

## The Spread of Competition Laws across South Asia

### 3.1 INTRODUCTION

South Asia, as demarcated for the purposes of the South Asian Association for Regional Co-operation (SAARC)<sup>1</sup> and the South Asian Free Trade Area (SAFTA)<sup>2</sup> includes Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, and Sri Lanka.<sup>3</sup> These countries are not only at similar stages of economic development and have comparable relationships with multi-lateral agencies<sup>4</sup> but are also

- <sup>1</sup> South Asian Association for Regional Cooperation 'About SAARC' <[www.saarc-sec.org/index.php/about-saarc/about-saarc](http://www.saarc-sec.org/index.php/about-saarc/about-saarc)> accessed 16 September 2021.
- <sup>2</sup> United Nations LDC Portal 'South Asian Free Trade Area' <[www.un.org/ldcportal/south-asian-free-trade-area/](http://www.un.org/ldcportal/south-asian-free-trade-area/)> accessed 16 September 2021.
- <sup>3</sup> Some definitions of South Asia also include Myanmar, however, it is not included in the present study because being a member of ASEAN (Association of Southeast Asian Nations) rather than SAARC it more properly falls within the South-East Asian region. <<https://asean.org/what-we-do/>> accessed 16 September 2021.
- <sup>4</sup> The World Bank classifies Bangladesh, Bhutan, India, Nepal, Pakistan, and Sri Lanka as lower-middle-income countries and has recently added Nepal and Sri Lanka to this category: re-classifying Nepal upwards from the low-income category and Sri Lanka downwards from the upper-middle-income category. Maldives is classified as an upper-middle-income country, and Afghanistan as a low-income country. (The World Bank data <<https://data.worldbank.org/country>> accessed 25 November 2020; New World Bank country classifications by income level: 2020–21 <<https://blogs.worldbank.org/opendata/new-world-bank-country-classifications-income-level-2020-2021>> accessed 25 November 2020). Further, the United Nations classifies Afghanistan, Bangladesh, Bhutan, and Nepal as 'least developed countries' (United Nations Country Classifications: Data sources, country classifications and aggregation methodology). Maldives graduated from this category in 2011 and Bhutan is set to graduate in 2023. Bangladesh and Nepal were up for a review in 2021, however, as per data released on 1 July 2022 their classification remains unchanged. (Country classification: Data sources, country classifications and aggregation methodology <[www.un.org/en/development/desa/policy/wesp/wesp\\_current/2014wesp\\_country\\_classification.pdf](http://www.un.org/en/development/desa/policy/wesp/wesp_current/2014wesp_country_classification.pdf)> accessed 25 November 2020) and New World Bank Country Classifications by income level 2022-2-23 <<https://blogs.worldbank.org/opendata/new-world-bank-country-classifications-income-level-2022-2023>> accessed 19 July 2022.

connected to each other through their geographies and parallel and sometimes overlapping histories.

Around the time that India and Pakistan adopted modern competition legislations in 2002 and 2007 respectively, the remaining South Asian countries were also taking steps towards adopting modern competition regimes for their own contexts. Among them Bangladesh, Nepal, Sri Lanka and more recently Maldives, have already enacted competition legislation, Bhutan has a competition policy and even Afghanistan was until recently evaluating its options in this regard. This chapter charts the progress of the competition regimes of the remaining six South Asian countries (the South Asian Six) along the deliberation-enactment-implementation continuum,<sup>5</sup> and analyses the motivations, mechanisms, and institutions engaged by each of them in this regard to evaluate the extent and quality of compatibility and legitimacy created or likely to be generated in the adoption process.

To this end this chapter is organised as follows: Section 3.2 examines the progress each of the South Asian Six have made along the deliberation-enactment-implementation continuum and describes where these are presently located; Section 3.3 examines the pre-conditions of transfer in each of these countries legal and political institutional landscape at the time they engaged with modern competition legislation and their motivations and strategies for engaging with these laws; Section 3.4 identifies the transfer mechanisms employed by each of these countries; Section 3.5 explores the compatibility and legitimacy generated or likely to be generated in the course of adoption for each of the South Asian Six and predicts their likely progress the implementation stage.

### 3.2 A COMPETITION TOUR OF THE SOUTH ASIAN SIX

Each of the South Asian Six have made progress towards adopting some version of a modern competition legislation. This section organises these countries according to the progress they have made towards adoption and examines the present state of their competition regimes to understand the overall picture of adoption of competition regimes in South Asia.

#### 3.2.1 *Countries That Have Completed the Adoption Stage*

Four out of the South Asian Six – Sri Lanka, Nepal, Bangladesh, and Maldives – have already adopted competition legislation and have therefore completed both the deliberation and the enactment phase of the adoption stage.

<sup>5</sup> As developed in Chapter 2.

## 3.2.1.1 Sri Lanka and the Consumer Affairs Authority Act 2003

Sri Lanka was the first among the South Asian Six to adopt a competition legislation by enacting the Consumer Affairs Authority Act 2003 ('the Sri Lankan Act').<sup>6</sup> The Sri Lankan Act provides for the establishment of the Consumer Affairs Authority<sup>7</sup> and the Consumer Affairs Council,<sup>8</sup> that together have the mandate *inter alia* to promote effective competition, protect consumers, and regulate internal trade.<sup>9</sup> Both the Authority and the Council are semi-autonomous, collegiate bodies,<sup>10</sup> and the government has the power to appoint as well as remove their members.<sup>11</sup> The Sri Lankan Act, does not regulate mergers and acquisitions and focuses only on 'anti-competitive practices'.<sup>12</sup>

The Act confers wide-ranging regulatory, investigative, and advocational powers on the Authority<sup>13</sup> but limits its enforcement powers. For instance, in respect of anti-competitive practices,<sup>14</sup> the Authority's powers are primarily investigative and advisory.<sup>15</sup> If, upon completing its investigation, the Authority is of the view that there is a case to be tried, it may refer the matter to the Council for adjudication.<sup>16</sup> The Council has the power to terminate the anti-competitive practice or seek its

<sup>6</sup> The Consumer Affairs Authority Act 2003 <[http://caa.gov.lk/web/index.php?option=com\\_content&view=article&id=11&Itemid=560&lang=en](http://caa.gov.lk/web/index.php?option=com_content&view=article&id=11&Itemid=560&lang=en)> accessed 16 September 2021.

<sup>7</sup> *ibid* section 2.

<sup>8</sup> *ibid* section 39.

<sup>9</sup> *ibid* Preamble.

<sup>10</sup> *ibid* sections 3–5 for the Authority, and section 39 for the Council.

<sup>11</sup> *ibid*. The power to appoint members of the Authority and of the Council and to remove members of the Authority (see Item 3 of the Schedule) vests in the government, however, the Act does not provide the mechanism for removal of members of the Council. In terms of section 49, the Authority may utilise sums recovered by it for its funding and for the payment of salaries of members of the Authority and the Council.

<sup>12</sup> *ibid* section 35.

<sup>13</sup> *ibid* section 7–12. The objects of the Authority as provided in section 7 include protection of consumers against marketing of hazardous goods or services; unfair and restrictive trade practices and ensuring adequate access to goods and services at competitive prices whilst in terms of section 8, it has the power to control or eliminate a range of anti-competitive practices, to conduct inquiries and investigations to establish such practices, to generate awareness about them and to promote good practices. The Authority is also given the power to regulate trade as per sections 9–12. Further, sections 26–32 deal exclusively with trading practices. Checking abuse of dominance is not listed in the powers or functions of the Authority.

<sup>14</sup> For definition see *ibid* section 35.

<sup>15</sup> The Authority has the power to entertain complaints from consumers (section 13); to enter into agreements with traders or manufacturers or their associations (section 14); to allow increase in prices of essential goods (section 18(2)); and to support the director general in referring cases of excessive pricing to the Council (section 19). In competition matters, the Authority may take cognisance of matters of its own accord or on receipt of a complaint (section 34) and may provide the parties an opportunity to be heard (section 36).

<sup>16</sup> *ibid* sections 20–22, and 37–38 which allow a party to require the Authority to submit a matter to the Council.

modification, provided it is of the view that the practice is contrary to the ‘public interest’.<sup>17</sup> Although the Act does not define ‘public interest,’ it requires the Council to ‘take into account all matters which appear to [it] to be relevant’ particularly those that may affect ‘competition between persons supplying goods and providing services’, ‘the price and quality of such goods and services’, and ‘development of new techniques and products, and facilitating the entry of new competitors into existing markets’ in making a judgment in this regard.<sup>18</sup> The Act is silent as to whether the orders of the Council may be appealed or as to the forum to which the appeal may lie.

### 3.2.1.2 Nepal’s Competition Promotion and Market Protection Act 2063, 2007

Nepal enacted the Competition Promotion and Market Protection Act 2063 in January 2007 (hereafter ‘the Nepalese Act’).<sup>19</sup> The avowed aim of the Act is to make the ‘national economy more open, liberal, market-oriented and competitive’; to enhance ‘national productivity by developing the business capacity of producers or distributors’; and to maintain ‘the economic interests and decency of the general public by doing away with possible unfair competition in trade practices’.<sup>20</sup>

In addition to the usual prohibitions on ‘anti-competitive agreements’,<sup>21</sup> ‘abuse of dominant position’,<sup>22</sup> and ‘mergers or amalgamations with intent to control competition’,<sup>23</sup> the Act specifically prohibits ‘bid-rigging’,<sup>24</sup> ‘exclusive dealing’,<sup>25</sup> ‘market restriction’,<sup>26</sup> tied-selling,<sup>27</sup> ‘misleading advertisement’,<sup>28</sup> and provides for the regulation of ‘abuse of intellectual property’.<sup>29</sup> However, the Act limits its expansive ambit by exempting several industries, activities, and products (including cottage and small industries, the procurement of raw materials, export business, collective bargaining, research and development, management collaboration, collaboration for organisational and procedural improvements intended to enhance trade capacity

<sup>17</sup> *ibid* section 41(1).

<sup>18</sup> *ibid* section 41(2).

