# 23

# *Nepal**

*– Navin Dahal*[†]

Nepal, with a population of 24.7 million and 147,181 square kilometres of land area, is a small landlocked kingdom in the foothills of the Himalayas. It is surrounded by China in the North, and India on all other sides. With nearly half of its population living below the poverty line, Nepal, a monarchy, is one of the poorest countries in the world. In addition, there are large disparities across income groups, between urban and rural areas, and across socio-ethnic groups.

| PROFILE | |
|---|---|
| Population: | 24.7 million*** |
| GDP (Current US$): | 5.8 billion*** |
| Per Capita Income: (Current US$) | 240 (Atlas method)***<br>1,370 (at PPP.)** |
| Surface Area: | 147.2 thousand sq. km |
| Life Expectancy: | 59.6 years** |
| Literacy (%): | 44 (of ages 15 and above)** |
| HDI Rank: | 140*** |

*Sources:*
- World Development Indicators Database, World Bank, 2004
- Human Development Report Statistics, UNDP, 2004

(**) For the year 2002
(***) For the year 2003

### Economy

Nepal still has a highly underdeveloped economy with agriculture accounting for 40 percent of the GDP and 76 percent of the employment. Manufacturing and services account for nine and 40 percent of GDP respectively. Other than the difficult terrain and paucity of natural and trained human resources, the violent Maoist insurgency – started in 1996 – makes economic development difficult. Currently, faced with a violent strife, the parliament too is in suspension with the monarch running the Government.

### Competition Evolution and Environment

In Nepal, 1951 saw the end of the autocratic Rana regime, which ruled for more than a century (1846-1951). 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 Companies Act had no provision for private limited companies. The implementation of a new Act in 1951 made the establishment of private limited companies possible, and approximately 100 joint stock companies were established between 1952 and 1964. However, it was only with the formulation of the first five-year plan in 1956 that serious attempts at progress in economic and industrial development were initiated.

Influenced by the Russian and Indian examples, Nepal's industrial development was also dominated by establishment of import-substituting public enterprises. The generous aid from Russia and China, which helped to establish industries, contributed to this process. The first five decades in the life of modern Nepal saw the establishment of government-owned industries, producing jute, sugar, cigarettes, cement, bricks, shoes, etc.

Though the 1974 Industrial Enterprises Act shifted the Government's focus from the public to the private sector, the industrial sector remained dominated by public sector enterprises until the early nineties. In fact, the state is still involved in many business activities.

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 the supply of goods and services by the public sector. Understandably, ensuring competition was not a priority for the architects of modern Nepal, who, in many cases, promoted public monopolies. The restoration of a

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multi-party democracy in 1990 saw the shift in government policies in favour of economic liberalisation and the privatisation of the public sector enterprises.

In 1990, Nepal adopted a new Constitution. The drafters of the new Constitution have clearly mentioned in the directive principles that the Constitution of Nepal aims at promoting the economic well-being of all sections of the society, and is against the concentration of economic power in the hands of a few. Article 25(2) of the Constitution states that, 'the role 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 the society, by making arrangements for the equitable distribution of economic gains on the basis of social justice, and by making such provisions as will prevent economic exploitation of any class or individual'.

Nevertheless, legislative measures affecting industries and enterprises are still dominated by the mindset of 'state allocation of resources' rather than the 'market allocation of resources'. Thus, even after more than a decade of economic liberalisation, Nepal is still struggling for the enactment of a competition law.

**Competition Law**

During negotiations with members of the WTO on accession, Nepal made a voluntary commitment to enact a competition law by July 2004. Accordingly, the Ministry of Industries, Commerce and Supplies prepared a draft competition bill. The salient features of the draft bill are discussed below.

The objective of the draft bill, as highlighted in its preamble, is to ensure healthy competition in the economy by restricting anticompetitive behaviour.

The draft bill prohibits price and market fixing, and puts restrictions on the production and sale of goods or services that have a negative impact on competition; collusive bidding; syndicates; cartels; predatory pricing; refusal to deal; tied selling; and misleading advertising. The draft bill also has provisions to curtail the abusive power of monopolies, and proposes to bring M&As under the scrutiny of the future competition authority.

The draft bill covers all governmental, non-governmental and private entities. It has also proposed extra territorial jurisdiction, wherein the activities of firms outside Nepal, affecting competition in Nepal, will also come under the purview of the law.

To make the implementation of the Act more effective, and so as not to repeat the mistakes made during the enactment of the Consumer Protection Act, the draft bill envisions a separate institution for enforcement of the regulations. Article 15 provides for the establishment of a three-member Competition Promotion Commission (CPC). To minimise political interference in the functioning of the Commission, it is proposed that the CPC would be made directly accountable to the Cabinet/Council of Ministers. Clear demarcation of investigative and adjudicative functions has been made in the draft bill as well, which sets terms for investigations to be conducted by the CPC, whilst cases are to be filed at, and decided, by Commercial Courts. Provision for appeals has also been set out in the proposed bill.

