Act, 1998, should be amended through ordinance for the new Telecommunications Policy of 2004 to come into effect, or whether one should wait until elections to have a legitimate parliament, given that Nepal has until January 1, 2009 under the WTO agreement to fully open up the telecommunications market.

3.2 Financial Sector

The Nepali financial sector has undergone major changes in the last decade as a result of rigorous liberalisation policies enacted in the aftermath of the restoration of democracy. The sector consisted of only two commercial banks until the mid 1980s, one that was fully government-owned (Rastriya Banijya Bank) and another, which comprised 51 percent government share (Nepal Bank Limited). Today, there are a total of 17 commercial banks, 57 finance companies and 17 insurance companies—all jostling for a larger share of the market (Pernia 2004). As of July 2003, the financial sector's assets equaled NRs 289.8 billion ($ 3.97 billion) and commercial banks dominate the sector accounting for 73.18 percent of total assets[3].

3.2.1 Policy Overview

NRB, established in 1955, has been responsible for regulating all institutions within the financial sector, including commercial banks. Chapter 3 and 4 of the NRB Act, 1955, states all powers vested in NRB, including the power to approve establishment of banks, to prescribe conditions for accepting deposits, supplying loans and issuing debentures, and to inspect, supervise and issue directives to all commercial banks and financial institutions. The NRB at the time also had the right to set interest rates and exclusively deal with foreign currency.

Initial efforts to introduce competition in the financial sector started in the mid 1980s under the government's liberal economic policy, which was guided by the Structural Adjustment Program of the Bretton Woods Institutions. Under this policy, the Commercial Act of 1984 was passed which removed most entry and exit barriers and allowed a 50 percent foreign investment in commercial banks in anticipation of increased foreign currency, technological know-how, modern banking skills and increased competition in the market with overall efficiency gains for consumers (Adhikari and Regmi 2001). As a result, Nepal Arab Bank (currently known as Nabil Bank) was established as the first joint venture bank. Subsequently, Nepal Indosuez Bank (currently Nepal Investment Bank) and Nepal Grindlays Bank (currently known as Standard Chartered Bank) were established in 1985 and 1987 respectively. These enterprises introduced modern banking practices and technical skills and brought about a fledgling competitive environment to the financial sector.

In July 1985, NRB further allowed commercial banks to accept current and fixed deposits in foreign currencies. And in May 1986 deregulated interest rates and lowered the liquidity requirement of commercial banks from 25 percent to 9 percent. Commercial banks were allowed to determine their interest rates except for export lending and productive sector credits (priority sectors) for which a Credit Information Bureau was established in 1989. However, the priority sector lending is currently being phased out under the rationale that it is market distorting and shall be eliminated by the end of the FY 2006/7. Furthermore, the auction mechanism was introduced for the first time to sell treasury bills and the Agriculture Development Bank of Nepal (ADB/N) and Nepal Industrial Development Corporation (NIDC) were allowed to issue debentures to increase their financial resources.

The restoration of democracy in 1990 finally provided a major thrust towards increased private investment and therefore increased competition in the financial sector.. Accordingly, The *Finance Company Act, 1985* was amended in 1992, which resulted in a tremendous increase in the volume of financial transactions and financial markets. By 2000 the number of commercial banks had reached 15 and the count now stands at 17 *(See Table 3.2 for a detailed list).*

3.2.2 Market Overview

The two public banks Nepal Bank and Rastriya Banijya Bank still dominate the market with a combined market share of 32.95 percent in deposits and 31.92 percent in loans. These two combined with the third largest commercial bank, the Himalayan Bank with a 9.74 deposit market share and a 9.44 credit market share monopolise almost half of the banking sector, thus reducing competitiveness. In aggregate, the three largest banks possess 50.36 percent of total assets of all commercial banks (Pernia 2004).

However, lending rates of commercial banks have been decreasing over the last decade, mainly after liberalisation, from 15-21 percent to 8-13 percent indicating an increase in competition in the financial market. Interest on import loan, for example, was between 14 -15 percent in 1998, but decreased to 11-13 percent in 2000. It is currently between 8-11.5 percent (Adhikari & Regmi 2001 and Nepal Rastra Bank 2004b). Likewise, rates against fixed deposits (FDR) have also decreased by about two percent on an average. Overall lending rates have shown a downward trend since the 1990s while banks have diversified their service portfolios to attract new customers,for example, hire purchase loan services, insurance services, ATM facilities and e-banking facilities, indicating increased competition in the market. However, as prescribed by theory, deposit rates have not increased with the increase in competition. This can be attributed to high liquidity in the economy as a result of increased remittances, lack of investment due to political instability, and increased loans and grants. Deposits have increased at an average annual rate of 21.36 percent between 1997 and 2003, reaching Rs 215136.6 million in mid-January 2004 (Nepal Rastra Bank, January 2004). As a result, interest paid on deposits has also been decreasing from an average of seven percent in 1997 to around four percent in 2004. In addition, the spread rate quoted by the World Bank Study "Financial Performance and Soundness Indicators of South Asia" (Pernia 2004) is approximately 3.09 percent indicating a fair level of competition in the market.

Table 3.2: Market Shares of Commercial Banks

Commercial Banks	Deposit Market % Share	Credit Market % Share
Nepal Bank Limited	15.530	13.815
Rastriya Banijya Bank	17.424	18.105
NABIL	6.033	6.329
Nepal Investment Bank Limited	5.009	5.261
Standard Chartered Bank Limited	9.056	4.896
Himalayan Bank Limited	9.740	9.441
Nepal SBI Bank	3.095	4.007
Nepal Bangladesh Bank Limited	5.455	7.400
Everest Bank Limited	3.451	4.420
Bank of Kathmandu	3.313	4.406
Nepal Credit and Commerce Bank	2.550	3.202
Lumbini Bank Limited	1.616	2.322
Nepal Industries & Commerce Bank	2.202	2.704
Machhapuchre Bank Limited	1.178	1.832
Kumari Bank Limited	2.061	2.676
Laxmi Bank	0.720	1.263
Siddhartha Bank Limited	0.552	1.131

Source: Research Department, Nepal Rastra Bank

The regulation department of NRB, as most other public institutions of Nepal, is plagued with endemic problems such as lack of incentives, lack of independence from vested interests and political pressures and the inability to effectively follow up after monitoring commercial banks as a result of a systemic handicap. Hence, NRB has not been as effective as mandated in bringing about a competitive environment and anti-competitive practices still prevail, for example, in the foreign exchange market.

3.3 The Power Sector

At the end of FY 2003/04, a total of 549.201 MW of hydropower was generated in the country (Economic Survey 2004), which is a fraction of the 44,000 MW economically feasible hydropower potential. In addition, thermal plants of 56.7 MW capacity and import of 50 MW from India are available to meet the power demand of the country.

3.3.1 Policy Overview

To facilitate the export of electricity, the government approved a new Hydropower Development Policy in 2002.

The Department of Electricity Development (DoED), previously known as Electricity Development Center, is responsible for licensing, promoting the private sector and maintaining quality standard of electricity supplied to consumers.

The Electricity Tariff Fixation Commission (ETFC) is responsible for fixing electric tariff and other charges.

The Hydropower Development Policy 2002 has suggested major changes in institutional provisions in this sector. The existing ETFC will be developed into an independent regulatory body with the mandate to fix electricity tariff and wheeling charges, to monitor and supervise reliability and quality of electricity services, to prepare grid code, to direct and supervise power purchase agreements among public and private generators, and to protect consumer interest. DoED will be mandated to promote hydropower development by the private sector, to encourage competition in project licensing, to develop a one-window policy to facilitate streamlined licensing process, to carry out high quality feasibility studies for hydropower and multi-purpose projects, to facilitate private sector participation, and to provide assistance to private sector in operation and monitoring of hydropower projects.

These guidelines aim to break the monopoly of NEA by “unbundling” it and separating the generation, transmission and distribution of electricity. These guidelines are yet to be incorporated into legislation.

3.3.2 Market Overview

The establishment of the Department of Electricity in 1960 and Nepal Electricity Corporation in 1962 were instrumental in the development of the electricity sector in Nepal. In 1985, the Electricity Department, responsible for developing new projects and Nepal Electricity Corporation, which was responsible for operation, maintenance and consumer service were merged to form NEA. NEA, a 100 percent government-owned entity, was the sole player in the generation, transmission and distribution of electricity in Nepal before the enactment of the Electricity Act, 1992. The enactment of the Hydropower Development Policy 1992, Electricity Act 1992 and Electricity Regulations, 1993 and subsequent entry of a number of IPPs in the electricity generation sector brought the monopoly of NEA to an end.

Despite this development, the electricity sector is still dominated by NEA; it still owns 79 percent of the installed generation capacity and has monopoly in the area of transmission and distribution and is the sole buyer of electricity generated by IPPs.

Despite the efforts of the government to encourage private sector participation, the consumers are paying very high rates for electricity. Electricity rate in Nepal is one of the highest in the world, and the Nepalese pay 23 percent of their income on electricity. According to a survey, out of 51 American states, the tariff rates in 40 are lower than in Nepal (Spotlight 2002).

3.4 Civil Aviation Sector

The establishment of the Department of Civil Aviation in 1957 under the then Ministry of Work, Communications and Transport heralded the formal beginning of the aviation sector in Nepal. Scheduled domestic and international air services started in 1958 with the establishment of the fully government-owned Royal Nepal Airlines. The statutory regulations regarding civil aviation were introduced under the Civil Aviation Act, 1959.

3.4.1 Policy Overview

Nepal adopted open sky policy with the introduction of the National Civil Aviation Policy 1993 (amended in 1996) and the enactment of Civil Aviation Act, 1996. One of the objectives of the 1996 policy is “to develop healthy and competitive air transportation through encouragement to the private sector.”

The Civil Aviation Authority of Nepal (CAAN) was established as an autonomous regulatory body on December 31, 1998 under the Civil Aviation Authority Act, 1996.

CAAN is the sole aeronautical authority of Nepal. It carries out the control and development/expansion works pertaining to all matters concerning the aviation sector within the policies and guidelines adopted by the Ministry of Tourism and Civil Aviation.

3.4.2 Market Overview

With the liberalization of the aviation sector in 1993 and the implementation of open sky policy, the Nepalese private sector stepped in to operate domestic airlines. In the first phase, Necon Air, Everest Airlines and Nepal Airlines were allowed to operate in the domestic sector. Within a few years, many other new airlines entered the market. By the year 2000, around 30 companies were registered as airlines and 15 of them were actually in business. Today there are 13 airlines in the domestic sector and five in international sector.

The entry barrier in the domestic airlines sector is low as is evident by the high number of private sector airlines that have entered the market after the adoption of "open sky" policy by the government

As mandated by the Civil Aviation Act, 1996, His Majesty's Government (HMG)fixes the airfare of each flight sector by prescribing the minimum and maximum range thereof. CAAN fixes the fare for each sector on the basis of average operating costs. This fare is then reduced by 25 percent. The airlines are then allowed to go up or down 25 percent of this reduced fare.