<sup>19</sup> The Competition Promotion and Market Protection Act 2063, 2007 <<http://admin.theiguides.org/Media/Documents/CompetitionPromotionMarketProtectionAct2007.pdf#:~:text=This%20Act%20may%20be%20called%20%20Competition%20Promotion%20and,Nepal.%20This%20Act%20shall%20come%20into%20force%20immediately>> accessed 16 September 2021.

<sup>20</sup> *ibid* Preamble.

<sup>21</sup> *ibid* section 3

<sup>22</sup> *ibid* section 4.

<sup>23</sup> *ibid* section 5.

<sup>24</sup> *ibid* section 6.

<sup>25</sup> *ibid* Section 7.

<sup>26</sup> *ibid* Section 8.

<sup>27</sup> *ibid* Section 9.

<sup>28</sup> *ibid* Section 10.

<sup>29</sup> *ibid* Section 31.

and agricultural products)<sup>30</sup> and by empowering the government to grant further exemptions if appropriate.<sup>31</sup>

The Act also provides for a Board, with powers of ‘formulating policies’, ‘reviewing laws’, and ‘raising awareness’ ‘to enhance fair competition in market by protecting the market’.<sup>32</sup> In terms of the Act, the Board comprises senior government officials, and nominees from industry and consumer rights’ organisations, that may be appointed and removed by the government.<sup>33</sup> The Act also requires the government to appoint a ‘Market Protection Officer’.<sup>34</sup> In terms of the Act both the Board and the Market Protection Officer are authorised to receive complaints from the public<sup>35</sup> as well as to carry out investigations into alleged violations of the Act,<sup>36</sup> however, the power to adjudicate upon these matters vests exclusively in the courts.<sup>37</sup> Further only the Market Protection Officer has the power to bring a case before the court,<sup>38</sup> while the responsibility for handling the case vests entirely in a ‘government attorney’.<sup>39</sup> The Act also allows a party aggrieved by a violation of the Act to directly approach the courts for compensation.<sup>40</sup>

### 3.2.1.3 Bangladesh Enacts the Competition Act 2012

Bangladesh enacted its Competition Act in June 2012 (‘the Bangladeshi Act’)<sup>41</sup> with the aim of enhancing economic development and eradicating anti-competitive practices.<sup>42</sup> This Act provides for the establishment of the ‘Bangladesh Competition Commission’ as an independent statutory body with perpetual succession,<sup>43</sup> comprising a chairperson and not more than four members. The Act requires members of the Commission to have at least fifteen-years experience in ‘economics, matters relating to market, or public administration or similar subjects or legal profession or legal affairs activities in different public–private institutions or any other field deemed relevant by the government’. All members are to be appointed by

<sup>30</sup> *ibid* Section 11.

<sup>31</sup> *ibid* Section 29.

<sup>32</sup> *ibid* Section 12(1).

<sup>33</sup> *ibid* Section 12(3).

<sup>34</sup> *ibid* Section 22.

<sup>35</sup> *ibid* Section 23(1).

<sup>36</sup> *ibid* sections 24 and 25.

<sup>37</sup> *ibid* section 14. In terms of section 2(h), ‘court’ means the commercial bench of such a court as may be designated by the Government of Nepal in consultation with the Supreme Court.

<sup>38</sup> *ibid* section 24.

<sup>39</sup> *ibid*.

<sup>40</sup> *ibid* section 29.

<sup>41</sup> Competition Act 2012 <[www.dpp.gov.bd/upload\\_file/gazettes/20533\\_10683.pdf](http://www.dpp.gov.bd/upload_file/gazettes/20533_10683.pdf)> accessed 23 October 2020.

<sup>42</sup> *ibid* Preamble.

<sup>43</sup> *ibid* section 5.

the government in accordance with rules made for this purpose.<sup>44</sup> The government also has the power to remove members on specified grounds albeit after affording them an opportunity of being heard.<sup>45</sup>

The Commission has the power to review ‘anti-competition agreements’,<sup>46</sup> abuse of dominant position,<sup>47</sup> and mergers.<sup>48</sup> However, ‘goods or services . . . controlled by the Government’ may be excluded from the ambit of the Act if it is in the ‘interest of the national security’ to do so and if the goods and services are ‘not open for private sector’.<sup>49</sup> The Act also authorises the Commission to adjudicate upon anti-competitive agreements, abuse of dominant position or mergers, while offences (including interfering in, contravening or failing to comply with an order of the Commission) under the Act are to be tried by a Magistrate. Persons aggrieved by the orders of the Commission may approach it for a review of its orders or to appeal against these to the government. It is not clear, however, whether there is a further right of appeal from the review orders of the Commission or of the appeal orders of the government.<sup>50</sup> Appeals from the orders of the magistrate<sup>51</sup> lie to the Court of Sessions, whose orders are to be final.<sup>52</sup>

### 3.2.1.4 Maldives’ Competition Act 2020

Maldives adopted a competition legislation only recently: the Maldives parliament approved the Competition Act 2020 on 18 August 2020 (hereafter ‘the Maldives Act’) which was ratified by the president on 21 August 2021,<sup>53</sup> to come into effect on 1 March 2021. The Act is to be administered directly by the government through the relevant ministry and will apply to all commercial transactions ‘carried out by enterprises’ in the Maldives as well as those that are ‘carried out overseas but that impact the competitiveness of any market in the Maldives’. The Act provides for checking anti-competitive agreements in relation to goods and services, excluding agreements within a single group of companies, and agreements with a public interest dimension. The Act also prohibits abuse of dominant position and mergers that result in ‘substantial reduction in competitiveness in any market’ but excludes mergers ‘finalised between two government companies, and mergers that provide services which serve public economic interests’ provided these have been approved by the minister in accordance with the Act. The Act also exempts mergers which

<sup>44</sup> *ibid* section 7.

<sup>45</sup> *ibid* section 9.

<sup>46</sup> *ibid* section 15.

<sup>47</sup> *ibid* section 16.

<sup>48</sup> *ibid* sections 20–21.

<sup>49</sup> *ibid* section 4.

<sup>50</sup> *ibid* section 29.

<sup>51</sup> *ibid* section 25.

<sup>52</sup> *ibid* section 30.

<sup>53</sup> Press Release <<https://presidency.gov.mv/Press/Article/23615>> accessed 16 September 2021.

though result in substantial reduction in competitiveness provide significant other economic benefits.<sup>54</sup>

The Act mandates the relevant ministry to establish a mechanism to address complaints regarding contraventions of the Act and allows parties aggrieved by decisions of the ministry to file appeals before the courts.<sup>55</sup>

### 3.2.2 Countries still in the Adoption Stage

Of the South Asian Six, Afghanistan and Bhutan have still to adopt a competition legislation. However, while Afghanistan has a draft competition act which indicates its intention to adopt such legislation, Bhutan believes that a competition policy is sufficient for its purposes.

#### 3.2.2.1 Enactment Interrupted: Afghanistan and the Draft Competition Act

The draft Afghanistan Competition Act prepared as far back as 2011 (hereafter ‘the draft Afghan Act’)<sup>56</sup> aims to establish an independent ‘Competition and Consumer Authority’ (section 10) comprising five members, to be appointed by the government.<sup>57</sup> The government also has the power to remove members, albeit on specified grounds and after an inquiry.<sup>58</sup> The proposed Authority is embedded in the Ministry of Commerce<sup>59</sup> which has the power to supersede the Authority in specified circumstances.<sup>60</sup> The draft Act confers on the Authority the power to investigate and sanction anti-competitive agreements and abuse of dominant position, to regulate combinations, and to check hoarding.<sup>61</sup> The Act allows appeals from certain orders of the Authority to lie to a specially designated bench of the Commercial Court<sup>62</sup> and from certain other orders to lie to a specially designated Competition Court.<sup>63</sup> Appeals from orders of the Competition Court are to lie to the Supreme Court.<sup>64</sup>

#### 3.2.2.2 Bhutan: To Enact or Not to Enact?

Bhutan claims not to need a competition legislation largely due to the smallness of its economy. In 2015, however, Bhutan adopted its first comprehensive competition

<sup>54</sup> Competition Act <[www.ctlstrategies.com/latest/competition-act/](http://www.ctlstrategies.com/latest/competition-act/)> accessed 19 October 2020.

<sup>55</sup> *ibid.*

<sup>56</sup> Draft Competition Act <<https://documentcloud.adobe.com/link/review?uri=um:aaid:scds:US:8e119aae-d5c9-4600-9c22-056aac34d4b6>> accessed 17 September 2021.

<sup>57</sup> *ibid* section 10.

<sup>58</sup> *ibid* section 11.

<sup>59</sup> Draft Competition Act <<https://documentcloud.adobe.com/link/review?uri=um:aaid:scds:US:8e119aae-d5c9-4600-9c22-056aac34d4b6>> accessed 17 September 2021.

<sup>60</sup> *ibid* section 46.

<sup>61</sup> *ibid* section 3–9, 20–22.

<sup>62</sup> *ibid* section 31.

<sup>63</sup> *ibid* section 32.

<sup>64</sup> *ibid* section 33.

policy<sup>65</sup> which envisaged establishment of a ‘National Competition Council’ to ensure that competition principles was followed across the government.<sup>66</sup> In 2020, Bhutan revised and updated this Policy (hereafter ‘the Bhutanese Policy’)<sup>67</sup> with the aim to allow Bhutanese citizens the right to practice any lawful trade and to foster private sector development through fair competition and by preventing commercial monopolies.<sup>68</sup> The Policy prohibits monopolies, abuse of dominant position, cartels, anti-competitive mergers, and deceptive marketing practices<sup>69</sup> and applies to government organisations and business entities.<sup>70</sup> The Policy excludes from its ambit economic activities that are in the interest of national security or have strategic importance.<sup>71</sup> The Office of Consumer Protection, established under the Bhutan Consumer Protection Act 2012,<sup>72</sup> has the power to review and monitor the implementation of the Policy.<sup>73</sup>

### 3.2.3 *Adoption of competition laws in the South Asian Perspective*

The review of the adoption of competition legislation across South Asia paints a very positive picture: six out of eight South Asian countries have completed the successive deliberation and the enactment phases of the adoption stage and have acquired some version of a modern competition legislation. Only Afghanistan and Bhutan are still to adopt a competition law and while Afghanistan has a draft legislation which may be enacted at a future date, Bhutan has not made any commitment in this regard (Figure 3.1).