The proposed bill also considers the 'development dimension,' by providing for certain exemptions and exceptions from the application of competition law. Such sectors/areas include: small and cottage industries, small farming businesses and farmers' cooperatives, research and development cooperation, sharing of data and information about market opportunities amongst the competitors, export cartels, collective bargaining rights of workers, etc.

However, the Government could not meet the deadline agreed at the WTO, and the draft bill has yet to see the light of the day. Going by the press reports, the Ministry of Law has expressed serious concerns regarding the provision of an independent competition authority. The draft has been sent back to the Ministry of Industries, Commerce and Supplies, for reconsideration.

**Other Laws that Affect Competition**

In addition, the following laws also have the potential to affect competition in the Nepalese economy:

- Essential Services Operation Act, 1957;
- Food Act, 1966;
- Nepal Standards (Certification Mark) Act, 1980;
- Pharmaceuticals Act, 1978;
- Export and Import Act, 1957;
- Nepal Agency Act, 1957; and
- Privatisation Act, 1994.

**Anticompetitive Business Practices**

***Cartels***

Most of the trade associations, for example, bankers, airlines, brick manufacturers, sugar manufacturers and barbers, have turned into cartelised bodies. The effects of these cartels on competition and on consumer welfare are obvious. In 1999, the tariffs on sugar increased from 10 percent to 40 percent. Once the imports were foreclosed, the sugar cartel came into action and raised the price of sugar by 10 percent.

***Syndicate Systems***

Such systems are particularly prevalent in the surface transportation sector. Bus and truck operators regulate the frequency of their services. Whilst bus fares are still regulated by the Government, truckers are free to charge a 'market-determined' price. After forming a syndicate, truck drivers have begun to charge users more. In Kaski, West

Nepal, the pre-syndicate fare charged by the truck drivers was Rs 1,600 per trip, which then went up to Rs 2,200. In addition, there is no incentive given to transport entrepreneurs to upgrade the quality of their services. The end result is extremely high prices for low quality services.

**Box 23.1: Syndicate System in Surface Transportation**

Majority of transport entrepreneurs in the country have formed local syndicates, which allow none other than syndicate members to ply their vehicles on the designated long routes. They have not only prevented other entrepreneurs from entering the transport business, but were also involved in vandalising buses which trespass on the demarcation of different syndicates.

Ironically, while the Government adopted a liberalised and free economy about a decade ago, it also created a provision in the Transportation Act for syndicates.

Syndicate operators claimed that they did not allow non-members/buses to ply on 'their' highway, and if they did ply, they would be fined heavily. Companies outside the syndicate system felt that it created problem for their operations. They blamed the Government for being a mute spectator of the system and held it responsible for perpetuating near monopoly, thereby rewarding inefficiency and carelessness.

*Source: Anticompetitive Practices in Nepal, Adhikari and Regmi, CUTS and SAWTEE, 2001*

***Collusive Bidding***

Bid rigging occurs mainly in pipe manufacturing and army supplies. In this context, specific cases have been known to arise with supplies to the Royal Nepalese Army and Nepalese Police, as well as by a number of polythene pipe manufacturers whilst bidding for the contract to supply pipes to the Nepal Drinking Water Corporation.

Fearing poor quality as a result of this bid rigging, municipalities do not even adhere to the 'lowest bidder' legal provision.

***Tied-selling***

Tied-selling occurs when players in a market or sector use deception or force to persuade consumers to buy products or services from only them or associated parties. The most commonplace tied-selling occurs in sectors where there are a number of related services involved. For example, in the health sector, where a doctor may persuade their patient to only buy medicine from a recommended chemist, or have tests done at the same or a particular clinic, again recommended by the doctor – apparently on the pretext of 'quality'.

The same tied-selling can occur in schools, where some schools will make it mandatory for parents to purchase school uniforms and textbooks from the school itself, which may be charging higher prices than other places.

A particular case of tied-selling in Nepal has been in the cement industry. The cement manufacturers demand that for every two sacks of Nepalese cement purchased, which is a fast-selling item; one sack of Indian cement must be purchased, which is a slow-selling item. In this context, the consumers are being negatively affected, so that the cement manufacturers do not lose money in the sale of Indian cement.

Cases of potential predatory behaviour have also been observed in Nepal, most notably in the food and newspaper markets; and price discrimination is also rife in the banking sector. On the basis of risk perception, banks are charging higher interest rates to borrowers of small amounts, and charging lower interest rates to those borrowing large amounts. Curiously, the largest borrowers are the biggest businesses, making them more of a risk to banks if they file for bankruptcy. This practice of price discrimination also limits the market contestability of small entrepreneurs.

**Regulatory Legislation**

Though Nepal does not have a competition law to ensure competition in the market, domestic enterprises have been exposed to international competition due to the liberal investment and import regimes, and there are a few legislations that have scattered provisions relating to competition.