The airlines are thus given a wide range within which they can fix their fares. This has not been reflected in the market and the fares of the different airlines are almost similar. The airlines have for the most part not competed on the basis of price. A few incidents of price competition were short lived.

In a poll conducted by the magazine New Business Age among the leaders of the business community, 70 percent said that the Airlines Operators Association was functioning as a cartel (NBA 2000a). One domestic airline, Cosmic Air, has reduced its fare by around 25 percent in some sectors since October 2004. This was followed by the reduction in fares by another airline Yeti Airlines in the same sectors. It is, however, interesting to note that the market leader in the domestic airline industry Buddha Air has not reduced its fare, and experts are of the opinion that as in the past the price war is going to be short-lived and the "cartel" will eventually triumph.

CHAPTER 4

Consumer Policy

4.1 Introduction

Consumer policy is a set of measures that takes into account consumer's concerns. By consumer concerns, we refer to a host of issues like product safety, reasonable pricing, impact on health, availability of choices etc. Implementation of this policy involves developing legislation and various other provisions in order to protect consumer interests. Consumer policy deals directly with consumer protection and indirectly with competition policy. This is because anything that affects competition affects consumers as well. Consumer policy thus forms an integral part of competition policy.

Consumer policy is an essential element in a liberalised and free market economy. This is important to ensure that the benefits of economic growth are not only taken up by the business community but also shared by the majority of the population—the consumers. Effective consumer policy allows consumers to purchase safe goods and services and also obtain redress and compensation whenever consumers are victimized. In making efforts to protect consumers, there is a need for governing bodies to work towards creating a healthy, efficient and competitive market mechanism and efficiently use regulatory tools for consumers' protection. Consumer protection is not an obstacle to development. Rather it promotes fairness and equality in development strategies. In countries such as ours it is even more important to be more conscious towards consumer protection because consumers are unorganized and vulnerable. Thus the need for consumer policy becomes greater.

In the efforts at establishing an effective consumer protection environment, conflict of interests may arise among the government, market makers and consumers. The government is not solely responsible for consumer protection. Market makers also need to exhibit greater responsibility to ensure that consumer rights are well protected. An effective consumer protection policy not only benefits consumers but businesses as well, since it helps reduce unfair competition. Competition in the domestic arena will help businesses develop competitiveness internationally as well. Consumers need to be able to pressurize business establishments to become more competitive so that the latter can cope with foreign competition and they can provide improved goods and services. This can benefit both consumers and businessmen (Consumer International 2001).

For effective implementation of consumer policy there must be a strong consumer movement. In the case of Nepal, the consumer movement is weak and consumer representation in the decision making level regarding consumer issues is still at its early stage. Due to increased awareness, the consumer movement is slowly gathering momentum and there are some organisations that have initiated work in this area. Although the existing consumer protection law is adequate to ensure that the Nepalese consumers are empowered, the lack of awareness, ambiguity in regulation and enforcement has made the law ineffective.

The directive of the Constitution of the Kingdom of Nepal states that:

> "*The fundamental economic objective of the State shall be to transform the national economy into an independent and self-reliant system by preventing the available resources and means of the country from being concentrated within a limited section of society, by making arrangements for the equitable distribution of economic gains on the basis of social justice, by making such provisions as will prevent economic exploitation of any class or individual, and by giving preferential treatment and encouragement to national enterprises, both private and public.*"

Whereas the preferential treatment and encouragement to national enterprises (private and public) has explicitly been stated, the directive remains silent on consumers' protection. The directives also state that the arrangements for *equitable distribution of economic gains will be made and efforts will be made towards preventing the economic exploitation of any class or individual.* This can be interpreted as an attempt to establish a socio-economic equilibrium, but the directive again excludes consumer protection.

There are some countries, which have declared consumer protection as one of the fundamental economic principles. For instance, Article 19(2) of the Bulgarian Constitution provides that 'the State shall establish guarantee equal legal conditions for economic activities to all citizens and corporate entities by preventing any abuse of a monopoly status and unfair competition, and by protecting consumers. This makes consumer protection a constitutional requirement. (Rachagan 1999)

4.2 Prevailing laws[4]

Given below is a brief description of some important laws that affect consumers:

4.2.1 Consumer Protection Act

In Nepal, the Consumer Protection Act(CPA) came into effect only in 1999. The legal provisions available for consumer protection before this Act were inadequate. The enactment of this Act was welcomed by everyone, and was thought to be the basis for protecting the rights of consumers.

The Act guarantees six out of the eight universally recognized consumer rights. It protects the consumers against any irregularities regarding price, quality, quantity, health, choice etc. and prevents any monopoly and unfair trading practices of producers. The Act also ensures proper compensation for consumers in case of damage because of unfair trade practices or any other prohibited practices.

The Consumer Protection Council, with the Prime Minister as Chairperson, has been formed under the CPA. The council formulates policies relating to the protection of the rights and interests of consumers and also offers suggestion to HMG on related issues.

CPA was brought out to protect the interest of the consumers and not to *per se* induce competition in the market. The act addresses restrictive trade practices and unfair trade practices. Unfair trading practices include the sale or supply of consumer goods or services by making false or misleading claims about their actual quality, quantity, price, measurement, design, make, etc., or the sale or supply of consumer goods produced by others by affecting their quality, quantity, price, measurement, design, make, etc. The act also prohibits the sale of sub-standard goods or services.

As such, the Act mainly addresses "irregularities concerning the quality, quantity and prices of consumer goods or services." Having said this, the provisions to ensure the benefits of consumers affect competition, as most unfair business practices affect both consumers and competitors, though indirectly. Particularly, the provisions in the Act that ensure consumers the right "to choose goods and services at competitive prices" and those that prohibit "the creation of circumstances to influence demand, supply or price of any consumer good or service by fixing the quota of raw materials needed for any consumer good, or reducing the production of any consumer good, or taking any other similar actions or by hoarding any consumer good or service or otherwise creating an artificial shortage, or selling and supplying such good or service at specified times or places only, or taking any other similar actions in collusion with others" are likely to have positive impact on competition.

The effectiveness of the Act is very weak. It has not been able to empower the consumers or promote competition in the Nepalese economy.

4.2.2 Food Act, 1966

The Food Act, 1966, ensures that the consumers are protected against the use of contaminated, harmful substances not fit for consumption. Manufactured consumables must adhere to a certain minimum standard of health and safety requirements and businesses must also provide certain critical information on any such consumables and their packing that may have a direct relation to the quality of the product being consumed.

Despite this Act, the availability of contaminated food is very common in the Nepalese market. A report published in the Nepalese English-language daily *The Kathmandu Post* on June 17, 2003 states that this has been proved in the reports of the Department of Food Technology and Quality Control (DoFTQC). The department has carried out sample tests of various food products that were available in the market and found that they were of substandard quality and have various types of contamination. In the tests carried out by DoFTQC companies seemed to have ignored the practice of labeling their packages. This act not only deprives the consumers of their right to know about the ingredients, but also violates the Consumer Act.

Experts have also been reiterating time and again that a large portion of milk, dairy products, cereal and meat products sold in the market contain coliform, yeast, mold, and other elements (*The Kathmandu Post* 2003). So far, actions have rarely been taken against the violators. The consumers have also remained silent. The only way they have been retaliating is by stopping consumption of these products. Although ensuring the quality of the products available has been covered by the Food Act, Nepal Standards Act, as well as CPA, the government has been unable to check the supply of substandard quality of products in the market and to make suppliers accountable. The implementation of the CPA is the responsibility of the Ministry of Industry, Commerce and Supplies(MOICS) while the implementation of the Food Act is the duty of the Central Food Research Laboratory (CFRL) which comes under the Ministry of Agriculture. Similarly, CFRL and municipalities are responsible for quality control of food grain supplied in the market.

4.2.3 Black Marketing and Certain Other Social Offences Act, 1975

This Act was brought out mainly to maintain the health, convenience and economic well being of the public and prohibits business practices such as black marketing, profiteering, deflection of commodities, hoarding and creation of artificial scarcity.

Section 2 (a) of the Act states: "In case any person sells any commodity at a price higher than the one fixed by HMG, and, in case HMG has not fixed the price, at a price higher than the price determined by the producer, importer, or main distributor of the commodities prescribed by HMG through notification in Nepal Gazette, the price at which such commodity was sold shall be refunded and the commodity shall be confiscated". This provision, though appropriate in the pre-liberalisation era when the government was involved in price fixing, and when there were restrictions on imports, is meaningless in today's liberal environment.

Similarly, consider the provision in Section 3 of the Act: "Except in circumstances in which the price has been fixed under Section 2, in case any person who trades in any commodity prescribed by HMG makes profit which is 20 percent more than the price of such commodity or what he is normally entitled to make according to trade practices, or makes undue profit through the sale of such commodity by taking advantage of scarcity, he shall be liable to imprisonment for a term not exceeding five years, or to a fine, or to both." This provision is ridiculous in the liberalised era.

This Act is following in the footsteps of other Acts that are there for consumer protection and can be considered a total failure. A burning example can be given in the case of NT.

NT, in order to meet the demands for mobile phones, had opened up five distribution centers in Kathmandu. However, due to limited availability of SIM cards, the centres closed at three in the afternoon when it was supposed to be open till five. Surprisingly, the SIM cards could be purchased at a higher price at the shops around the centers. When a complaint was lodged with the authority, they said that they were unable to take actions against these people. This is an example of black marketing, which is rampant in other areas too.

Although provisions in the Act such as Section 7 that prohibits adulteration of drugs and sale of such drugs protect the interest of consumers, the Act, as a whole, is very weak in promoting competition in a market-based liberal economy.

4.2.4 Essential Services Operation Act, 1957

HMG has enacted the Essential Services Operation Act in order to make necessary and appropriate arrangements for uninterrupted supply of essential services and commodities so that lives of ordinary citizens are not affected. This Act ensures the rights of consumers to have access to extremely important services like transportation, postal system etc. The Act prohibits strikes in these sectors.

4.2.5 Nepal Standards Act (Certification Mark) Act, 1980

This Act has been enacted to make arrangements for determining the standard of goods available to the public for their welfare. In order to achieve the objective of this Act, HMG has also established Nepal Bureau of Standards(NBS). It ensures certain quality in the goods that are available to consumers, and that they are protected against consuming any sub-standard quality of goods.

4.3 Complementarities Between Competition Policy and Consumer Protection

The main objective of competition policy and law is to promote competitive markets and curb anti-competitive practices. In this process, they also protect and promote consumer welfare as these laws make the market environment favourable from the consumer perspective as well. Competition policy and law promote competitive markets rather than protecting individual competitors' interests. The policy aims at developing the competitiveness of these competitors. Consumer policy aims at creating an environment for the protection of consumers.

Competition policy is more of a proactive policy that attempts to promote consumer interest in the marketplace whereas consumer protection policy puts forward mainly a reactive agenda such as protecting the interest of consumers and providing access to redress against abuses (Nanda 2004).

Although on the surface, these two policies seem to have different objectives they complement each other because the ultimate objective of both these policies is consumer welfare. Competition policies enhance the competitiveness of firms and enable them to survive in the international market. The firms are then able to give consumers not only the best possible choice, but also the lowest possible prices and adequate supplies. Thus the ultimate beneficiaries of this policy are the consumers.