However, a closer look at the competition legislation that these countries have adopted, or propose to adopt, reveals considerable variations amongst them. While some of these legislations provide for the establishment of independent, autonomous competition authorities, others fully embed competition enforcement in the country’s pre-existing executive framework. Further, certain competition laws allow the competition authorities to take enforcement actions, while others envisage these authorities as intermediaries between the public and the courts. The greater number of these legislations vest the power of appointment and removal of members of their

<sup>65</sup> Competition Policy 2015 <[www.gnhc.gov.bt/en/wp-content/uploads/2017/05/Final-Draft-Competition-Policy-181114.pdf](http://www.gnhc.gov.bt/en/wp-content/uploads/2017/05/Final-Draft-Competition-Policy-181114.pdf)> accessed 17 September 2021.

<sup>66</sup> *ibid* Article 14.

<sup>67</sup> Competition Policy 2020 <[www.gnhc.gov.bt/en/wp-content/uploads/2020/03/National-Competition-Policy-2020.pdf](http://www.gnhc.gov.bt/en/wp-content/uploads/2020/03/National-Competition-Policy-2020.pdf)> accessed 17 September 2021.

<sup>68</sup> *ibid* Article 3.

<sup>69</sup> *ibid* Article 5.

<sup>70</sup> *ibid* Article 2.

<sup>71</sup> *ibid* Article 6.

<sup>72</sup> Consumer Protection Act 2012 <<http://extwprlegs1.fao.org/docs/pdf/bhu129924.pdf>> accessed 19 September 2021.

<sup>73</sup> *ibid*.



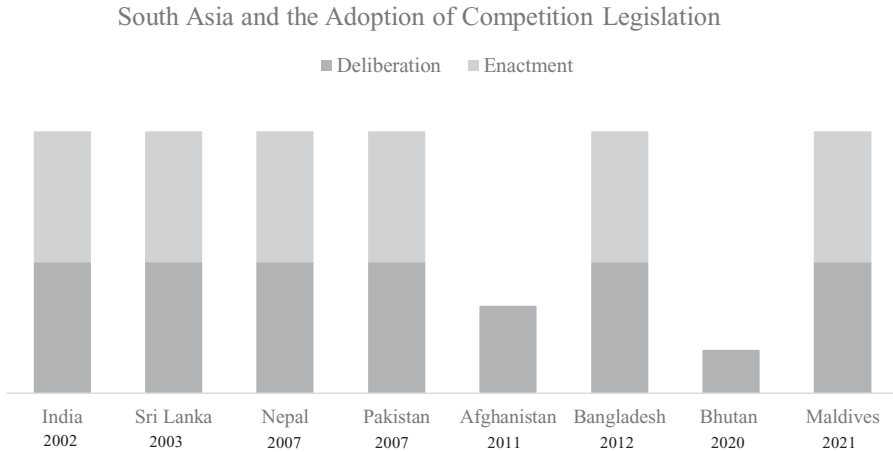


FIGURE 3.1. Adoption of competition legislation across South Asia (in descending chronological order)

competition authorities or boards entirely in the government, thereby giving the government exclusive control over their composition. These legislations also experiment with different competition enforcement pathways: the legislations in certain countries allow appeals from the orders of the competition authority to lie to independent, specialist tribunals, and from orders of the tribunals to lie to the general courts pre-existing in the country, while in others, the aggrieved party may only approach the government for redress (Table 3.1).

### 3.3 PRE-CONDITIONS OF TRANSFER AND THE ADOPTION PROCESS IN THE SOUTH ASIAN SIX

The variations in the substance of the competition legislation adopted by the South Asian Six and the enforcement authorities they create are largely attributable to the contexts and the adoption strategies that shaped them. This section groups the South Asian Six in accordance with their governance models and examines their individual pre-existing conditions of transfer, their respective motivations for adopting or engaging with adopting modern competition legislation, and the interplay of their institutions in the adoption process.

#### 3.3.1 *Democracies and the Adoption of Competition Legislation*

Of the South Asian Six, Sri Lanka and Bangladesh are both former British colonies. Sri Lanka achieved dominion status under the Ceylon Independence Act 1947 and, since then, has adopted two constitutions – in 1972 and 1978. The 1978 Constitution

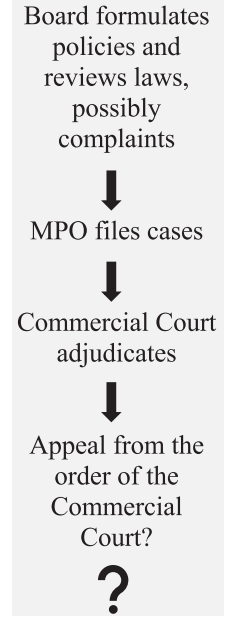
TABLE 3.1. *A comparative review of South Asian competition legislation*

COUNTRY (in the order of adoption)	Competition Authorities			Competition Enforcement Pathway
	Structure	Mandate	Composition	
<b>India</b>	<ul style="list-style-type: none"> <li>• Comprising 2–6 members;</li> <li>• Independent;</li> <li>• Collegiate;</li> <li>• Government may also issue directives to supersede the authority.</li> </ul>	<ul style="list-style-type: none"> <li>• Specialist competition body with an advocacy and enforcement mandate including the power to investigate, take cognizance of, and sanction; anti-competitive agreements; abuse of dominance, and mergers.</li> <li>• Government has the power to exempt businesses and entities.</li> </ul>	<ul style="list-style-type: none"> <li>• Appointment of members on recommendation of a statutorily prescribed selection committee;</li> <li>• Removal by the government on specified grounds and upon conclusion of a supreme court enquiry.</li> </ul>	<p>CCI issues order</p> <p>↓</p> <p>Tribunal hears appeal</p> <p>↓</p> <p>Supreme Court hears final appeal</p>
<b>Sri Lanka</b>	<ul style="list-style-type: none"> <li>• Comprising minimum 10 members;</li> <li>• Chairman and 3 members to be government representatives;</li> <li>• Collegiate.</li> </ul>	<ul style="list-style-type: none"> <li>• Mandate includes investigating: trade, competition, and consumer issues (including hoarding).</li> </ul>	<p>Members to be appointed and removed by the government.</p>	<p>Authority investigates</p> <p>↓</p> <p>Consumer Affairs Council adjudicates</p> <p>↓</p> <p>Appeal from order of the Council</p> <p>?</p>

## Nepal

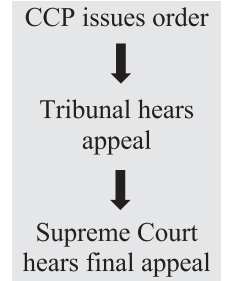
- No independent authority established;
- Board set up comprising government officers and nominees.
- Formulating policies, reviewing laws, and raising awareness regarding:
  - anti-competitive agreements; abuse of dominant position; mergers
  - abuse of intellectual property.
- Cottage & small industries, procurement of raw materials, export business, collective bargaining, research and development etc., excluded from the Act.

Government has exclusive power to appoint and remove members of the Board.



## Pakistan

- Comprising 5–7 members;
- 2 members may be government representatives;
- Independent;
- Collegiate.
- Specialist competition body with an advocacy and enforcement mandate including the power to investigate, take cognisance of, and sanction:
  - anti-competitive agreements;
- Government to appoint in consultation with the Chairman
- Government may remove on grounds specified in the Act and after an impartial inquiry (under rules made by the government) unless



(continued)

TABLE 3.1. (continued)

COUNTRY (in the order of adoption)	Competition Authorities			Competition Enforcement Pathway
	Structure	Mandate	Composition	
<b>Bangladesh</b>	<ul style="list-style-type: none"> <li>Independent;</li> <li>Chairman and 4 members;</li> <li>Collegiate.</li> </ul>	<p>abuse of dominance; mergers. deceptive marketing practices.</p> <ul style="list-style-type: none"> <li>Government has the power to exempt businesses and entities.</li> <li>Regulates: anti-competitive agreements, and; abuse of dominant position.</li> <li>Public sector goods exempted in the interest of national security.</li> </ul>	<p>removal ordered by a competent court.</p> <ul style="list-style-type: none"> <li>Government to appoint in accordance with rules made for this purpose.</li> <li>Government to remove members on specified grounds and after providing an opportunity of being heard.</li> </ul>	<pre> graph TD     Commission --&gt; Government     Commission --&gt; Magistrate     Magistrate --&gt; SessionsCourt[Sessions Court]         </pre>
<b>Maldives</b>	No independent authority.	<ul style="list-style-type: none"> <li>To review anti-competitive agreements; abuse of dominance; mergers. Act does not apply to: government actions and those exempted under the Special Economic Zone Act.</li> </ul>	Not applicable.	<pre> graph TD     Ministry --&gt; Courts         </pre>

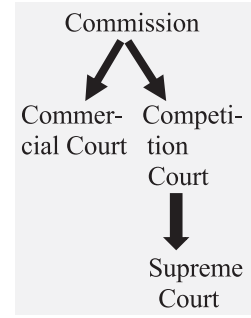
agreements within group of companies and with a public interest dimension; mergers with significant economic benefits.

**Afghanistan**

- Competition and Consumer Authority;
- Comprising 5 members;
- Embedded in the Ministry of Commerce;
- Minister of Commerce has power to supersede the Authority in specified circumstances.

- Authority had the power to review and regulate anti-competitive agreements; abuse of dominant position; combinations; hoarding.

- The government has the power to appoint members;
- Government has the power to remove members albeit on specified grounds and after an inquiry.



**Bhutan**

- No competition authority;
- Office of Consumer Protection to implement the policy.

- Prohibits: monopolies; dominant position; cartels; anti-competitive mergers; deceptive marketing practices.
- Economic activities in the national interest excluded.

