



# Anti-competitive business conduct in Nepal

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# Structure of presentation

- Anti-competitive conducts
  - Structural
  - Policy failure
  - Restrictive business practices
- Effectiveness of present legal provisions
- Current state of play
- Conclusions

# Market concentration



- Economic concentration and lack of market contestability
- Market concentration in manufacturing sector
  - High – e.g., cement, iron & steel, paper, milk
  - Moderate – e.g., sugar
  - Low – e.g., textile, vegetable ghee
- Market concentration in services
  - High – e.g., telecom, commercial banking, life insurance
  - Moderate – e.g., aviation
  - Low – e.g., print media

# Industrial concentration in Nepal

(Source: SAWTEE & CUTS, 2001)

S.N	Industry	Number of units	Production	Unit	Share of top three companies in the national production (%)		
					I	II	III
1	Sugar	30	75,512	MT	17.4	11.5	8.3
2	Cement	11	190,588	MT	37.3	34.5	27.1
3	Iron rods ( Iron and Steel)	9	106,646	MT	28.5	18.7	15.2
4	Textile	134	21,459	'000 mtrs.	9.0	7.7	7.6
5	Pulp, paper & paperboard	60	19,459	MT	52.5	30.1	N.A
6	Vegetable ghee	18	86,975	MT	10.2	9.1	7.3
7	Milk (Dairies)	26	123,316	'000 ltrs.	55.04	4.21	2.9

# Transformation of public monopolies into private

- Privatisation process started in 1992 without any homework
- Privatisation Act brought out only in 1994
- Objectives of making ownership board-based failed
- Lack of:
  - clear cut guidelines
  - regulation
  - implementation of law
  - post-privatisation monitoring and evaluation mechanism
- Result: transformation of public monopolies into private

# Cartel



- Most trade association (e.g., bankers, airlines, brick manufacturers, sugar manufacturers, barbers) have turned into cartelising bodies
- Classic example of sugar cartel:
  - 1999 – tariff increased from 10 to 40%
  - Once the imports were foreclosed, cartel came into action
  - Price was raised by more than 10%
- Example of banking cartel
  - Number of banks increased from 2 (in 1982) to 18 (in 2004)
  - Spread reduced only from 8 percent to 6 percent, thanks to Nepal Bankers' Association (NBA)
  - Foreign exchange rate still fixed collectively, thanks to Foreign Exchange Dealers Association of Nepal (FEDAN)

# Syndicate system



- Bus and truck operators regulating the frequency of their service
- While bus fares are still regulated by the government, truckers are free to charge “market determined” price
- Truckers are charging more after the formation of syndicate
- One example in Kaski (West Nepal)
  - Pre-syndicate fare = Rs. 1,600/trip
  - Post-syndicate fare = Rs. 2,200/trip
- No incentive for transport entrepreneurs to upgrade the quality of their services
- The syndicate members could even physically threaten “unauthorised” plying of buses

# Bid rigging



- Polythene pipe manufactures while bidding for contract to supply pipes to Nepal Drinking Water Corporation
- Supplies to Royal Nepalese Army and Nepal Police
- Municipalities not adhering to the legal provision of “lowest bidder” due to bid-rigging fearing poor quality

# Tied selling



- Cement: One who purchases 2 sacks of Nepalese cement (fast moving item) must purchase 1 sack of Indian Cement (slow moving item)
- School: Mandatory to purchase school uniforms and text books from the school itself
- Hospital and nursing home: Mandatory to conduct pathology and other tests in the same hospital where consultation is done – apparently on “quality” pretext

# Predatory behaviour



- Dumping of *Maggi* noodles into Nepalese market, apparently with predatory intent – failed
- Pricing of Newspaper: The Himalayan Times selling newspapers at Re. 1 per copy, whereas actual printing cost is estimated at Rs. 15
- Part of the ad. revenue might offset the loss, but that is not sufficient to recover all the costs
- Predatory intent suspected

# Price discrimination



- Mainly in banking sector:
  - Higher charge for small borrowers and lowers for the big borrowers based on “risk perception”
  - Risk perception is a facile argument because biggest defaulters are the big businesses, who are apparently less risky
  - This practice limits market contestability of small entrepreneurs

# Legislative provisions



- Black Marketing and Certain Other Offenses (Prevention and Control) Act – price list (Section 3)
- Consumer Protection Act, 1997
  - guarantees consumers' rights to choose (Section 6.1.C)
  - prohibits collusion, fixing of quotas, hoarding and creation of artificial scarcity (Section 7)
  - controls monopoly and unfair trade practices (Section 8.1.B).
- None of them effectively implemented

# Current state of play



- Government has made a commitment to enact competition law a part Nepal's Protocol of Accession to the WTO
- The law would be enacted by June end
- However, given the possible implementation challenges, SAWTEE :
  - is helping the government in extensive consultation with the stakeholders
  - has initiated "Competition Advocacy and Education Project" with major objective of creating a healthy competition culture in the country



# To conclude

- Due to lack of awareness among the stakeholders – anti-competitive practices are not contested
- Existing legal provisions ineffective
- Comprehensive competition law in the offing
- However, lack of expertise, availability of data, political interference and business-politicians nexus will make implementation less effective
- Therefore, building a healthy competition culture is the only way out