Generally competition and consumer policy are taken to be different areas of intervention and in most countries these two functions are separated.

Now it is more and more being realized that if the process of competition is ensured, then this leads to protection of consumers as well.

The fact that consumer and competition policies are intertwined can also be explained by the syndicate system prevailing in the transport sector in Nepal. These syndicates not only restrict consumers' choices but since they do not allow non-members to ply in the "designated routes", this also prevents healthy competition to prevail in the economy. Thus the consumers and other new members wanting to enter the business are affected adversely. The impact is seen on the quality of services available as well as prices. Another example can be of the Black Marketing and certain other Social Offences Act. These acts prohibit sellers from making unreasonable profits and thus put a price ceiling on the goods. This provision not only benefits the consumers but also curb the firms to take undue advantage of its monopoly position in the market.

In many countries, some of the issues like unfair and restrictive trading practices are covered by both Consumer Protection and Competition acts. Due to the similarity of the issues, some countries such as Australia and Peru have only one institution to deal with both consumer and competition issues.

The close linkage between competition and consumer policy has resulted in the inclusion of many consumer issues in the draft Competition Act. The preamble to the draft of the Competition Act in Nepal states that the law would ensure the availability of quality products in reasonable prices to the consumers by establishing a healthy competitive environment in the market. Various anti-competitive practices such as tied selling, abuse of monopoly powers that would directly affect consumers have been covered by this law. Certain provisions like the one on misleading advertisements have been included in both the CPA 1998 and the draft Competition Act.

CHAPTER 5

Anti-competitive Practices

Anti-competitive practices are a set of unfair practices, which enterprises may use in order to distort or eliminate competition with the aim of acquiring and abusing monopoly power.

This chapter is a summary of some of the anti competitive practices observed in the Nepalese economy. These are listed according to individual categories, followed by case study examples from various sectors and an assessment of the potential reasons behind the existence of such practices.

Anti-competitive practices, however, occur in many forms. Some reflect tacit or explicit agreements among producers or suppliers that have the effect of lessening competition. For example, suppliers may agree to a minimum price, to share the relevant market and/or to deter new entrants into the market. Others result from firms abusing a dominant position in the market. For example, forcing suppliers or distributors to accept certain restrictions. While some others take the form of restrictive trade practices, for example, through mandatory requirements for purchasing other goods along with the desired ones known as tied selling or through charging different prices on discriminatory grounds. The study has, however, found it cumbersome and inappropriate to formulate broad categories such as the above for classification purposes because one particular restrictive practice is different from another, yet it is applicable to all broad categories. Hence, the following paragraphs identify and separately list all types of existing anti-competitive practices in the Nepalese economy with an inquiry into their *raison d'être.*

5.1 Collective Price Fixing

Collective price fixing is a type of horizontal agreement whereby firms collectively fix prices of primary goods, intermediary goods, or finished products. It may also involve agreements relating to specific forms of price computation, including the granting of discounts and rebates, drawing up of price lists and variations, and exchange of price information.

This is the most prevalent collusive arrangement and has been practiced by a number of business and trade associations such as the Colour Photographers Association, the Association of Brick Industries, the Air Transporters Association of Nepal, Nepal Association of Travel Agents and regional truck and bus syndicates.

During the monsoon season, heavy rainfall wipes out stocks of bricks causing losses to brick manufacturers. The Association of Brick Manufacturers fixes the minimum price during this season incorporating the losses incurred by members in the price structure. In this manner, it is able to pass on the costs of its inability of proper storage to consumers. The price quoted is around NRs 1700 per one thousand bricks instead of the regular NRs 1500 (Adhikari and Regmi, 2001) and the opportunity to bargain is also nil as the association is able to throw out any member that charges a lower price than the one quoted.

The airlines sector is another prominent example of collective price fixing. The price structures of most appear curiously similar (See Table 5.1). This might be mistaken for a tough competitive environment in the sector; however, past experiences have proved otherwise.

Table 5.1: Price Structure of Major Airlines to Five Destinations from Kathmandu (in rupees as of November 2004)

Airlines	Bhairawa	Bharatpur	Biratnagar	Nepalgunj	Pokhara
RNAC		1150		2970	1710
Yeti Airways	2570	1420	2975	3970	1420
Budhha Air	2570		2975	3970	1420
Gorkha Airlines	2370	1420			1820
Cosmic Air	2150	1420	2390	2550	1820

Source: Experience Nepal Tours and Travel

Even in 1999, the prices of all private airlines were identical, clearly demonstrating a tacit cartel between them. Moreover, there was a significant difference between the fares of private airlines and the government-owned RNAC, which further endorsed this belief. Fares were around 15 percent higher than those of RNAC for the Kathmandu-Nepalgunj flight; 22 percent higher for the Kathmandu-Bharatpur flight and 17 percent higher for the Kathmandu-Biratnagar flight. However, it was difficult to officially levy charges against the Air Transporters' Association of Nepal due to the lack of a comprehensive competition policy and law in the country. In the last couple of years, some airlines started engaging in a price and promotion war, which brought about some optimism among consumers and other stakeholders. The recent decrease in the fare of Cosmic Air is another manifestation of this outbreak. If the past experience is any guide, this kind of price warfare will not last long, and the cartel will come back on the track. Hence, the recent competition between Cosmic Air and Yeti Airways and the low prices offered by Cosmic Air do not rule out the possibility of another relapse as experienced in the past (See Adhikari, 2004).

Similarly, in the telecom sector, there is evidence of collective price fixing between service providers, even in services such as radio paging which is relatively more moribund.

A general consensus among financial sector analysts, media persons and even bankers is that commercial banks have tacitly colluded in the foreign exchange market. However, the underlying reason is heavily contested and justification from the banks is that collusion was necessary to avoid big businesses from exploiting the information asymmetry among commercial banks, especially as Nepal is a heavily importing country. However, as a result of collusion, small and medium enterprises and customers in general have heavily lost out.

Lastly, the surface transportation sector has exploited consumers and deterred competitors by forming regional cartels called syndicates. In the last couple of years, this sector witnessed tremendous growth as the central bank identified it as a "priority sector". Due to this reason some commercial banks started over-financing trucks and buses, which resulted in a glut in the surface transportation market. As a result, the operators have formed regional cartels. They tacitly agree on their respective areas of operation and frequency of circulation and vigorously deny entrance to new operators. Furthermore,their quality of service is appalling. However, the government, fearing a massive strike, and given the turbulence in the country because of the Maoist insurgency, has remained silent on the issue.

5.2 Collusive Bidding or Tendering

In such a scheme, the buyer, who invites competitive offers or quotations through a tendering procedure, will receive offers solely from cartel members who have secretly arranged among themselves as to which enterprise will make the lowest offer. The other cartel members will either decline to participate or make fake offers called "cover bids" by inflating their prices. However, when an outsider makes a genuinely competitive offer, the cartel deals with it by quoting lower prices and incurring losses, but it is financed through reserves put aside each time a cartel is awarded an offer, precisely with the aim of combating outsiders.

In Nepal, collusive bidding is widespread in contracts for infrastructure construction such as roads, bridges and highways as well as in supply of raw materials. Producers of polythene pipes, for example, were known to collude while supplying pipes to Nepal Drinking Water Corporation. In recent years, this practice has fairly declined with the breaking up of the national cartel (Adhikari and Regmi 2001). The justification given by most companies, however, is that they are compelled to collude in order to survive in the already distorted market where government officials, instead of setting out a level playing field before the bidding process, seek bribery from companies and favour those who give in. Hence, as a result, the firms are induced to collude.

5.3 Tied Selling

Under this practice, the supply of particular goods or service is made dependent upon the purchase of other goods or services from the supplier or his / her designate. The tied product may be totally unrelated to the product requested or maybe complimentary or similar. Tying arrangements are normally imposed in order to promote the sale of slower moving products and in particular those subject to greater competition from substitute products.

Tied selling is rife in the education sector in Nepal. In most private schools, students are required to purchase textbooks sold by the schools in exorbitant prices without having any other option. These books are mostly bought from foreign publishing houses and photocopied. Uniforms are a part of the deal, and students have to go to particular stores to have their uniforms tailored. The regulatory authority, the Office of the District Education Officer, under the Ministry of Education, turns a blind eye to this practice because of its lack of capacity or resource constraint to effectively check the practice.

Hospitals are also widely engaged in tied selling. Private hospitals require patients to conduct pathological tests that are not required. For example, even if the patient has recent tests conducted in other hospitals (Adhikari and Regmi, 2001)they are required to take the tests again. Even the proliferation of private hospitals and nursing homes has not made much difference in the health costs borne by consumers.

Another sector involved in tied selling is the cement sector where customers who demand Nepalese cement are forced to buy Indian cement as well. The Nepalese cement is known for its superior quality and fast setting attributes. However, the three major cement producers of Nepal are SOEs with inefficient production systems and a low-level of capacity utilization, thus leading to frequent scarcity of Nepalese cement in the market. At one time, customers were required to purchase 25 sacks of Indian cement while purchasing 50 sacks of Nepalese cement.

5.4 Resale Price Maintenance

Under this practice, the supplier (manufacturer or dealer) dictates the final downstream price quoting the minimum amount to retailers for the resale of goods. The objective behind this unusual anti-competitive practice is firstly to prevent retailers from competing with each other so that the selling price of the good does not go down. Secondly, although the costs of production decrease for reasons such as cheaper raw material prices, technological efficiency and hence increased productivity, the selling price is kept high by the producers out of fear that the "image" of good will become "inferior" if the price of it goes down. Thus, they set the minimum selling price for retailers and use the extra profit for other forms of compensation to consumers such as prize-winning schemes or lottery schemes as demonstrated by noodle manufacturers of Mayo's, Wai Wai and 2 PM brands of noodles.

5.5 Creation of Artificial Scarcity

The creation of artificial scarcity denotes a situation whereby the seller creates a shortage of a good in the market in order to push prices up, resulting in increased profits for the seller.

In Nepal, the creation of artificial scarcity has become a common practice. Businessmen buy huge quantities of agricultural products, especially rice, wheat, and pulses from farmers who do not have the capacity to stock the output during peak season. The businessmen collectively hold the food stock in their warehouses until the off-season arrives. They subsequently start releasing foodstuff in a manner that creates artificial scarcity. Sadly, even consumers are so accustomed to the idea of "shortage" in the market that they accept it without questioning the state of affairs.

The sugar industry is a case in point. In 1999, sugar producers demanded a rise in import tariffs from 10 percent to 40 percent with the rationale of protecting infant industries. They asserted that they had now developed sufficient capacity to fulfill domestic demand; hence there was no need for imports, but a strong need for protection from foreign competition. However, soon after the government blindly raised tariffs, the producers started creating artificial scarcity and pressurising the government to increase the selling price of sugar (Adhikari, 2004). In November 2004, this incident was repeated when the price of sugar increased from NRs 38 per kg to NRs 50 per kg after the producers of sugar created an artificial shortage deliberately during the festive season when demand is higher than usual.