Office of Consumer protection established under the Ministry of Economic Affairs and comprises government Officers.

No implementation trajectory specified.



has been amended twenty times but has never been suspended.<sup>74</sup> Bangladesh on the other hand was part of Pakistan until 1971 when it declared independence, prior to which it was part of India until 1947. Bangladesh adopted its first constitution in 1972 which has been amended eighteen times and was suspended once between 1982 and 1986.<sup>75</sup> In 1995 both Sri Lanka and Bangladesh joined the WTO.<sup>76</sup>

### 3.3.1.1 The Sri Lankan Context

Sri Lanka was motivated by both domestic needs and external pressure to consider a modern competition legislation. In 1977 Sri Lanka had embarked upon a programme of economic liberalisation and had enacted the Fair Trading Commission Act 1987 with the aim of curbing monopolies, preventing anti-competitive practices, and regulating mergers contrary to the public interest.<sup>77</sup> However, the Fair Trading Commission, established in pursuance of the Act, did not have the power to hear competition cases or to impose sanctions.<sup>78</sup> Soon after Sri Lanka joined the WTO, the WTO Secretariat carried out a trade review of its policies and practices and noted that it was necessary to further liberalise the Sri Lankan economy to ensure its competitiveness.<sup>79</sup> Sri Lanka first responded to this observation by supplementing its Fair Trading Act with sector-specific regulation, however, after a change of government in December 2001 and with the support of the World Bank and the United States,<sup>80</sup> it gradually moved towards an integrated and holistic trade and competition regulation regime, replacing the Fair Trading Act by the Consumer Affairs Authority Act 2003 (or the Sri Lankan Act as earlier defined).<sup>81</sup> It is not known whether and to what extent Sri Lanka consulted foreign competition legislation or domestic stakeholders in drafting the Sri Lankan Act. However, the fact that the Act was enacted through the parliament in accordance with the legislative procedures prescribed in the Sri Lankan constitution, suggests

<sup>74</sup> Sri Lanka <[www.countries/countries/Asia/Sri\\_Lanka?lang=en](http://www.countries/countries/Asia/Sri_Lanka?lang=en)> accessed 21 September 2021.

<sup>75</sup> Bangladesh <[www.countries/countries/Asia/Bangladesh?lang=en](http://www.countries/countries/Asia/Bangladesh?lang=en)> accessed 21 September 2021.

<sup>76</sup> WTO Members and Observers <[www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/org6\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm)> accessed 21 September 2021.

<sup>77</sup> Fair Trading Commission Act 1987 <[www.commonlii.org/lk/legis/num\\_act/fcca1987282/](http://www.commonlii.org/lk/legis/num_act/fcca1987282/)> accessed 2 November 2020.

<sup>78</sup> Apsara Thurairatnam, 'Competition Regimes: Sri Lanka' 161–62 <<https://competitionregimes.com/pdf/AsiaPacific/30-Sri%20Lanka.pdf>> accessed 2 November 2020.

<sup>79</sup> Trade Policy Review, Sri Lanka November 1995 <[www.wto.org/english/tratop\\_e/tpr\\_e/tp017\\_e.htm](http://www.wto.org/english/tratop_e/tpr_e/tp017_e.htm)> accessed 2 November 2020. Also see Consumer Affairs Authority Annual Report 2015, 21 <[http://caa.gov.lk/web/images/AnnualReport/English/AR\\_2015\\_Eng.pdf](http://caa.gov.lk/web/images/AnnualReport/English/AR_2015_Eng.pdf)> accessed 23 September 2021.

<sup>80</sup> Prime Minister Hon. Ranil Wickremesinghe, elected to office in 2001, was keen to carry out market reforms and was negotiating a free trade agreement with the United States. However, this initiative was abandoned in 2004 after the government was removed from office. See 'Parliament of Sri Lanka' <[www.parliament.lk/en/prime-ministers](http://www.parliament.lk/en/prime-ministers)> accessed 22 September 2021 and 'US ready to pursue FTA with Sri Lanka' <[www.bilaterals.org/?us-ready-to-pursue-fta-with-sri](http://www.bilaterals.org/?us-ready-to-pursue-fta-with-sri)> accessed 22 September 2021.

<sup>81</sup> See n.6.

that there was a degree of consultation with stakeholders with regard to the content of the legislation which further suggests they had at least constructively consented to the enactment.

### 3.3.1.2 Bangladesh's Efforts to Adopt an Enlightened Legislation

At the time of its independence from Pakistan in 1971, Bangladesh inherited the laws prevailing in Pakistan,<sup>82</sup> including Pakistan's Monopolies and Restrictive Trade Practices (Control and Prevention) Ordinance 1970.<sup>83</sup> However, Bangladesh's immediate economic priority at the time was enhancing its GDP rather than regulating monopolies,<sup>84</sup> and therefore, the Ordinance was not implemented.<sup>85</sup> Further Bangladesh espoused socialist policies shortly after independence which brought industrial production in the country nearly to a halt.<sup>86</sup> By 1973, the government gradually started revising its nationalisation policy and in 1979 replaced it with a nineteen-point program that emphasised greater productivity and *efficiency*. The government also returned many state-owned enterprises to the private sector.<sup>87</sup> The growth of the Bangladeshi economy from 1980 onwards was attributed to these policies.<sup>88</sup>

Soon after joining the WTO in 1995, Bangladesh once again considered the idea of regulating monopolies and to this end, adopting a modern competition policy. In a 2002 statement submitted at a regional meeting of the WTO Competition Working Group,<sup>89</sup> the Bangladesh Minister of Commerce noted that while there

<sup>82</sup> Constitution of Bangladesh 1972, Article 149.

<sup>83</sup> In pursuance of the Bangladesh Laws (Revision and Declaration) Act 1973, Bangladesh replaced the words 'Pakistan', 'Central Government', and 'rupees' throughout the Ordinance, with 'Bangladesh', 'Government', and 'Taka' respectively.

<sup>84</sup> At the time of its independence in 1971, Bangladesh's population density was over 500 persons per km and was growing at 3 per cent annually. The country's cultivable land frontier was exhausted; only 6 per cent of the GDP originated from modern manufacturing (mostly jute and cotton textiles), and 85 per cent of the export earnings came from raw jute and jute goods which had weak international markets. Businessmen, mostly of Pakistani origin, had left the country, productive capacity and infrastructure had been damaged by war, and domestic savings had fallen to almost zero. See ODI Briefing Paper, 'Bangladesh Economic Performance and Prospects' (Overseas Development Institute 1990) <<https://cdn.odi.org/media/documents/6760.pdf>> accessed 22 September 2021.

<sup>85</sup> Karen Ellis, Rohit Singh, Shaikh Eskander, Iftekharul Huq 'Assessing the Economic Impact of Competition: Findings from Bangladesh' (Overseas Development Institute 2010) <<https://cdn.odi.org/media/documents/6058.pdf>> accessed 22 September 2021.

<sup>86</sup> Encyclopedia Britannica 'Economy of Bangladesh' <[www.britannica.com/place/Bangladesh/Economy](http://www.britannica.com/place/Bangladesh/Economy)> accessed 20 October 2020.

<sup>87</sup> *ibid.*

<sup>88</sup> ODI Briefing Paper 'Bangladesh: Economic Performance and Prospects' (Overseas Development Institute 1990) <[www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/6760.pdf](http://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/6760.pdf)> 1, accessed 20 October 2020.

<sup>89</sup> In 2001 at the Doha Ministerial Conference, Ministers instructed the Working Group to focus *inter alia* on support for progressive re-inforcement of competition institutions in developing countries through capacity building. <[www.wto.org/english/tratop\\_e/comp\\_e/history\\_e.htm](http://www.wto.org/english/tratop_e/comp_e/history_e.htm)> accessed 20 October 2020.

was growing awareness in Bangladesh of the need to ‘control anti-competitive conduct by firms and multi-national companies’ it was important to ‘keep in the perspective the special needs of LDCs such as Bangladesh’ especially the potential of ‘enterprise behaviour’ to give rise ‘to problems in international trade relations’, and to extract gains out of the economy.<sup>90</sup> The minister was particularly concerned about Bangladesh becoming ‘trapped in an agreement which [it was] not fully prepared to negotiate and in which the dispute settlement mechanism would be mainly used against the weaker and upcoming countries’.<sup>91</sup> He therefore urged Bangladesh to take ‘a cautious view to the whole issue of competition policy’,<sup>92</sup> and emphasised the importance of building capacity before adopting competition legislation. He also urged that competition laws designed for countries such as Bangladesh ‘not only be effective’ but also ‘equitable’.<sup>93</sup>

Throughout this period UNCTAD engaged extensively with Bangladesh to raise awareness of and build capacity for addressing competition issues.<sup>94</sup> By 2004, even though competition was no longer on the WTO agenda, a Bangladeshi thinktank, in partnership with an Indian thinktank and with support from the UK Department for International Development (DFID), launched a project to raise competition awareness in the country.<sup>95</sup> The project report, issued in 2005, noted that ‘a healthy competition policy and Law [was] a necessity for the economic advancement of developing countries’,<sup>96</sup> and that a survey carried out as part of the project showed that there was ‘a consensus among stakeholders for an urgent need to regulate the market in terms of anti-competitive practices, to institute a mechanism to implement the law, and finally to develop the capacity of the stakeholders, empowering them to create an enabling environment where competition can flourish, benefiting both consumers and businesses’.<sup>97</sup> To this end, the report called for the establishment of ‘a modern, independent, and transparent Competition Authority’<sup>98</sup> and for the enactment of an overarching competition law for Bangladesh, through

<sup>90</sup> Statement of the Hon’ble Minister for Commerce, Mr Amir K Mahmud Chowdhury, MP, at the Regional Seminar on Competition Policy and Multilateral Negotiations, Hong Kong: April 2002 <[www.iprsonline.org/resources/competition.html](http://www.iprsonline.org/resources/competition.html)> accessed 21 October 2020.

<sup>91</sup> *ibid.* 3.

<sup>92</sup> *ibid.* 5.