5.6 Price Discrimination

Price discrimination is the charging of different prices to consumers for the same good or service in order to extract maximum profits. There are three degrees of price discrimination. The first-degree price discrimination refers to a situation whereby producers extract the maximum amount that the consumer is willing to pay. Hence, this applies to all situations where the buyer and seller engage in bargaining, and this practice is prevalent in most developing countries, including Nepal.

The second-degree price discrimination occurs when producers try to sell the maximum amount of good or service at the profit maximising point and then reduce the price for the remaining units. This is done, for example, with cinema tickets, bus tickets, air tickets etc.

The third-degree price discrimination is a situation in which there are a minimum of two markets for the same good with two different elasticities of demand. Producers charge a higher price where the elasticity is low and a lower price where the elasticity is high. This can be observed in the banking sector in Nepal where loans are given according to the type of consumer classified as "prime" and "others". High lending rates are given to small borrowers with a lower elasticity of demand and low rates are given to large borrowers with a high elasticity of demand. The lending rate difference is on an average two to three percent.

5.7 Predatory Pricing

This refers to an action whereby a firm sets a price for its good or service below the cost price in order to drive out competitors from the market. A form of this predatory behaviour, known as 'dumping', was conducted in Nepal by the Indian subsidiary of the Nestle Limited which sold Maggi noodles much below the prices charged in some Indian cities. However, a competitive environment has developed in the noodle business to a great extent in recent years as a result of the establishment of many local producers.

A more eminent manifestation of predatory pricing occurred between Nepal's two widely sold English-language dailies: The Himalayan Times, and The Kathmandu Post—part of the Kantipur Publications. When the former cut down its prices to NRs 2 (possibly with predatory intent) and became the lowest selling paper, The Kathmandu Post slashed its newsstand price by 62 percent to Rs1.50 per copy (and 42 paisa per copy for subscribers of its sister publication the *Kantipur* daily) becoming the cheapest English daily broadsheet overnight. The *Himalayan* Times further reduced its price to NRs. 1. With the cost price said to be at around Rs 15, many believe that the Rs. 1.50 price offered by The Himalayan Times had a predatory intent.

5.8 Unreasonably High Price

Charging unreasonably high prices by taking advantage of a dominant position in the market can be observed in the telecom sector of Nepal. NT enjoys a dominant position in the market as a result of its previous existence as a government-owned monopoly. Hence, it owns most network lines and frequency capacity, which it exploits to the fullest. The prices charged for mobile services are exorbitant in light of decreasing mobile charges worldwide, including neighboring India. During peak hours calling from post-paid and pre-paid mobile phone is seven and nine times higher than calling from landline telephone (Table 5.2).

Table 5.2: Call Charges of Landline and Mobile Phones (NRs)

Type of Call	8:00 - 18:00		18:00 – 22:00		22:00-8:00
Landline Charges*	Rs. 1 per 2 min**		Rs. 1 per 4 min**		Rs1 for 8 min**
Post Paid Mobile (outgoing charge)	**8:00 - 20:00**		**20:00 – 8:00**		
	Initially	At present	Initially	At present	
	3.60	3:00	1.8	1.50	
	1.80	Free	Free	Free	
Pre-paid Mobile (outgoing charge)	4.68	3.50	4.68	2.50	
Pre-paid mobile (incoming charges)	2.34	Free	2.34	Free	

*Free call 175 in Rs 200 ** additional call charges *(min=Minutes)*
All the above charges are excluding TSC and VAT

Source: Calculated on the basis of published tariffs of NT

However, there is not much that NTA has done despite consumer complaints because the authority itself cannot determine whether these price differences are justified. A few more players have recently entered the market, but the situation still looks dim as restraining bodies such as NTA and the Ministry of Information and Communications seem incapable of curbing such practices.

It is due to various institutional reasons (legal, social and cultural) that one can observe such anti-competitive practices in almost all major industries in Nepal. Firstly, the lack of a comprehensive competition law has allowed businesses to engage in anti-competitive practices by exploiting the existing loopholes in sectoral legislation. Secondly, the high capital requirement for starting business acts as a formidable entry barrier for small- and medium-sized firms that could potentially challenge monopoly enterprises. Thirdly, given the weak checks and balances in public institutions, the government apparatus remains hostage to active lobbying from interest groups that are often aligned to political parties. This, together with other inefficiencies of regulating agencies such as lack of incentives to perform, apathy et al. results in rent seeking and corruption. Finally, an overall lack of consumer awareness on the need for a participatory approach in eliminating such practices as well as the inability, on the part of consumers, to form alliances around a common theme and to voice their collective concerns has aided the continuation of anti-competitive practices.

CHAPTER 6

Perspective on Competition Policy and Law

This chapter presents the findings of a questionnaire survey that involved 100 respondents. Twenty-five respondents representing the business community, an equal number of policymakers, mostly government officials, and 50 consumers, including economic journalists, academicians, civil society activists and lawyers were interviewed during the course of the survey.

6.1 Background and Methodology

Three separate sets of questionnaire were used, each for business community, policymakers and consumers. Each questionnaire contained around 30 questions. The questions were structured in a ‘multiple choice’ manner for the purpose of simplicity. No subjective questions were asked though additional information provided by the respondents, particularly cases of anti-competitive practices prevalent in Nepal, were recorded.

The initial focus of the field survey was on probing the extent of public awareness regarding competition-related issues. However, it was realised that given the relatively small size of the sample, the outcome could not be representative. Also, it was realised during the course of pre-test that even many businesspersons and policymakers, let alone consumers, did not have a sound understanding and knowledge on competition-related issues.

The focus of the survey was thus changed to include only the educated and the more aware class. The survey was confined to the Kathmandu Valley. The questionnaires were also slightly changed. More technical issues were included in the questionnaire, and it was also decided to first identify all potential respondents based on the perceived extent of his/her knowledge on competition. A list of potential respondents was prepared by SAWTEE and the enumerators/interviewers contacted the potential respondents for interviews. Some of the identified potential respondents were, however, not interviewed since they were not available or acknowledged that they had no knowledge on competition-related issues. Even in the case of the more aware respondent, a lot of explanation had to be made before he/she could respond to some of the questions. In many instances, responses to earlier questions had to be changed as the respondents understood issues clearly only as questions unfolded.

Besides, respondents were allowed to make multiple responses to some questions. In such cases, an ordinal approach to the "multiple choice" answers was used, i.e. respondents were asked to assign ranks to different choices he/she made. The interviewer then assigned priority ranking instead of mere "yes-yes" or "no-no" type response. As already noted, subjective information provided by the respondents were recorded in a separate sheet attached with each set of questionnaire.

6.2 Field Survey Results

In general, a large number of respondents from all the three groups, namely business community, consumers and policymakers, did not have clear concepts of competition. Nonetheless, they were aware of "unfair" practices. All respondents were of the view that anti-competitive practices do prevail in Nepal. They also pointed out a handful of areas where anti-competitive practices are most prevalent and that the concerned departments or ministries have done very little to put a stop to such practices.

Likewise, the majority of the respondents believed that effective implementation of legislation that seek to check anti-competitive practices, even if only to some extent, could go a long way in benefiting all sections of the society, including consumers and business. In addition, an overwhelming majority was also in favor of a comprehensive competition law. They pointed out the need for exemptions and exceptions within the legal framework on grounds of public interest or general welfare. The following sections present a detailed explanation of the field survey results.

6.3 The Extent of Anti-Competitive Practices in Nepal

An overwhelming number of consumers, business community and policymakers opined that anti-competitive practices are prevalent in Nepal.

Of the 100 respondents, 90 respondents viewed that anti-competitive practices prevail in the Nepalese market. However, the perceived extent and degree of anti-competitive practices varied across the three groups of respondents as well as amongst respondents within the same group. While 88 percent of the consumers and 64 percent of policy-makers stated that the extent of anti-competitive practices were significant, only 36 percent from the business community stated that anti-competitive practices were significant. 44 percent of the respondents from the business community viewed that moderate anti-competitive practices did prevail. Only 10 percent of the consumers stated that moderate anti-competitive practices prevails; 20 percent of the policymakers gave the same response. None of the respondents said that anti-competitive practices did not prevail or prevailed only insignificantly.

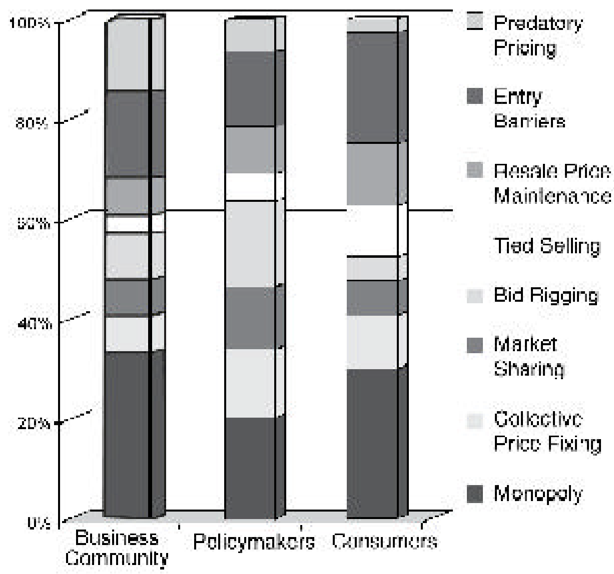
Monopoly of firms and entry barriers for new ventures were termed as the most common forms of anti-competitive practices prevalent in the country. However, the majority of respondents could not give concrete examples to support their claims, arguing that their choice was just an "informed response". Only in the case of "entry barriers" was the example of syndicate system in the surface transportation sector cited. In addition to the already mentioned two types of anti-competitive practices, respondents viewed that tied selling, collective price fixing and resale price maintenance were also common in Nepal.

A large number of respondents under the consumer and business community groups pointed out that sectors having significant state interest and control are substantially plagued by anti-competitive practices. Lawyers and journalists interviewed during the course of study were very critical of the state's engagement in commercial activities, arguing that the state is promoting anti-competition in some sectors. The most commonly named sectors include petroleum, mobile telecommunication and electricity distribution. Other sectors perceived to be substantially affected by anti-competitive practices are banking, insurance, public transportation, aviation, etc. Apart from journalists and lawyers, the majority of respondents could not cite specific examples to support their response. Figure 6.1 illustrates the responses of the different groups of respondents[5].

6.4 Action Taken While Faced With Anti-Competitive Practices

During the course of the field survey, consumers and businesspersons were asked as to what action they took when faced with anti-competitive practices. Surprisingly, from amongst the consumers, 50 percent of them chose to "ignore and deal" when faced with anti-competitive practices. Twenty-four percent of the consumer respondents chose to "go to another supplier" (who supposedly adopts fair practice), while 18 percent chose to 'argue and deal' with the anti-competitive practitioner. Only 6 percent of the consumers chose to complain to government authorities. Among the consumers who stated that they would prefer to complain to the government included one journalist and two lawyers.

Figure 6.1: Anti-Competitive Practice in Nepal



Most consumers chose not to complain to government authorities since they viewed that it would not invoke any action from the government's side. Among the consumers harboring such views were lawyers and journalists. Even those consumers who chose to lodge formal complaints with the government opined that they did not expect any action from the government's side whatsoever. Apart from most policymakers, lawyers and a majority of journalists, most consumers and businesspersons, were unaware that there existed laws containing provisions relating to anti-competitive practices.

Similarly the respondents from the business sector were asked what they did when they faced unfair business practice in their industry/ sector. The majority of them chose to deal with cases of anti-competitive practices amongst themselves. No respondent from this group chose to make formal complaints with the government. From among the 20 respondents under this group who viewed that anti-competitive practices did prevail in Nepal, 35 percent stated that they matched the move of the anti-competitive practitioner while an equal proportion stated that they talked to other business peers to settle the issue mutually. Another 25 percent chose to negotiate directly with the anti-competitive practitioner, while the remaining five percent complained to relevant business organisations/associations.

Figure 6.2 and Figure 6.3 present the actions taken by consumers and businesspersons when faced with anti-competitive practices.

Figure 6.2: Action Taken by Consumers While Faced With Anti-Competitive Practices

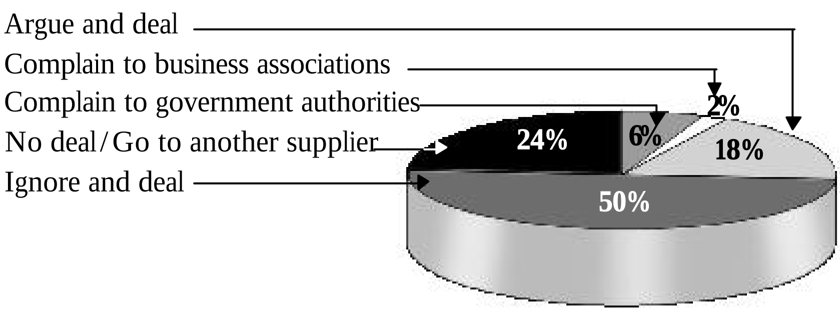
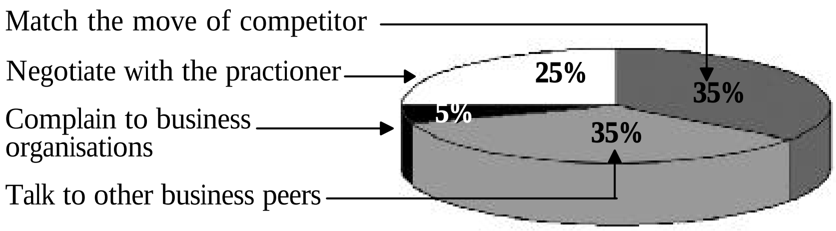


Figure 6.3: Action Taken by Business While Faced With Anti-Competitive Practices



6.5 Extent of Awareness Regarding Relevant Legislative Framework

There are a number of laws in Nepal that contain provisions relating to various anti-competitive practices. However, references to only a few laws were made during the course of interviews. It was found that many respondents who were aware of the laws were not able to relate them to anti-competitive practices. The most referred to law was the CPA. Forty-four percent of the 100 respondents were aware that CPA contained provisions relating to anti-competitive practices, with the policymakers' group having the highest level of awareness.

Sixty-six percent of all consumers, i.e. 33 consumer respondents, were not aware of laws that contain provisions relating to anti-competitive practices[6]. As such, the awareness about these laws amongst the consumers was found to be very low. Those who were aware of the laws were mostly journalists or lawyers. Besides, even amongst the journalists, only a few knew which department or ministry or agency of the government was responsible for the implementation of such laws.

On the other hand, 76 percent of policymakers knew about at least one of such laws. From amongst the businesspersons interviewed, only 44 percent were aware that laws such as the CPA and the Black Marketing and Certain Other Social Crimes and Punishment Act contained provisions relating to anti-competitive practices. However, policymakers and businesspersons conceded that the implementation of laws, not limited to anti-competitive practices, by the government authorities concerned were very poor. All groups of respondents, including policymakers, also asserted that proper implementation of laws that aimed at protecting general interest of businesses and consumers would be in the benefit of all.

Table 6.1 summarises the response of consumers, policymakers and businesspersons about their awareness regarding laws that contain provisions aimed at curbing one or more anti-competitive practices.

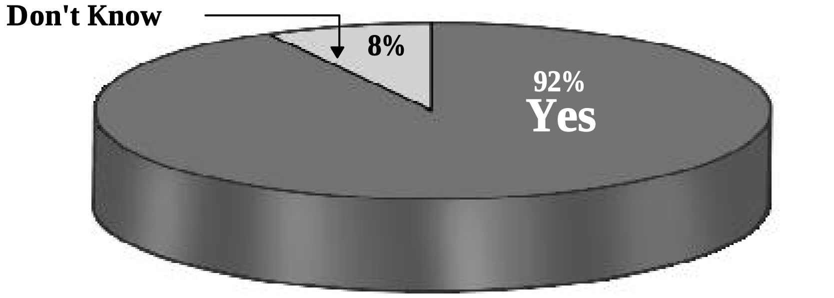
Table 6.1: Extent of Awareness Regarding Laws Relating to Anti-competitive Practices

Awareness about competition related laws	Consumers		Policymakers		Businesspersons	
	Number	Percent	Number	Percent	Number	Percent
Yes	17	34	19	76	11	44
No	33	66	6	24	14	56

6.6 The Necessity for a Comprehensive Competition Legislation

An overwhelming number of the total respondents (92 percent) viewed that comprehensive law dealing exclusively with anti-competition issues should be enacted in Nepal. Only eight consumers were not sure if such a law would be needed. All the policymakers and businesspersons interviewed responded that a Competition Act is the need of the hour. Besides, all respondents who were in favor of competition law viewed that the law, if properly implemented, would benefit consumers and businesses alike. Many respondents, including those from the business community, even stated that the government should have realised the need for a Competition Act, following its decision to deregulate the national economy back in the 1990s.

Figure 6.4 : Should A Competition Law Be Enacted?



Ironically, most policymakers believe that the business community will oppose any strong competition legislation. Of the 25 policymakers interviewed, 20 opined that the business community will not favour a strong competition law in the country since the law basically aims at curbing the anti-competitive activities of the business community. Nonetheless, policymakers also view that a strong competition regime will help to increase the competitiveness of business enterprises in Nepal, which is very important in the context of the country's recent accession to the WTO. They were of the view that by putting a check on anti-competitive practices, a strong legislation will force Nepalese firms to be better equipped in order to deal with the onslaught of any foreign competition in the domestic market.

6.7 Objectives of Competition Law

The response of the business community and consumers differed slightly on the question as to what the objectives of a competition law should be. While an overwhelming majority of consumers, the usual victims of anti-competitive practices, said that the objectives should be to 'regulate business enterprises' and 'promote consumer welfare', respondents from among the business community opined that the objective of the competition law should be to promote business efficiency. Most policymakers stated that all three objectives—regulation of business, promotion of business efficiency and consumer welfare—are important for a good competition regime.

Furthermore, many businesspersons interviewed argued that regulation of businesses is not a philosophy that should be adopted under a liberal market economy. On the other hand, consumers view that unless businesses in Nepal are regulated, the widespread anti-competitive actions of the business community will not stop. Table 6.2 summarises the responses of the business community, consumers and policymakers with regard to what the objectives of a competition law in Nepal should be.

Table 6.2: Objectives of Competition Law[7]

Objectives / Responses	Consumers		Policymakers		Businesspersons	
	Number	Percent	Number	Percent	Number	Percent
Regulate Business Enterprises	21	42	25	100	6	24
Promote Consumer Welfare	40	80	25	100	12	48
Promote Business Efficiency	32	64	25	100	23	92

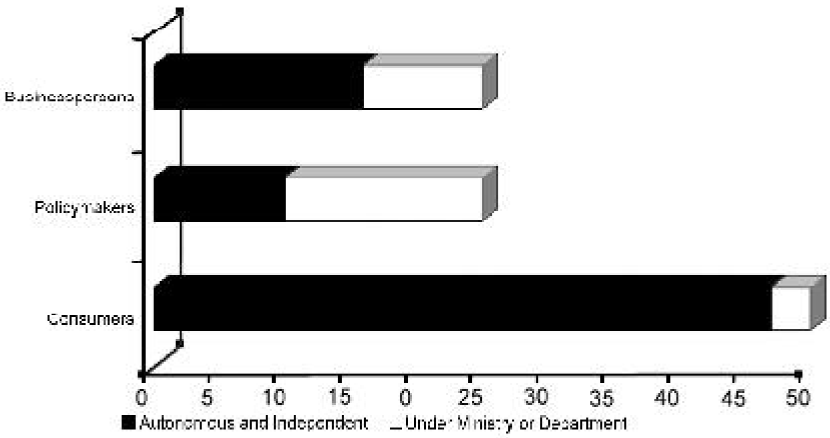
6.8 Scope and Coverage of Competition Law

The majority of respondents unanimously said that competition law should cover private as well as government enterprises. All businesspersons opined that both private and government-owned entities should fall under the purview of the competition law. However, of the 25 policymakers, six opined that the law should not have its jurisprudence over government entities. Some of them argued that government entities exist with a social mandate and hence they should not be treated on a par with private business houses and firms. From amongst the consumers, 76 percent stated that both government and private entities should be included under the purview of competition law.

One of the questions included in all three sets of questionnaires were whether competition law should cover all areas of commercial activities. In response, an overwhelming majority of respondents—76 percent of consumers, 80 percent of businesspersons and 72 percent of policymakers—said that all areas of commercial activities must be included in the competition law. A number of respondents cited the example of anti-competitive practices prevalent in the education sector in the country. Many private schools are found to engage openly in tied selling (by forcing parents to buy school uniforms, stationery, tie, etc. from the school at higher prices).

The issue of inclusion of specific sectors such as telecommunications, civil aviation, insurance and electricity, which have separate sectoral regulators, under the jurisdiction of competition law proved tricky to many respondents. Sixty-two percent of consumers were not sure how sectoral regulators and competition authority would interface. Likewise, 36 percent of policymakers too remained undecided on this issue, while 48 percent of the businesspersons interviewed opined that all sectoral regulators should function under the legal framework of competition law.

Figure 6.5: Type of Competition Authority



One of the questions in each of the three sets of questionnaires was related to the inclusion of Intellectual Property Rights (IPRs) issues under the gamut of competition law. Interviewers had to first explain the concept of IPRs to almost all consumers, businesspersons and policymakers[8]. All respondents opined that IPR issues should be addressed in the competition law, and that the law should deal with the abuse of IPRs in the general welfare of the stakeholders concerned.

6.9 Favoured Structure of Competition Authority

An overwhelming majority of the respondents argued that a strong and competent competition authority is necessary to discharge all responsibilities as will be laid down by a competition law. Of the 50 consumers interviewed, 47 stated an autonomous and independent competition authority is necessary. Justifying the need for such a structure to handle competition related issues; some of the more aware consumers cited the example of the CPA, the implementation of which has been unsatisfactory.