<sup>93</sup> *ibid.*

<sup>94</sup> For instance, UNCTAD had delivered ‘Training of Trainers’ intensive courses in 2001 and 2002. UNCTAD ‘Competition Policy for Development: A Report on UNCTAD’s Capacity Building and Technical Assistance Programme’ <[https://unctad.org/system/files/official-document/ditceclp20042\\_en.pdf](https://unctad.org/system/files/official-document/ditceclp20042_en.pdf)> accessed 22 October 2020.

<sup>95</sup> ‘Promoting Competition Policy and Law in Bangladesh: A Civil Society Perspective’ (CUTS International 2006) <<https://cuts-ccier.org/pdf/BangladeshCAD.pdf>> accessed 22 October 2020.

<sup>96</sup> *ibid.* 7.

<sup>97</sup> *ibid.*

<sup>98</sup> *ibid.* 27.



consultations with all stakeholders.<sup>99</sup> Also the 2005 Poverty Reduction Strategy paper, prepared by Bangladesh in consultation with the International Monetary Fund (IMF) and the World Bank,<sup>100</sup> identified effective competition policy as an important factor in accelerating poverty reduction in the country,<sup>101</sup> and announced that it had sought technical assistance from the World Bank to draft a competition law.<sup>102</sup>

In 2008 Bangladesh produced its first draft competition law. However, this draft could not be enacted due to resistance by the business community that viewed is the law as a foreign intervention and an attempt on the part of the government to intimidate the community.<sup>103</sup> Despite these reservations, in June 2012 Bangladesh, with the support of the DFID and the International Finance Corporation (IFC), enacted a Competition Act (earlier defined as the Bangladeshi Act) as part of a wider programme of technical assistance for enhancing its investment climate.<sup>104</sup> Interestingly, however, contrary to the expectations created by the Bangladeshi stance before the WTO, the Act spoke only of economic development and sanctioning anti-competitive practices and made no reference to inclusivity or eradication of poverty.<sup>105</sup> The Act also had strong Indian overtones,<sup>106</sup> albeit

<sup>99</sup> *ibid* 28.

<sup>100</sup> IMF Country Report No. 05/410 'Bangladesh: Poverty Reduction Strategy Paper' (International Monetary Fund 2005).

<sup>101</sup> *ibid* 20. Also see section 5.B.6.2 pp 72–73 which details a competition policy generally associated with developed countries and not a special adaptation, keeping in mind Bangladesh's status as a developing country.

<sup>102</sup> Mark Dutz and R Shyam Khemani 'Competition Law and Policy: Challenges in South Asia' (The World Bank 2007), Acknowledgements.

<sup>103</sup> Nazmul Haque Tonmoy, 'The Absence of Political Will to Implement Competition Policy in Bangladesh is a Major Obstruction of its Rapidly Growing Economy' (2018) 2(3) Comparative Law Working Papers 7. News reports published during this period drew support from the Indian Supreme Court's decision in favour of competition regulation. See, Financial Express 'Competition Commission: The Task Ahead' <<https://thefinancialexpress.com.bd/views/columns/competition-commission-the-task-ahead>> accessed 26 October 2020.

<sup>104</sup> 'IFC Helps Bangladesh Implement Mechanism to Make Regulations Efficient, Improving Governance' <<https://ifcext.ifc.org/ifcext/pressroom/IFCPressRoom.nsf/0/27D09BF91AB7305E85257A97001879A2>> accessed 23 October 2020. The first phase of the project was completed circa 2015 (Nathan 'End of Program Evaluation of Bangladesh Investment Climate Fund (BICF)' <[www.nathaninc.com/end-of-program-evaluation-of-bangladesh-investment-climate-fund-bicf/](http://www.nathaninc.com/end-of-program-evaluation-of-bangladesh-investment-climate-fund-bicf/) <[www.nathaninc.com/end-of-program-evaluation-of-bangladesh-investment-climate-fund-bicf/](http://www.nathaninc.com/end-of-program-evaluation-of-bangladesh-investment-climate-fund-bicf/)> accessed 23 October 2020) and a second phase was launched in 2016. ('Enhancing Competitiveness in the Bangladesh Economy Continues to Form part of the FCO Agenda.' UKAid 'Bangladesh Investment Climate Fund, Phase 2' <<https://devtracker.fcdo.gov.uk/projects/GB-1-204951/documents>> accessed 23 October 2020).

<sup>105</sup> n.41 Preamble.

<sup>106</sup> See, for instance, the concept of 'combination' and of 'enterprise' in section 2 of the Bangladeshi Act and the concept of 'deemed' anti-competitive affect and of 'adverse affect on competition' in section 15 both of which it shares with the Indian Act. Also see n.103 which makes this comment about the 2008 draft as well.

intermixed with certain features that related specifically to the Bangladesh context.<sup>107</sup>

### 3.3.2 *Adopting Competition Laws in Former Monarchies*

Both Nepal and Maldives had been traditional monarchies before becoming independent constitutional monarchies in 1948 and 1968 respectively.<sup>108</sup> Also, although the countries were never fully colonised, they had remained under British influence for significant periods of their histories.<sup>109</sup> Since its independence in 1948, Nepal had adopted seven constitutions the latest in 2015,<sup>110</sup> while Maldives had adopted three constitutions, the latest in 2008.<sup>111</sup> The modern constitutions of both countries prescribed separation of powers and vested the power of governance in the elected government while retaining the monarch as the titular head of state.<sup>112</sup> Nepal joined the WTO in 2004 while Maldives has been a member since 1995.<sup>113</sup>

#### 3.3.2.1 The Context in Nepal

Shortly before joining the WTO in 2004, Nepalese thinktanks, in conjunction with an Indian thinktank and the DFID had already started investigating the state of competition in the Nepalese economy and participating in forums organised by UNCTAD to build domestic competition capacity.<sup>114</sup> Subsequently in its

<sup>107</sup> For instance, see Section 2.1(c) above particularly with reference to the enforcement pathway prescribed in the Bangladeshi Act.

<sup>108</sup> For Nepal see <[www.constituteproject.org/countries/Asia/Nepal?lang=en](http://www.constituteproject.org/countries/Asia/Nepal?lang=en)> and 'Constitutional History of Nepal' <<https://constitutionnet.org/country/nepal-country-constitutional-profile>> accessed 22 September 2021; for Maldives see <[www.constituteproject.org/countries/Asia/Maldives?lang=en](http://www.constituteproject.org/countries/Asia/Maldives?lang=en)> accessed 22 September 2021 and 'A Short Constitutional History of Maldives' <<https://minivannewsarchive.com/politics/a-short-constitutional-history-of-the-maldives-73902>> accessed 23 September 2021. While Nepal's constitutional history has been complicated due to war and internal strife, Maldives has been largely peaceful. For most of its long history, Maldives has been ruled by sultans, who from the sixteenth century onwards, have ruled under the direction and protection of successive European powers. From 1796, the archipelago became a protectorate of the British, a status that was formalised in 1887. In 1932, Maldives acquired its first constitution, however, it was only in 1968, after having obtained full political independence from the British in 1965, that Maldives abolished the sultanate and declared a new republic.

<sup>109</sup> For Nepal see <[www.britishempire.co.uk/maproom/nepal.htm](http://www.britishempire.co.uk/maproom/nepal.htm)> accessed 22 September 2021 and for Maldives see <[www.britishempire.co.uk/maproom/maldives.htm](http://www.britishempire.co.uk/maproom/maldives.htm)> accessed 22 September 2021.

<sup>110</sup> See n.108. The Nepalese constitution remained suspended from 1960 to 1962.

<sup>111</sup> *ibid.*

<sup>112</sup> Nepal Constitution 2015, Article 56 <[www.constituteproject.org/constitution/Nepal\\_2016.pdf?lang=en](http://www.constituteproject.org/constitution/Nepal_2016.pdf?lang=en)> accessed 22 September 2021; Maldives Constitution 2008, Articles 5–7 <[www.countries/constitution/Maldives\\_2008.pdf?lang=en](http://www.countries/constitution/Maldives_2008.pdf?lang=en)> accessed 22 September 2021.

<sup>113</sup> See n.76.

<sup>114</sup> See generally Ratnakar Adhikari 'Discussion Paper on Competition Policy in Small Economies' (South Asia Watch on Trade, Economics and Environment (SAWTEE) and

discussions with the WTO, the Nepalese government made a voluntary commitment to adopt a competition law and in 2007, well after the subject of competition had been dropped from the WTO agenda,<sup>115</sup> Nepal followed through with this commitment and adopted the Nepalese Act.<sup>116</sup>

When the Act was enacted on 14 January 2007,<sup>117</sup> Nepal was governed directly by the King who had dissolved the parliament in 2002<sup>118</sup> and was only one day away from re-instating the parliament under the Interim Constitution 2007.<sup>119</sup> The parliament, therefore, had no role in the adoption of the Act. Certainly, some features of the Act, particularly the structure of the Board and the enforcement pathway, echo the approach adopted by Nepal in other comparable laws such as the Consumer Protection Act that was in force in the country at the time,<sup>120</sup> others reflect the recommendations made in deliberations between Nepalese and Indian thinktanks and multi-lateral agencies.<sup>121</sup>

### 3.3.2.2 Maldives and Competition Legislation for a Small Economy

The smaller, though wealthier and more developed Maldives seems to be an unlikely candidate for competition reform.<sup>122</sup> However, since its independence Maldives had maintained a close relationship with multi-lateral agencies and bodies which is likely to have motivated it to take action in this regard. After becoming a member of the World Bank in 1978 Maldives had long standing implemented

CUTS Centre for International Trade, Economics and Environment (CUTS-CITEE) 2002) <[www.sawtee.org/publications/Discussion-Paper-3.pdf](http://www.sawtee.org/publications/Discussion-Paper-3.pdf)> accessed 29 October 2020; Ratnakar Adhikari 'Competition, Competitiveness and Development: Lessons From Developing Countries' UNCTAD/DITC/CLP/2004/1 (UNCTAD 2004) (<[https://unctad.org/system/files/official-document/ditclp20041\\_en.pdf](https://unctad.org/system/files/official-document/ditclp20041_en.pdf)>) accessed 29 October 2004. Also see the completion report of the Competition Advocacy and Education Programme conducted by SAWTEE in conjunction with DFID's Nepal Office <[www.sawtee.org/programme/completed-programmes/competition-advocacy-and-education-programme-\(caep\).html](http://www.sawtee.org/programme/completed-programmes/competition-advocacy-and-education-programme-(caep).html)> accessed 31 October 2020.