Even the business community in general seemed to be in favour of an autonomous and independent competition authority. Sixty-four percent of the respondents from the business community stated that an independent body is necessary in the context of Nepal's WTO membership. Their support for an independent body largely rested on the fact that bigger global players could dominate Nepal's domestic market in the future, and that a weak competition authority would not be in a position to prevent the onslaught of unfair foreign competition, which could prove fatal to many domestic industries. However, the business community in general did express fears that competition officials could misuse their powers and a proper check and balance mechanism is necessary to prevent abuse of power.

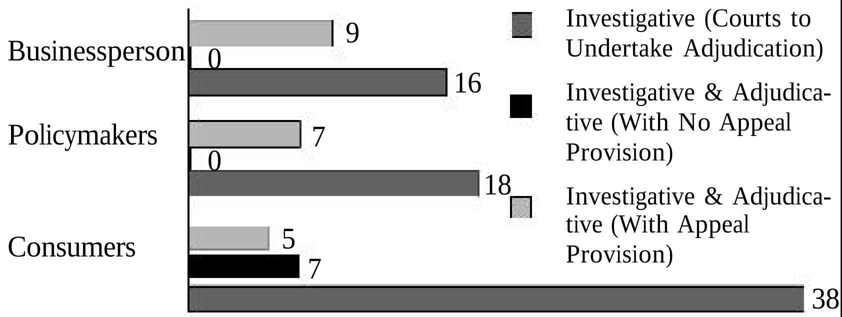
The policymakers were divided on the issue of the competition authority's autonomy and independence. While 40 percent of them stated that the authority should be autonomous and free from political interference, 60 percent argued that it should be formed under a ministry or department. Those against the authority's independence and autonomy cited cost factor and legal implications as the main obstacles. However, they did acknowledge that a strong human resource base is required to deal with competition issues, and that such personnel may be lacking within the government structure. Figure 6.5 summarises the responses of interviewees with regard to the structure of an effective competition authority.

6.10 Powers of Competition Authority

Irrespective of the structure of the competition authority, whether independent and autonomous or under some ministry or department, a large proportion of respondents viewed that the competition authority should have both investigative and adjudicative powers with provisions for appeal. Seventy-six percent of the consumers, 72 percent of the policymakers and 64 percent of the businesspersons opined that the competition authority should have both investigative and adjudicative powers with clear provisions for appeal. Thirty-six percent of the interviewed businesspersons viewed that the authority should be allowed only to investigate while the courts discharge the adjudicative functions. Figure 6.6 presents the responses of interviewees.

On the question of whether the competition authority should be empowered by the law to even initiate criminal proceedings against practitioners of

Figure 6.6: Powers of Competition Authority



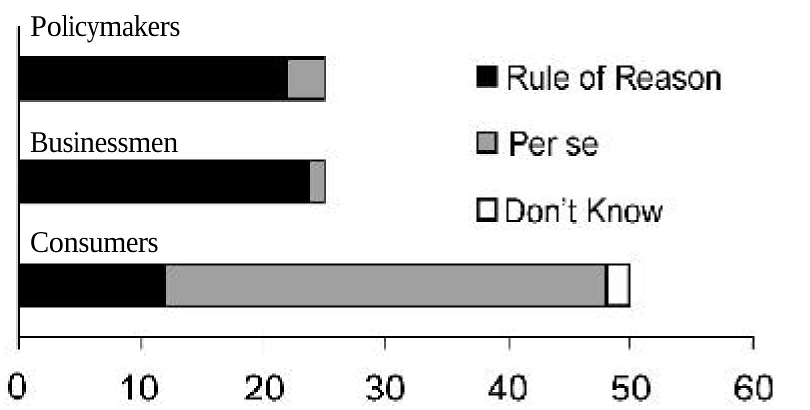
anti-competition, the majority of the consumers supported the idea. While 70 percent of the consumers viewed that criminal penalty is necessary for violation of law in all cases, 25 percent reasoned that criminal charges should be initiated only on a case-to-case basis. Policymakers too supported the idea of criminal penalty, but all viewed that it should depend on the gravity of the violation. On the other hand, the business community opposed the idea of criminal penalty arguing that it would be unfair to initiate criminal penalty for violations of law that might take place without knowledge.

6.11 Implementation of Competition Law

Almost all respondents, except some consumers, have favoured the implementation of competition law in a phase-wise and calibrated manner. All policymakers favoured a soft launching of the law to ensure that the business community gets enough time to adjust its operations to comply with the provisions as set out in the competition law. Businesspersons too viewed that unless the law is enacted in a calibrated manner, there can be no way in which Nepalese businesses would be able to comply with the provisions of the law because operations cannot be changed overnight. However, some consumers were of view that unless the law is implemented fully from day one, there will be the danger of the law being unenforceable in the long run due to resistance from the business community.

Despite the convergence in the views of majority of respondents with regard to a calibrated approach to implementation, their views differed on the issue of whether the law should adopt a "rule of reason" or "per se" approach. Most policymakers opined that "per se" approach cannot be adopted in the Nepalese context, with some explaining that given the rela-

Figure 6.7: Mode of implementing Competition Law



tively weak legal structure, it would be difficult to identify all possible circumstances prior to the enactment of the law. Likewise, even businesspersons viewed that a "rule of reason" approach would be a better way to implement competition law. However, the majority of the consumers opined that "per se" approach is needed as businesses would under the "rule of reason" approach try to take undue advantage of the flexibility provided. Consumers' insistence for a "per se" approach is to ensure "black and white" implementation of the law. Interestingly, even most lawyers opined that *per se* approach to implementing competition law would be a better option.

Despite the admission by the majority of respondents that anti-competitive practices do prevail unchecked, some respondents argued that outright ban on all forms of anti-competitive practices would not be good for the general economy and social welfare. Consumers, businesspersons and policymakers argued that there must be exemptions on the ground of efficiency, public welfare, larger domestic interests, etc. Besides, 84 percent of the total respondents stated that being in a position to abuse power should not automatically invoke anti-competition provisions. Monopoly or market dominance per se is not anti-competitive.

However, 73 percent of the respondents, mostly comprising consumers and policymakers, did suggest that mergers or acquisitions involving two or more big players should be reviewed and monitored to check substantial lessening of competition in the market. Even respondents from the business community on this issue viewed that mergers and acquisitions involving big firms should be monitored, but not stopped.

In addition, all respondents viewed that the implementation of the competition law should not be the responsibility of the government agency only. They opined that stakeholders should be consulted in various stages of implementation as well as in the functioning of the competition authority. Over three-fourths of the respondents viewed that the competition authority should discharge its functions in close coordination with a well-structured committee that has the representation of all stakeholders.

CHAPTER 7

Competition Law

Although domestic enterprises have been exposed to international com petition due to the liberal investment and import regimes, Nepal does not have a competition law to ensure competition in the market. However there are some legislation that affect competition. Some of these laws that affect competition or have provisions related to consumer protection and competition have already been discussed in Chapter 4. Nepal is also in the process of enacting competition law. During its accession to WTO, Nepal made a voluntary commitment to enact competition law. This chapter deals with two Acts that affect competition and some salient features of the draft competition law.

7.1 Various Acts that affect Competition[9]

7.1.1 The Industrial Enterprises Act, 1992

The Industrial Enterprises Act, 1992 marked a significant shift in the industrial policy of Nepal. It heralded the end of the "license regime" and was catalytic in infusing competition in the market.

The preamble to the Act states: "Whereas, for the overall economic development of the country, it is expedient to make arrangements for fostering industrial enterprises in a competitive manner through the increment in the productivity by making the environment of industrial investment more congenial, straightforward and encouraging." This probably was the first time that competition was mentioned in a government act concerning the industrial sector.

One of the important competition enhancing majors in the Act was section 9 (1) regarding permission for opening industry. Section 9 (1) states, "Industries other than those as set forth in Annex 2 which may significantly cause adverse effect on the security, public health and environment, shall not be required to obtain permission for their establishment, extension and diversification." This Act thus opened up the market to almost all industries.

Similarly, no permission is required to open industries other than those producing explosives, including arms, ammunition and gunpowder, security printing, bank notes, coins, cigarettes, bidi, cigar, chewing tobacco, khaini or goods of a similar nature, using tobacco as the basic raw material, and alcohol and beer.

7.1.2 The Foreign Investment and Technology Transfer Act, 1992

This Act, concomitant of the Industrial Enterprises Act, 1992, as stated in its preamble was brought out "to promote foreign investment and technology transfer for making the economy viable, dynamic and competitive through the maximum mobilization of the limited capital, human and the other natural resources." The act has opened foreign investment in all sectors barring few such as cottage industries, real state and those affecting national security. By promising permission within 30 days of application, the Act tries to facilitate foreign investment in Nepal. Foreign investors are allowed to hold 100 percent ownership in industries. The opening up of the economy to foreign investment is a major policy shift of the government of Nepal and in principle is likely to enhance competition in the market.

7.2 Competition Law

During its negotiation for accession to WTO, Nepal made a voluntary commitment to enact competition law by July 2004. Accordingly the MOICS prepared a draft competition bill. The salient features of the bill are discussed below.

The draft Competition bill highlights the following major objectives in its preamble:

- To make the national economy competitive through open and liberal measures
- To develop an independent market in the country through optimal and equitable distribution and utilisation of national resources
- To benefit the consumer by ensuring healthy competition in the goods and services sector

- To control anti competitive practices

The Draft bill mainly focuses on the following core areas:

7.2.1 Anti-competitive Agreements

The draft competition Act prohibits written or oral agreements that have the potential to restrict competition. The following types of agreements between enterprises involved in the manufacturing, trading of "like" goods and services are presumed to have negative impact on competition and are deemed *per se* illegal from the date on which the parties entered such agreements:

- Putting conditions that have negative impact on competition and consumer welfare while selling goods and services
- Market allocation
- Restriction on output, technical development or investment
- Price fixing
- Collusive bidding
- Syndicates and cartels

7.2.2 Abuse of Dominance

A dominant position has been defined in the bill in terms of a firm on its own or in collusion with another firm(s) that is capable of influencing the market. The bill also requires that a firm has the minimum of 40 percent market share in the relevant market to be deemed having a "dominant position". The bill recognises that all dominant positions are not necessarily "anti-competitive" and requires that firms have control of the market and are able to implement their decisions unilaterally in the market to be deemed "dominant". The relevant market can be a product market or a geographical market. The following actions, taken independently or in collusion with other firm(s), can be deemed 'abuse of dominant position':

- Buying and selling price fixing
- Restriction on output, technical development or investment
- Use of discriminatory terms and conditions to select enterprises/ firms
- Predatory pricing

7.2.3 Mergers and Acquisitions

The bill makes it mandatory for firms to inform the Competition Promotion Commission (CPC) before entering into merger and acquisitions (M&A) agreements. The CPC can deny such agreements if it has substantial reasons to believe that the new entity will abuse its dominant position and such an agreement will lead to reduced competition in any part of the country.

Any M&A agreement entered without consulting CPC will be declared null and void from the date on which such an agreement is made. In addition, the parties that enter such an agreement are liable for any negative impact on consumers and competitors by such agreements.

7.2.4 Monopolies

The draft bill is very cautious of the negative impacts of monopoly power and has various provisions to restrict the abuse of monopoly power. The bill defines monopoly as an ability of a person or a firm to completely control the market of a good or service and implement its decisions unilaterally.

7.2.5 Restrictive Business Practices

In addition to addressing anti-competitive practices the draft also prohibits restrictive business practices. The bill has made exclusive dealing and refusal to deal *per se* illegal. The bill also prohibits any person or firm from restricting its market and any horizontal agreement to restrict the sale or selling of any product or service to a particular geographical market. Tied selling, the selling of a product or a service with a condition to buy another product or service from the same supplier or a person/ firm specified by the supplier, is also deemed *per se* illegal.

The draft also prohibits misleading advertisements. The bill makes any advertisement that gives misleading or incorrect information regarding the quality, quantity, type, utility and price of own or competitors product or service *per se* illegal.

The bill also makes collusive bidding for tenders *per se* illegal. This includes agreement between persons or firms not to bid or to submit similar bids, to share information on the quotation or any other agreement to influence the tender in their favour.

7.2.6 Competition Promotion Commission

The bill has a provision of an independent authority to implement the competition act. Article 15 provisions for the establishment of a three-member

CPC. To minimise political interferences in its work, CPC has been made accountable directly to the Cabinet/Council of Ministers. The bill has given the Council the freedom to directly raise funds from donors. This is likely to give more independence to CPC and reduce undue government intervention.

A clear demarcation of investigative and adjudicatory functions has been made in the draft. CPC has only investigative power, and the adjudicative power will be with the court designated by His Majesty's Government. Any person or firm can file a complaint with the Council with sufficient proof. However, firms involved in a similar trade will have to deposit a sum as stipulated by the Council. There is also a provision to appeal against the decisions made by the Council.

The draft has proposed extra-territorial jurisdiction. Acts of firms outside Nepal that affect competition in Nepal will also come under the purview of the law. The draft also has a "whistle blower" provision to tackle hard-core cartels. The "whistle blower" can be rewarded with a smaller fine, shorter sentence or a complete amnesty. This will apply if a person or a firm gives information to the Council before the start of an investigation, if the person or a firm is the first to give important information to the council, if the person or firm has discontinued from cartel and if the person or firm gives important evidence to the Council.

7.2.7 Other Important Features of the Bill

The draft covers all governmental, non-governmental and private entities.

Notwithstanding the various provisions of the bill, the government of Nepal, if deemed necessary, can exempt any goods or service sector from the purview of this law.

All business associations also have to list themselves in CPC. This will help CPC keep tabs on activities of such associations.

This bill also has measures to address the misuse of IPR by any person or firm. If CPC feels that such provisions are detrimental to the interest of consumers and competition, it can recommend the government authority concerned to ask an IPR holder to issue compulsory license or make arrangements for parallel import.

The bill also empowers CPC to do competition advocacy. CPC has the mandate to make the private sector and civil society aware of the negative impact of not having healthy competition in the economy and the positive impact of having healthy competition. It is also responsible for organising meetings, workshops for competition advocacy. It is also required to educate the public on competition issues through publications and media.

7.2.8 Exemptions

The bill has exempted certain sectors of the economy with a view to giving them space to compete with larger and stronger competitors. Cottage, and small industries, agriculture and agricultural cooperatives, joint procurement of raw material, collection of statistics, export cartels, research and development activities, joint efforts to enhance competitiveness and quality, logistic management that do not affect the supply and price of goods and services and collective bargaining power of labour are not covered by the Competition Act.

CHAPTER 8

The Way Forward

In addition to the Competition law and the Consumer Protection Laws many other government policies and laws affect the level of competition in the Nepalese economy. Policies like the Industrial Policy, Trade policy, Foreign Investment Policy, Exchange Rate Policy directly and indirectly affect the level of competition in the economy. However, no attempt has been made so far to analyze the impact of these and other related government policies and laws on competition. Hence there is a need for assessing related laws and policies on the touchstone of competition. In addition, all future government policies and laws that directly or indirectly impact competition should have an explicit statement on the likely impact of policy or law on competition.

Competition is still a relatively new concept in Nepal and different stakeholders have different views on its role in economic growth and enhancing the competitiveness of enterprises. It is indeed disheartening to note that the captains of the Nepalese economy—the policy makers—are not too enthusiastic on the role an effective competition regime can play.

For most of the Sectoral regulators, ensuring competition is not a priority. They seem to be engaged more in operational aspects and in most cases lack the legal mandate and human resources to ensure competition in their respective sectors. Hence there is a need for making necessary changes in related laws to ensure that regulators give priority to ensuring fair competition in their respective sectors. There is also a need for training human resources to enable them to handle competition issues more effectively. Finally, a mechanism to coordinate the activities of CPC and Sectoral regulators, including a clear demarcation of the hierarchies, also needs to be put in place.

Many years of intrusive and restrictive government intervention in the industrial and trade sectors have resulted in a serious lack of competition culture in Nepal. This means that building a strong competition culture is the first step towards ensuring that competition starts to play a more important role in the Nepalese economy. Building a competition culture is a difficult task and the government alone is not capable to do this.

The government thus must recognise this and assign appropriate roles to different stakeholders viz. the business community, the media and civil society. It should actively support organizations working on consumer and competition issues and should also try to enhance their roles in decision making regarding policies and laws affecting competition.

The consumers can play an important role to develop a competition culture. But given the low level of awareness of consumers and complicated litigation procedures, the consumer movement can be lackluster. Hence, information dissemination and consumer education, simplification of litigation procedures and establishment of a special tribunal court dealing with consumer issues are required to strengthen the consumer movement. In addition to this, effective mechanism should be put in place for consumer representation on competition-related issues.

The business community, one of the main stakeholders, seems to be apprehensive of a strong competition regime. Many business people argue that a strong competition regime will restrict their growth and the Nepalese economy is not at the stage to have such a regime. It seems clear that the business community needs to be made aware that they too are going to gain through enhanced efficiency if there is an appropriate level of competition in the economy. The proposed CPC should thus engage in an advocacy campaign to increase the awareness of the business community on competition issues.

It is beyond doubt that the future of competition in the Nepalese economy depends on the shape of the Competition Law, which the government promised to enact during its acquisition of WTO membership. The provisions of the law, no matter how prudent, will be meaningless if they are not implemented properly. The experience of the CPA has shown that an independent commission to oversee competition issue will be required to ensure that the country does benefit from Competition Law.

The ability of three main stakeholders: consumers, businesspersons and policymakers to reach a common consensus on various issues relating to competition is key to effective implementation of competition law. The results from the field survey indicate that the views of the stakeholders largely converge on most of the issues. But there are several aspects on which their views differ. It is on such issues that a common consensus is needed. Consensus can be reached by involving all parties in constructive debates and open discussions. But all the parties concerned should have the capacity to understand the issue and put forward their concerns. Thus, capacity building of different stakeholders viz., the business community, the consumers and civil society at large will form an integral part of developing a competition culture in Nepal.

Given the overlapping nature of competition and consumer issues and the lack of financial and human resources to deal with them, many small economies have adopted a hybrid approach by coupling consumer and competition policies. They have only one organisation dealing on both issues. This will probably be the right approach in the case of Nepal, considering its resources and human capacity, and the novelty of the issue.

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Endnotes

1 The General Agreement on Trade in Services (GATS) is a multilateral agreement of WTO member countries and governs trade in services dealing with 4 modes of supply. Nepal became a full member of hte WTO on 23rd April 2004.

2 See Zita, Ken. Nepal Briefing Paper, USTDA South Asia Communications Infrastructure Conference, New Delhi, India. 2004. www.nadventures.com

3 See "Finance Performance and Soundness Indicators of South Asia", Finance and Private Sector Unit, South Asia Region, The World Bank, May 2004

4 This is not an exhaustive list of laws that affect consumers

5 The total does not add up to 100 in the case of consumers and 25 in the case of policymakers and businesspersons since the interviewees on some occasions have made multiple responses.

6 It should be noted that many respondents were aware of laws such as Consumer Protection Act. However, they were unaware that the law contained provisions relating to anti-competitive practices.

7 The total number of consumers does not add up to 50 since multiple responses were made. The same holds to policymakers and businesspersons. It should be noted that some consumers who expressed their ignorance over the need for the enactment of competition law too have their response with regard to the objectives of competition law.

8 Though one of the multiple choice response to this question was 'don't know or can't say', the respondents were explained the concept of IPRs with the dual purpose of raising awareness as well as collecting better information instead of mere 'don't know or can't say' response. It was earlier decided to use the 'don't know or can't say' response only if respondents remained undecided even after the relevant issues were explained to them.

9 This is not an exhaustive list of acts that affect competition. SAWTEE is conducting a separate and in-depth research to identify laws that affect competition.

Annex 1

Questionnaire for Policy Makers

Instructions: The interviewees may not readily know about many of the concepts dealt with in the questionnaire. The interviewers need to explain them. Please also prompt and probe wherever appropriate. It may also happen that the respondent might get a better understanding of the issues as the questionnaire unfolds and you may need to modify his/her answers to earlier questions.

Question	**Answers**	**Code**	**Skip to**
1. Name			
2. Designation			
3. Organisation			
4. Address			
5. What do you understand by competition?	Greater protection of consumer welfare Companies competing with each other Improved efficiency of business Optimum utilisation of resources	1 2 3 4	
6. Do you think anti-competitive practices are quite prevalent in Nepal?	Yes, insignificantly Yes, moderately Yes, significantly Yes, hugely No Don't know/can't say	1 2 3 4 5 6	
7. To what extent are consumers affected by such practices?	Insignificant Moderate Significant Huge	1 2 3 4	

8. What are the most prevalent anti-competitive practices in the market?	Monopoly Collective price fixing Market sharing Bid rigging Tied selling Exclusive dealing Refusal to deal Resale Price Maintenance Discriminatory dealings Unreasonably high price Entry barrier Predatory pricing Any other (specify)	01 02 03 04 05 06 07 08 09 10 11 12 13	
9. Which, in your opinion, are the most affected sectors by such practices? *(Please note three most prevalent sectors in order of importance)*	(i) (ii) (iii)	?? ?? ??	
10. Do you think a strong competition regime will help to increase the competitiveness of Nepalese enterprises?	(i) Yes (ii) No (iii) Can't say/ Do not know	1 2 3	
11. Do you think the business sector will resist strong competition regime?	(i) Yes (ii) No (iii) Do not know/ Can't say	1 2 3	
12. Are there any rules, regulations or laws to check such practices?	Yes No Can't say/don't know	1 2 3	
13. What are they?	(i) (ii) (iii) (iv) (v)		
14. Are they seriously implemented?	Yes Yes, some of them No Can't say/don't know	1 2 3 4	
15. Do the consumers benefit from such rules?	Yes No Can't say/don't know	1 2 3	