<sup>115</sup> Apurva Kathiwada 'Nepal' 2 <<https://cuts-ccier.org/pdf/23-Nepal.pdf>> accessed 30 October 2020.

<sup>116</sup> See n.19.

<sup>117</sup> Nepali Date 2063-09-30.

<sup>118</sup> 'Nepal Parliament Dissolved' <[http://news.bbc.co.uk/1/hi/world/south\\_asia/2003085.stm](http://news.bbc.co.uk/1/hi/world/south_asia/2003085.stm)> accessed 23 September 2021.

<sup>119</sup> The Interim Constitution of Nepal 2063 (2007) <[www.satp.org/satporgtp/countries/nepal/document/papers/Interim\\_Constitution\\_2007.pdf](http://www.satp.org/satporgtp/countries/nepal/document/papers/Interim_Constitution_2007.pdf)> accessed 23 September 2021; Constitutional History of Nepal <<https://constitutionnet.org/country/nepal-country-constitutional-profile>> accessed 22 September 2021.

<sup>120</sup> The Consumer Protection Act 1997 <[www.lawcommission.gov.np/en/archives/category/documents/law-archives/statutes-acts-law-archives/consumer-protection-act-2054-1998](http://www.lawcommission.gov.np/en/archives/category/documents/law-archives/statutes-acts-law-archives/consumer-protection-act-2054-1998)> accessed 22 September 2021.

<sup>121</sup> See n.114.

<sup>122</sup> The World Bank in Maldives <[www.worldbank.org/en/country/maldives/overview](http://www.worldbank.org/en/country/maldives/overview)> accessed 19 October 2020.

thirty-two projects (with over \$295 million in support) across many development areas;<sup>123</sup> the United Nations Development Programme (UNDP) also had a presence in Maldives since 1978 and had partnered with the government and non-governmental agencies in several projects relating to the environment, climate change, and governance.<sup>124</sup> In 1993 Maldives had become a member of the General Agreement on Tariffs and Trade (GATT) and in 1995 of the WTO<sup>125</sup> Since 1999 Maldives had also been worked closely with the IMF.<sup>126</sup> From 2000 onwards, Maldives had embarked upon a long-term plan to re-organise the Maldivian economy and political system. To this end in 2008 Maldives adopted a new constitution, which not only strengthened constitutional checks and balances in the country but also established the country's first Supreme Court.<sup>127</sup> In 2012 Maldives had implemented the Asian Development Bank's 'Inclusive Micro-, Small-, and Medium-Sized Enterprise Development Project' with a particular focus on enhancing its business environment and business support infrastructure<sup>128</sup> and had committed to adopting a competition law. In 2016 Maldives first circulated a draft competition bill for consultation. However, this bill was not enacted into law.<sup>129</sup> Multi-lateral agencies, nevertheless, kept the issue alive in the Maldivian reform agenda.<sup>130</sup>

It was finally in 2019 that the Maldives government, with the assistance of the United Nations Development Programme (UNDP), pulled together the various projects it was pursuing with different multi-lateral partners to create a holistic Strategic Action Plan 2019–23<sup>131</sup> in which it identified Maldives' economic, social,

<sup>123</sup> *ibid.*

<sup>124</sup> 'About UNDP in Maldives' <[www.mv.undp.org/content/maldives/en/home/about-us.html](http://www.mv.undp.org/content/maldives/en/home/about-us.html)> accessed 19 October 2020.

<sup>125</sup> See n.76.

<sup>126</sup> International Monetary Fund: Maldives <[www.imf.org/en/Countries/MDV](http://www.imf.org/en/Countries/MDV)> accessed 19 October 2020.

<sup>127</sup> Maldives Constitution 2008, Article 145 <[www.constituteproject.org/constitution/Maldives\\_2008.pdf?lang=en](http://www.constituteproject.org/constitution/Maldives_2008.pdf?lang=en)> accessed 23 September 2021.

<sup>128</sup> Maldives: Inclusive Micro-, Small-, and Medium-Sized Enterprise Development Project <[www.adb.org/projects/43566-013/main#project-pds](http://www.adb.org/projects/43566-013/main#project-pds)> accessed 19 October 2020.

<sup>129</sup> 2019 Investment Climate Statements: Maldives <[www.state.gov/reports/2019-investment-climate-statements/maldives/](http://www.state.gov/reports/2019-investment-climate-statements/maldives/)> accessed 19 October 2020.

<sup>130</sup> IMF Country Report No. 19/102 'Technical Assistance Report: Public Investment Management Assessment' para 35 <<https://www.imf.org/en/Publications/CR/Issues/2019/04/17/Maldives-Technical-Assistance-Report-Public-Investment-Management-Assessment-46814>> accessed 19 October 2020. Also in 2016, Maldives had invited the IMF's Fiscal Affairs Department to visit the country for a Public Investment Management Assessment (PIMA) and in its 2017 report the IMF observed that the regulatory frameworks in place in Maldives provided for competition in some but not all public utility sectors.

<sup>131</sup> Strategic Action Plan <<https://presidency.gov.mv/SAP/>> accessed 19 October 2020. The plan was the culmination of extensive consultations with a wide range of stakeholders including government ministries, independent state institutions, state-owned enterprises, and civil society organisations. The compilation of the Plan was led by key ministries and was co-ordinated by the Policy Office of the President's Office together with support from the Ministry of National

and governance reform priorities, the steps needed to accomplish these,<sup>132</sup> and the mechanisms for their delivery.<sup>133</sup> As part of this plan, Maldives recommended the adoption of competition legislation by 2020 to ‘facilitate a conducive business environment’ and to ‘ensure a business environment that is safe, fair and transparent with emphasis on strengthening consumer protection and promoting intellectual property rights’.<sup>134</sup> In September 2020 Maldives finally adopted the Maldives Act in pursuance of this agenda.<sup>135</sup>

### 3.3.3 *Competition in Hard Places: The Context in Afghanistan and Bhutan*

The two remaining South Asian Six – Afghanistan and Bhutan – have not adopted competition legislation, at least not yet. However, these countries are not only at very different stages of preparation in this regard – Afghanistan has already prepared a draft competition law while Bhutan contends that it does not need a competition law and a competition policy is sufficient for its purposes – but also have very different political and economic environments which are likely influence the future of competition. Bhutan, though not a parliamentary democracy, has enjoyed a reasonably stable political environment and has developed a development management system founded on the principle of Gross National Happiness (GNH).<sup>136</sup> Afghanistan’s history on the other hand is a saga of decades of wars, civil strife, and constitutional instability: Afghanistan was a traditional monarchy until 1964 when it became a constitutional monarchy before being declared a Republic in 1973.<sup>137</sup> From 1978 until 2000 the Republic was embroiled in conflict, first with the Soviets and then with the Taliban.<sup>138</sup> In 2001, Afghanistan adopted an interim administrative framework under the Bonn Agreement brokered by the UN, which

Planning and Infrastructure and was completed over a five-month period. Prior to this in October 2000 Maldives it had engaged the International Trade Institute of Singapore (ITIS) to develop the Strategic Economic Plan (SEP). Interestingly, like the IMF PIMA report in 2017 (n.130), the ITIS had also identified lack of competition in the utilities sector (especially electricity and telecommunication) as a stumbling block in Maldives’ the drive towards economic efficiency and had recommended the adoption of appropriate competition legislation. <<https://sustainabledevelopment.un.org/content/documents/4416Maldives-strategic%20economic%20plan.pdf>> accessed 19 October 2020.

<sup>132</sup> *ibid* 10–12.

<sup>133</sup> *ibid* 15.

<sup>134</sup> *ibid* 86.

<sup>135</sup> See n.53 and 54 and text thereto.

<sup>136</sup> The World Bank in Bhutan <[www.worldbank.org/en/country/bhutan/overview](http://www.worldbank.org/en/country/bhutan/overview)> accessed 14 October 2020.

<sup>137</sup> ‘A Brief History of Afghanistan’ <<https://newint.org/features/2008/11/01/afghanistan-history>> accessed 12 October 2020.

<sup>138</sup> Afghan War 1978–92 <[www.britannica.com/event/Afghan-War](http://www.britannica.com/event/Afghan-War)> accessed 12 October 2020.

was replaced in 2004 by the new Constitution of Afghanistan.<sup>139</sup> In 2016 Afghanistan also became a member of the WTO.<sup>140</sup> At the time of writing, Afghanistan had once again fallen into the hands of the Taliban and the fate of its constitution as well as its engagement with multi-lateral agencies was once again rendered uncertain.<sup>141</sup>

### 3.3.3.1 Afghanistan: Between the Draft and its Enactment

Afghanistan's 2004 Constitution had been in place for only about six years when it commenced deliberations for the adoption of a competition law. According to contemporaneous news reports, the Afghan government considered adopting this law due to fear on the part of the 'government and international organisations that as Afghanistan's markets opened, its valuable state assets would be vulnerable to oligarchs who would move quickly to secure monopolies over them'.<sup>142</sup> The deliberation phase in Afghanistan was funded by the DFID, that commissioned a UK thinktank to draft a competition regime for the country. This UK thinktank, in turn, engaged an Indian law firm to assist in deliberating and drafting appropriate competition legislation for the country. In drafting the law, the Indian law firm met with Afghan government officials to understand 'the kind of concepts Afghanistan needs' and incorporated these in the draft law modelled on UNCTAD and Organisation for Economic Co-operation and Development (OECD) templates.<sup>143</sup>

### 3.3.3.2 Bhutan: Too Small for Competition?

Bhutan's small economy is based on agriculture, forestry, and hydropower and is defined by its close relationship with India. Agriculture and forestry are primary sources of livelihood for more than half of Bhutan's population while hydropower comprises 40 per cent of its total exports and 25 per cent of its total revenue.<sup>144</sup> India is also the financier and buyer of Bhutan's hydropower projects and in 2008 agreed to build twelve new hydropower dams in Bhutan by 2020. In 2017 Bhutan signed a memorandum of understanding with Bangladesh and India to jointly construct a

<sup>139</sup> J Alexander Thier, 'The Making of a Constitution in Afghanistan' State Reconstruction and International Engagement in Afghanistan, 30 May–1 June 2003, London School of Economics and Political Science and University of Bonn.

<sup>140</sup> See n.76.

<sup>141</sup> 'Taliban Announces New Government in Afghanistan' <[www.aljazeera.com/news/2021/9/7/taliban-announce-acting-ministers-of-new-government](http://www.aljazeera.com/news/2021/9/7/taliban-announce-acting-ministers-of-new-government)> accessed 23 September 2021.

<sup>142</sup> 'Indian Law Firm ELP Drafts Afghanistan's Competition Act' <[www.legallyindia.com/content/indian-law-firm-elp-drafts-afghanistans-competition-act-20101210-1604](http://www.legallyindia.com/content/indian-law-firm-elp-drafts-afghanistans-competition-act-20101210-1604)> accessed 13 October 2020.

<sup>143</sup> *ibid.*

<sup>144</sup> 'Bhutan Economy Profile' <[www.indexmundi.com/bhutan/economy\\_profile.html](http://www.indexmundi.com/bhutan/economy_profile.html)> accessed 14 October 2020.

new hydropower plant for exporting electricity to Bangladesh.<sup>145</sup> Bhutan also shares a close economic relationship with India: 80 per cent of Bhutan's imports come from India; the Bhutanese currency is pegged to the Indian rupee, and India is also Bhutan's primary source of foreign aid.<sup>146</sup>

Given the close economic relationship between India and Bhutan it is not surprising that in 1992, just as India was opening up its economy, the Bhutanese government also initiated a process of de-monopolisation, generating greater competitiveness and enhancing consumer choice in the country by requiring companies supplying goods to the country, to engage with more than one dealer.<sup>147</sup> In the years that followed, the Bhutanese government adopted several policies and laws to create an enabling environment for the private sector including a Companies Act, Commercial Sale of Goods Regulation, Industrial Property Regulation, and De-monopolisation policy, and so on.<sup>148</sup> By 1999 Bhutan had also created sectoral regulators, for instance in the telecom sector,<sup>149</sup> and by 2001 it was contemplating consumer protection legislation to pursue the dual aims of promoting consumer welfare and competition in the country.<sup>150</sup> In 2012, Bhutan adopted a Consumer Protection Act,<sup>151</sup> (intended to be a hybrid consumer and competition instrument), on the basis of a report prepared by an Indian research organisation,<sup>152</sup> however, the Act that resulted from this exercise was more in the style of a sales of goods act than a competition law.<sup>153</sup> In 2015 Bhutan finally adopted its first competition policy drafted by an Indian consultant on the basis of a report commissioned by UNCTAD. In 2020 it updated this policy.<sup>154</sup>

<sup>145</sup> *ibid.*

<sup>146</sup> See n.136.

<sup>147</sup> 'Competition Policy in South Asian Countries' <[https://cuts-ccier.org/pdf/Competition\\_Policy\\_in\\_South\\_Asian\\_Countries.pdf](https://cuts-ccier.org/pdf/Competition_Policy_in_South_Asian_Countries.pdf)> accessed 14 October 2020, 2. Also see the very interesting story about Bhutan taming the Indian multi-national Hindustan Levers, in Pradeep Mehta (ed) 'Competition Regimes in the World: A Civil Society Report' chapter 5, 26 (CUTS 2006) <<https://competitionregimes.com/publications/>>

<sup>148</sup> Proceedings and Resolutions of the 75th Session of the National Assembly <[www.nab.gov.bt/assets/uploads/docs/resolution/2014/75th\\_Session.pdf](http://www.nab.gov.bt/assets/uploads/docs/resolution/2014/75th_Session.pdf)> accessed 15 October 2020.

<sup>149</sup> See n.147.

<sup>150</sup> *ibid.* During this period, the UNCTAD was also engaged in the promotion of consumer protection and competition in Bhutan. 'Capacity-building on Competition Law and Policy for Development: A Consolidated Report' (UN 2008) 23. See <[https://unctad.org/system/files/official-document/ditcclp20077\\_en.pdf](https://unctad.org/system/files/official-document/ditcclp20077_en.pdf)> accessed 29 November 2021.

<sup>151</sup> 'Consumer Protection Act 2012' <[www.moea.gov.bt/wp-content/uploads/2017/07/Consumer-Protection-Act-of-Bhutan-2012.pdf](http://www.moea.gov.bt/wp-content/uploads/2017/07/Consumer-Protection-Act-of-Bhutan-2012.pdf)> accessed 15 October 2020.

<sup>152</sup> 'Consumer Protection in Bhutan' <<https://cuts-ccier.org/consumer-protection-in-bhutan/>> accessed 15 October 2020. Also see Civil Society Report, ch 5 (n.147).

<sup>153</sup> *ibid.*

<sup>154</sup> The consultant Vinod Dhall had been a secretary in the Indian Ministry of Company Affairs. In July 2003 he had joined the CCI as an Officer on Special Duty and was later appointed as CCI's member-administration before resigning in 2008. 'Acting CCI Chairman Vinod Dhall Quits' <[www.financialexpress.com/archive/acting-cci-chairman-vinod-dhall-quits/325038/](http://www.financialexpress.com/archive/acting-cci-chairman-vinod-dhall-quits/325038/)> accessed 15 October 2020.

### 3.4 TRANSFER MECHANISMS AND PATTERNS ACROSS SOUTH ASIA

A review of the contexts and institutions engaged by the South Asian Six in adopting their competition legislations reveals that despite the variations in their histories, governance structures, and the size of their economies there are interesting parallels not only in the transfer mechanisms and institutions through which they adopted their competition legislation but also with the adoption processes of India and Pakistan.

Sri Lanka's primary motivation for adopting the Sri Lankan Act was external.<sup>155</sup> However, rather than simply resorting to *emulation* to adopt a competition law aligned with Western precedents, Sri Lanka engaged in *socialisation* of competition principles and adapted these to suit its context and its economic priorities. It also enacted the law through the parliament, which while often besieged by constitutional crises, has been functioning since 1948. In doing so, Sri Lanka, at least in theory, aggregated knowledge but also obtained the constructive consent of stakeholders. Interestingly, the Sri Lankan Act that results from this exercise, while uniquely Sri Lankan in scope and purpose, prioritises consumer protection and public interest, relegating competition regulation to an adjunct to these primary goals thereby reflecting domestic capacity and priorities rather than external recommendations.

Nepal, perhaps more so than Sri Lanka, was motivated, if not urged, by multi-lateral agencies to adopt a modern competition legislation. Like Sri Lanka, Nepal too engaged domestic institutions at the deliberation phase, however, unlike Sri Lanka, Nepal did not have a stable constitutional or parliamentary history and therefore was unable to meaningfully aggregate input and knowledge from the domestic context. In fact, at the time Nepal adopted its competition legislation it was governed directly by the King who was under no legal obligation to aggregate knowledge from stakeholders. However, the legislative exercise in Nepal was informed by reports of Nepalese thinktanks that had been prepared in consultation with their Indian counterparts and multi-lateral agencies. The Nepalese adoption strategy may therefore be deemed to be a mix of *coercion* and *socialisation* albeit delivered through top-down, exclusive institutions belonging entirely to the executive (Table 3.2).

The mechanism of *coercion* appeared to be predominant in Bangladesh also. Bangladesh, like Sri Lanka and Nepal before it, had been motivated by the WTO and other multi-lateral agencies to adopt a competition law. However, unlike Nepal (but somewhat like Sri Lanka), it had resisted doing so for several years, in part because it was not convinced that a modern competition law was compatible with Bangladesh's more pressing economic needs of eliminating poverty and ensuring inclusive growth. During this period, non-governmental thinktanks operating in Bangladesh had liaised with Indian thinktanks to understand the competition

<sup>155</sup> See n.79 and 80 and text thereto.



TABLE 3.2. *Strategies for adopting competition laws across South Asia*

Countries	Motivation	Mechanisms	Institutions
<b>India</b>	Internal with some international factors.	<ul style="list-style-type: none"> <li>● <i>Dominant</i>: socialisation.</li> <li>● <i>Others</i>: emulation; regulatory competition.</li> </ul>	<ul style="list-style-type: none"> <li>● Bottom-up, participatory, inclusive;</li> <li>● Historic depth;</li> <li>● All three branches of state.</li> </ul>
<b>Sri Lanka</b>	External more than internal.	<ul style="list-style-type: none"> <li>● <i>Dominant</i>: coercion and socialisation.</li> <li>● <i>Others</i>: emulation.</li> </ul>	<ul style="list-style-type: none"> <li>● Bottom-up, participatory, inclusive;</li> <li>● Historic depth however, also political strife.</li> <li>● Executive and legislature engaged.</li> </ul>
<b>Nepal</b>	External. No evidence of internal motivation.	<ul style="list-style-type: none"> <li>● <i>Dominant</i>: coercion and socialisation.</li> <li>● <i>Others</i>: emulation.</li> </ul>	<ul style="list-style-type: none"> <li>● Primarily top-down and exclusive;</li> <li>● No historic depth;</li> <li>● Executive only.</li> </ul>
<b>Pakistan</b>	External. Limited and weak evidence of internal demand.	<ul style="list-style-type: none"> <li>● <i>Dominant</i>: Coercion;</li> <li>● <i>Others</i>: emulation, regulatory competition, and socialisation.</li> </ul>	<ul style="list-style-type: none"> <li>● Primarily top-down and exclusive;</li> <li>● Limited historic depth;</li> <li>● Mostly executive with limited engagement with Parliament.</li> </ul>
<b>Bangladesh</b>	External. Limited and weak evidence of internal demand.	<ul style="list-style-type: none"> <li>● <i>Dominant</i>: coercion and socialisation.</li> <li>● <i>Others</i>: emulation.</li> </ul>	<ul style="list-style-type: none"> <li>● Bottom-up, participatory, inclusive;</li> <li>● Limited historic depth;</li> <li>● Executive and legislature engaged. Limited engagement with judiciary also.</li> </ul>
<b>Maldives</b>	External	<ul style="list-style-type: none"> <li>● <i>Dominant</i>: coercion and socialisation.</li> <li>● <i>Others</i>: emulation.</li> </ul>	<ul style="list-style-type: none"> <li>● Bottom-up, participatory, inclusive;</li> <li>● Limited historic depth;</li> <li>● Executive and legislature engaged.</li> </ul>
<b>Afghanistan</b>	External	<i>Dominant</i> : Coercion	<ul style="list-style-type: none"> <li>● Top-down and exclusive</li> <li>● No historic depthlong standing political strife.</li> </ul>
<b>Bhutan</b>	External	<i>Dominant</i> : Coercion <i>Others</i> : Socialisation.	<ul style="list-style-type: none"> <li>● Top-down and exclusive.</li> </ul>