16. Do you think that the existing rules, regulations and laws are sufficient to check such practices? Or has the government done enough to check such practices?	Yes No Can't say/don't know	1 2 3	
17. Do you think that a comprehensive law should be enacted to check such practices?	Yes No Can't say/don't know	1 2 3	
18. What should be the objectives of such a law?	To regulate enterprises Enhance business efficiency and consumer welfare Promote Nepalese industries Can't say/don't know	1 2 3	
19. Should it cover all types of enterprises and persons and all areas of commercial activity?	Yes No Can't say/don't know	1 2 3	
20. Would you suggest a total ban on anti-competitive practices?	Yes for all Yes for some Yes but exempted in case of efficiency gains No, only if it harms public interest Can't say/don't know Any other (specify)	1 2 3 4 5	
21. Would you suggest that dominance may not be disallowed but activities of dominant firm will be monitored to avoid its abuse?	Yes No Can't say/don't know Yes for all deals	1 2 3	
22. Should there be provisions for reviewing mergers and acquisitions to check substantial lessening of competition?	Yes for bigger deals only No Can't say/don't know	1 2 3 4	
23. Should the law deal with IPR-related competition abuses (Please note that this is not about violation of IP law but about abuse of monopoly position assumed by companies by virtue of their IP rights or anti-competitive licensing agreements)	Yes No Can't say/don't know	1 2 3	

24. What kind of implementation mechanism/competition authority is (CA) best for Nepal?	Autonomous CA Agency under relevant govt. dept./ Ministry Any other (specify)	1 2	
25. What kind of powers should the CA have?	Both investigative and adjudicative Investigative only with adjudicative power vested with separate authority Investigative only with adjudicative power vested with courts Can't say/don't know Any other (specify)	1 2 3 4 5	
26. Do you think that the CA should deal with unfair trade practices/ consumer protection issues as well?	Yes No Can't say/don't know Any other (specify)	1 2 3	
27. Do you think there should be specialised sectoral regulators for electricity, telecom etc., or the CA should be given power to handle such issues?	Yes for some with CA having power over them Yes for some with CA coordinating with them Yes for many of them with CA having power over them Yes for many of them with CA coordinating with them Any other (specify)	1 2 3 4	
28. Do you think that the law should have provisions for leniency programme and whistle-blower protection?	Yes No Can't say/don't know	1 2 3	
29. Do you suggest for criminal penalty for violations of the law?	Yes in some cases Yes in all cases No Can't say/don't know	1 2 3 4	
30. Should there be exemption on public interest ground (e.g., technological advancement, protecting interest of SMEs or socially disadvantaged groups, employment)?	Yes No Can't say/don't know	1 2 3	

31. How should the competition law be implemented?	Through well-defined rules Judicial scrutiny – room to examine on case to case basis Can't say/don't know Any other (specify)	1 2 3 4	
32. Should the law have provisions to ensure right to private action?	Yes No Can't say/don't know Any other (specify)	1 2 3	
33. Do you think that the law will have provisions for extra-territorial jurisdiction to deal with practices that originate from outside the country?	Yes No Can't say/don't know Any other (specify)	1 2 3	
34. Do you think competition law should be implemented in phase wise manner?	(i) Yes (ii) No (iii) Can't say/ Do not know	1 2 3	
35. Do you think that the CA should involve different stakeholder groups in its functioning especially advocacy/publicity etc.?	Yes No Can't say/don't know	1 2 → 3 →	 37 37
36. In what way?	Through occasional hearing Through a structured consultative committee Any other (specify)	1 2	
37. In general, to what extent business people try to balance their profit motives with consumer welfare (CW)?	Profit motive only Profit, but CW sometimes Maintain a balance Can't say/don't know Any other (specify)	1 2 3 4	
38. Thank You			

Annex 2

Questionnaire for Business Community

Instructions: The interviewees may not readily know about many of the concepts dealt with in the questionnaire. The interviewers need to explain them. Please also prompt and probe wherever appropriate. It may also happen that the respondent might get a better understanding of the issues as the questionnaire unfolds and you may need to modify his/her answers to earlier questions.

Question	**Answers**	**Code**	**Skip to**
1. Name			
2. Address			
3. Industry /Business			
4. What do you understand by competition?	Companies competing with each other Improved efficiency of business Optimum utilisation of resources Greater protection of consumer welfare Don't know/can't say	1 2 3 4 5	
5. Do you think anti-competitive practices are prevalent in the Nepalese market?	Yes, insignificantly Yes, moderately Yes, significantly Yes, hugely No Don't know/can't say	1 2 3 4 5 6	
6. To what extent is your industry/sector affected by such practices?	Insignificantly Moderately Significantly Hugely	1 2 3 4	
7. What are the most prevalent anti-competitive practices in your sector?	Monopoly Collective price fixing Market sharing Bid rigging Tied selling	01 02 03 04 05	

	Exclusive dealing Refusal to deal Resale Price Maintenance Discriminatory dealings Unreasonably high price Entry barrier Predatory pricing Any other (specify)	6 7 8 9 10 11 12 13	
8. Which, in your opinion, are the most affected sectors by such practices? *(Please note three most prevalent sectors in order of importance)*	(i) (ii) (iii)		
9. What are anti-competitive practices in Nepal?	Monopoly Collective price fixing Market sharing Bid rigging Tied selling Exclusive dealing Refusal to deal Resale Price Maintenance Discriminatory dealings Unreasonably high price Entry barrier Predatory pricing Any other (specify)	1 2 3 4 5 6 7 8 9 10 11 12 13	
10. What do you do when you face an unfair business practice?	(i) Ignore (ii) Talk to business peers to settle the issue (iii) Lodge a complain	1 2 3	12
11. Why do you not complain to the authorities?	(i) I do not know that there is a law (ii) I do not know where to complain (iii) I do not have time (iv) It is useless	1 2 3 4	
12. Are there any rules, regulations or laws to check such practices?	Yes No Can't say/don't know	1 2 3	

13. What are they?	(i) (ii) (iii) (iv) (v)		
14. Are they seriously imple-mented?	Yes Yes, some of them No Can't say/don't know	1 2 3 4	
15. Do the consumers benefit from such rules?	Yes No Can't say/don't know	1 2 3	
16. Do you think the government done enough to check such practices?	Yes No Can't say/don't know	1 2 3	
17. Do you think that a compre-hensive law should be enacted to check such practices?	Yes No Can't say/don't know	1 2 3	
18. Do you think strict regulations ensuring competition will benefit the Nepalese enterprises?	(i) Yes (ii) No (iii) Do not know/ can't say	1 2 3	
19. Would you suggest a total ban on anti-competitive practices?	Yes for all Yes for some Yes but exempted in case of effi-ciency gains No, only if it harms public interest Can't say/don't know Any other (specify)	1 2 3 4 5 6	
20. What kind of implementation mechanism/competition authority (CA) would you like to have for your country?	Autonomous CA Agency under relevant govt. dept./ Ministry Any other (specify)	1 2 3	
21. What kind of powers should the CA have?	Both investigative and adjudicative Investigative only with adjudicative power vested with separate authority Investigative only with adjudicative power vested with courts Can't say/don't know Any other (specify)	1 2 3 4 5	

22. Do you think that the CA should deal with unfair trade practices/ consumer protection issues as well?	Yes No Can't say/don't know Any other (specify)	1 2 3 4	
23. Do you think there should be specialised sectoral regulators for electricity, telecom etc., or the CA should be given power to handle such issues?	Yes for some with CA having power over them Yes for some with CA coordinating with them Yes for many of them with CA having power over them Yes for many of them with CA co-ordinating with them Any other (specify)	1 2 3 4 5	
24. In general, to what extent business people try to balance their profit motives with consumer welfare (CW)?	Profit motive only Profit, but CW sometimes Maintain a balance Can't say/don't know Any other (specify)	1 2 3 4	
25. Thank You			

Annex 3

Questionnaire for Consumers

Instructions: The interviewees may not readily know about many of the concepts dealt with in the questionnaire. The interviewers need to explain them. Please also prompt and probe wherever appropriate. It may also happen that the respondent might get a better understanding of the issues as the questionnaire unfolds and you may need to modify his/her answers to earlier questions.

Question	Answers	Code	Skip to
1. Name			
2. Address			
3. What do you understand by competition?	Greater protection of consumer welfare Companies competing with each other Improved efficiency of business Optimum utilisation of resources Don't know/can't say	1 2 3 4 5	
4. Do you think anti-competitive practices are prevalent in the Nepalese market?	Yes, insignificantly Yes, moderately Yes, significantly Yes, hugely No Don't know/can't say	1 2 3 4 5 6	
5. To what extent are you affected by such practices?	Insignificantly Moderately Significantly Hugely	1 2 3 4	
6. What are the most prevalent anti-competitive practices you have ever faced?	Monopoly Collective price fixing Market sharing Bid rigging Tied selling	01 02 03 04 05	

	Exclusive dealing Refusal to deal Resale Price Maintenance Discriminatory dealings Unreasonably high price Predatory pricing Any other (specify)	06 07 08 09 10 11 12	
7. Which, in your opinion, are the most affected sectors by such practices? *(Please note three most prevalent sectors in order of importance)*	(i) (ii) (iii)		
8. What do you do when you face an unfair business practice?	(i) Ignore and deal (ii)Go to another supplier (iii) lodge a complain	1 2 3 = >	10
9. Why do you not complain to the authorities?	(i) I do not know that there is a law (ii) I do not know where to complain (iii) I do not have time (iv) It is useless	1 2 3 4	
10. Are there any rules, regulations or laws to check such practices?	Yes No Can't say/don't know	1 2 3	
11. What are they?	(i) (ii) (iii) (iv) (v)		
12. Are they seriously implemented?	Yes Yes, some of them No Can't say/don't know	1 2 3 4	
13. Do the consumers benefit from such rules?	Yes No Can't say/don't know	1 2 3	
14. Do you think that the existing rules, regulations and laws are sufficient to check such practices?	Yes No Can't say/don't know	1 2 3	

15. Do you think that a comprehensive law should be enacted to check such practices?	Yes No Can't say/don't know	1 2 3	
16. How do you think anti-competitive practices should be checked?	Ban all Ban some with exemption in case of efficiency gains No Ban except if it harms public interest Can't say/don't know Any other (specify)	1 2 3 4 5	
17. What kind of implementation mechanism/competition authority (CA) would you like to have for your country?	Autonomous CA Agency under relevant govt. dept./Ministry Any other (specify)	1 2 3	
18. What kind of powers should the CA have?	Both investigative and adjudicative Investigative only with adjudicative power vested with separate authority Investigative only with adjudicative power vested with courts Can't say/don't know Any other (specify)	1 2 3 4 5	
19. Do you think that the CA should deal with unfair trade practices/consumer protection issues as well?	Yes No Can't say/don't know Any other (specify)	1 2 3 4	
20. Do you think there should be specialised sectoral regulators for electricity, telecom etc., or the CA should be given power to handle such issues?	Yes for some with CA having power over them Yes for some with CA coordinating with them Yes for many of them with CA having power over them Yes for many of them with CA coordinating with them Any other (specify)	1 2 3 4 5	
21. In general, to what extent business people try to balance their profit motives with consumer welfare (CW)?	Profit motive only Profit, but CW sometimes Maintain a balance Can't say/don't know Any other (specify)	1 2 3 4 5	
22. Thank You			