regulation model most appropriate for Bangladesh and to create domestic awareness of the importance of competition regulation. It is not clear, however, whether these efforts had any impact on the content of the Bangladeshi Act, which despite being enacted by the parliament reflected the recommendations of the multi-lateral

institutions rather than addressing the context specific concerns that had been expressed prior to its adoption. In a testament to the influence of the Indian think tanks the language of the Bangladeshi Act also mirrored that of the Indian Act. Maldives, like Bangladesh, had been working closely with multi-lateral agencies for the adoption of its competition law and the substantive provisions of the Maldives Act largely conformed to the Western competition principles on which they were based. However, Maldives had succeeded in generating greater acceptance for the proposed legislation by issuing the Strategic Action Plan prior to adopting the competition legislation and by outlining the rationale for doing so. Therefore, while Maldives may also be deemed to have adopted its competition law through a mix of *coercion* and *socialisation*, it is likely to have struck a better balance between the two, due in part to the nature of its relationship with multi-lateral agencies and its indigenous efforts in creating awareness.

Afghanistan and Bhutan, the two South Asian countries that have yet to adopt a competition law, have both been *coerced* by DFID and UNCTAD respectively to engage with competition principles. In both Afghanistan and Bhutan, the drafting of the competition law and policy respectively was outsourced to Indian consultants, albeit in Afghanistan indirectly through a UK-based thinktank. While in the case of Bhutan there is some evidence of *socialisation* in the linking of competition to the values of GNH, there is no evidence of a comparable attempt in Afghanistan.

This review also reveals two important commonalities among all South Asian countries: first, that with the exception of Bhutan, all South Asian countries have been motivated to adopt their competition legislations, due to their engagement with the WTO albeit to varying degrees. Second, that with the exception of India, even when these countries have adopted their competition legislations through their constitutional legislative institutions, these institutions have lacked the experience and the expertise meaningfully aggregate either local knowledge or consent. The combination of these two factors makes these countries particularly susceptible to *coercion* from multi-lateral agencies, and in respect of Bangladesh, Nepal, Bhutan, and Afghanistan, also from India. The effect of *coercion* is mitigated to some extent due to the opportunity to *socialise* and adapt the proposed legislation to the context provided by the engagement of domestic thinktanks (in Nepal and Bangladesh) and the enactment of competition laws through democratic institutions (in Bangladesh, Maldives, and Sri Lanka). However, the question remains whether this exercise also generates compatibility and legitimacy for the adopted laws and thereby facilitates their subsequent implementation.

### 3.5 COMPATIBILITY, LEGITIMACY, AND THE POTENTIAL FOR SUCCESS OF THE ADOPTED LEGISLATION

As in the case of India and Pakistan, the extent of compatibility and legitimacy of modern competition legislations in the South Asian Six may not be measured

directly and may only be deduced from the mechanisms and institutions employed by these countries in the adoption process.<sup>156</sup> As discussed in Chapter 1, a law is more likely to be compatible with the context for which it is intended, if it is adopted through bottom-up, participatory, and inclusive institutions that have the capacity not only to aggregate local knowledge but also to utilise it in adapting the law to the context. The adoption through bottom-up, participatory, and inclusive institutions is also likely to generate greater legitimacy for the laws: although laws may enjoy formal legitimacy simply for having been introduced through institutions that have legality and authority in the country, a more substantive legitimacy is only possible if there is a degree of public consent, whether actual or constructive, to the law being adopted. The greater the compatibility and legitimacy of the adopted law, the greater its chances of being understood, accepted, and utilised in the adopting country and of enjoying a productive relationship with other elements in the legal system of the host country. This, in turn, is a critical factor in ensuring that the adopted law is translated from being a law in the books to law in action and steadily integrates into the host country's pre-existing legal system.

In order to understand the extent of compatibility and legitimacy generated in the course of adoption in Bangladesh, Maldives, Nepal, and Sri Lanka that have actually adopted competition legislation, it is important to consider the nature of their relationship with the WTO and other multi-lateral agencies; the branches of state that they engaged in the deliberation and enactment phases; and finally, the capacity of the institutions employed by them in the deliberation, rather than only in the enactment phase, to aggregate both tacit local information and consent. It is evident even from a cursory review of the adoption processes in Sri Lanka, Nepal, Bangladesh, and Maldives,<sup>157</sup> that as in Pakistan, the influence of the WTO and other multi-lateral agencies was a significant motivation in the adoption of competition laws.<sup>158</sup> It is further evident that Sri Lanka and Bangladesh, like India, have enacted their competition legislations through their parliaments, which are designed in terms of their constitutions, as bottom-up, participatory, and inclusive institutions, while Nepal adopted its legislation in a period when executive power was being exercised directly by the King. Given that compatibility and legitimacy derive from the institutions rather than the motivations through which laws are adopted, it may be argued that the competition legislation in Bangladesh, Maldives, and Sri Lanka, is likely to have the same degree of compatibility and legitimacy as the Indian Act has in the Indian context, while the extent of compatibility and legitimacy in Nepal is likely to be commensurate with that of Pakistan.

However, a closer look at the adoption processes in Bangladesh, Maldives, Nepal, and Sri Lanka suggests that such a conclusion is superficial because even though the

<sup>156</sup> See Chapter 2, Section 2.4.

<sup>157</sup> See Table 3.2.

<sup>158</sup> See Chapter 3.

impetus to adopt modern competition legislation came from external sources, the relationships between these countries and these external sources was not uniform: Among them, Maldives and Nepal appear more aligned with the vision of the multi-lateral agencies for their economies, while Sri Lanka and Bangladesh appear to insist on a competition legislation specifically tailored to their contexts. Further, in respect of the institutions engaged by these countries in the deliberation phase, only Maldives seems to have attempted a broad-based consultation by developing a holistic Strategic Action Plan prior to enacting its competition legislation. There is little evidence of a similar exercise in Sri Lanka, Nepal, or Bangladesh: there is no information of a governmental committee (like the Raghavan Committee in India), or a team formed and led by multi-lateral agencies (like the World Bank team in Pakistan), having been established in any of these countries to investigate the appropriateness of competition legislation and to inform the government and the parliament of its findings and recommendations. However, there is information that thinktanks based in each of these countries had produced some discussion and proposals for the legislation which are likely to have informed the substance of the adopted competition legislations. For all these countries, therefore, it may be argued that the deliberation phase generated limited compatibility and even lesser stakeholder consent and legitimacy.

Further although these countries engaged their parliaments in the enactment phase, the actual capacity of these parliaments to aggregate local knowledge and to apply it to the legislation proposed to be adopted, or to garner meaningful consent from stakeholders is limited due to their deference to the executive and multi-lateral agencies, their lack of historic depth and, their limited experience of legislating. In Nepal, the law was adopted before the parliament had even been re-instated and therefore the possibility of debates in parliament or through its committees does not arise. Even in Sri Lanka and Bangladesh the parliamentary system had been under considerable pressure due to long-standing civil strife and therefore was not equipped for or most likely even focused on fully engaging with the proposed legislation. Maldives, the most stable country from a governance point of view, had a long history of monarchy as well as an overt and accepted dependence on multi-lateral agencies for economic advice which it is not likely to have challenged.

This complex picture returns mixed results for compatibility and legitimacy of competition legislation in these countries. Although the input of the governments of these countries in respect of competition principles proposed by multi-lateral agencies creates some compatibility, and the adoption of these laws through the parliament confers authority and legality on them, these laws retain the unmistakable stamp of their Western multi-lateral origins (especially the Bangladeshi and Maldives Act) and are only awkwardly *socialised* for context (for instance, the Nepalese Act). At times this manifests in the repetition in the content and the overall lack of conceptual clarity and at others in an ill-defined enforcement trajectory (for instance, in the Sri Lankan and the Nepalese Acts). Similarly, the

legitimacy of the adopted competition legislations is undermined due to these having been enacted without a broad-based consultation with indigenous stakeholders beyond the limited formal debates in parliament. The absence of such consultation also suggests another missed opportunity to enhance the compatibility of the adopted laws with context.

The consequent superficial compatibility and legitimacy of the adopted competition legislation is likely to have a negative impact on the extent to which these laws may be understood, applied, and utilised in these countries and on the productivity of their interactions with the pre-existing legal system of the countries. This in turn is likely to adversely affect the extent to which these laws are translated from being laws on the books into laws in action and at the pace and extent to which they may become integrated in the pre-existing legal systems of the adopting countries. Although Afghanistan and Bhutan have not adopted competition laws, the conclusions regarding compatibility and legitimacy are equally likely to hold true for their draft law and policy respectively, given that both countries have engaged with competition legislation due to the persuasion of Western, multi-lateral agencies rather than in response to an internal demand and have had little (in the case of Bhutan) or no (in the case of Afghanistan) domestic input in the policy adopted by or the law proposed for them.