The enactment of the Industrial Enterprises Act, 1992 and Foreign Investment and Technology Act, 1992 were a major step in the liberalisation process, as foreign investment was opened in most of the sectors; and licensing was abolished, except for in a few areas concerning national sovereignty and security, public health, and the environment. This, together with the lowering of tariffs, can be termed as path-breaking in increasing competition within most industrial sectors.

The reduction and restructuring of import duties; and elimination of most quantitative restrictions and import licensing requirements, as part of the reform programmes, have played an important role in enhancing competition in the domestic market. Due to the reforms, the average rate of protection has declined from nearly 111 percent in 1989, to 22 percent in 1993 and, to 14 percent in 2002. Most rates now fall at 05-25 percent, whilst more than 70 percent of the rates exceeded 25 percent in 1990 (HMGN/MOICS 2003, 19).

***The Black Marketing and Certain Other Social Crimes and Punishment Act, 1975***

This Act was brought in mainly to maintain the health, convenience and economic well-being of the public; and also prohibit restrictive business practices, such as black marketing, profiteering, deflection of commodities, hoarding and creation of artificial scarcity.

Section two (a) of the Act states that 'In case any person sells any commodity at a price higher than the price fixed by His Majesty's Government; and, in case His Majesty's Government 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 His Majesty's Government by notification in the 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 control and when there were restrictions on imports, is meaningless in today's liberal environment.

Thus, though provisions in the Act, such as the one in Section seven, prohibiting the adulteration of drugs and sale of adulterated drugs, do protect the interest of the consumers, the Act is very weak in promoting competition in a market-based, open economy.

***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 '*Licence Raj'* and was catalytic in infusing competition into the market.

The preamble of the Act states that, '…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 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 law, concerning the industrial sector.

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

Similarly, permission is not required to open industries, other than those producing explosives, including arms, ammunition and gunpowder; security printing; bank notes and coin minting; and cigarettes, *Bidi*, cigars, chewing tobacco, *khaini* industries, and industries producing goods of a similar nature utilising tobacco as the basic raw material; and alcohol or beer producing industries.

***The Foreign Investment and Technology Transfer Act, 1992***

This Act, enacted concomitantly with the Industrial Enterprises Act, 1992, as stated in its preamble, was brought in 'to promote foreign investment and technology transfer for making the economy viable, dynamic and competitive, through the maximum mobilisation of the limited capital, human and the other natural resources'.

The Act has opened up all the sectors to FDI, barring a few, such as cottage industries, real estate and those affecting national security. By promising approval within thirty days of application, the Act tries to facilitate FDI in Nepal. Foreign investors are allowed to hold 100 percent ownership in industries. The opening up of the economy, to foreign investment, was a major policy shift by the Nepalese Government and, in principle, was thought to be competition-enhancing.

**Consumer Protection**

***The Consumer Protection Act, 1998***

This Act was adopted to protect the interest of consumers, not to *per se* induce competition in the market. This Act addresses restrictive 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, affecting their quality, quantity, price, measurement, design, make, etc. This Act also prohibits the sale of sub-standard goods or services.

As such, this Act mainly addresses 'irregularities concerning the quality, quantity and prices of consumer goods or services'. Having said this, the provisions to ensure the benefits for consumers do affect competition, as most unfair business practices affect both consumers and competitors, albeit indirectly.

Particularly, those provisions in the Act that ensure consumers' rights '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 goods, or taking any other similar actions or by hoarding any consumer goods or services, or otherwise creating an artificial shortage, or selling and supplying such goods or services 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 has, however, been very weak as it has neither been able to protect the consumers' interest, nor promote competition in the Nepalese economy.

**Regulatory Framework**

Till the early 90s, the area of utilities was completely in the hands of the State, and there was virtually no involvement by the private sector in areas, such as power, telecom, and water supply. In line with the economic liberalisation process initiated by the Government in the early 90s, the utilities and other services sectors, traditionally dominated by state monopolies, have been opened to the private sector. The generation of power was opened in the early nineties, and the private sector was allowed in the telecom sector in 2003.

Following the change of the Government's role from provider to regulator and facilitator, the following agencies have been formed to regulate the different sectors of the economy:

- The Nepal Telecommunications Authority (NTA) – to regulate the telecommunication sector;
- Electricity Development Board – to regulate the electric power sector;
- The Insurance Committee – to regulate the insurance sector; and
- The Civil Aviation Authority – to regulate the civil aviation sector.

The central bank, Nepal Rastra Bank, regulates the financial and banking sector in Nepal, and the Securities Board oversees the securities market.

***Telecommunications Policy[1]***

The Nepali telecommunications sector is still relatively young, the first telephone exchange being installed in 1960. Since then, the sector consisted of only one state-owned monopoly – NTC, dominating the market since its inception in 1975, mainly through 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 market. Nevertheless, with a tiny foothold on entry, there is little difference made to the competition scenario. Contributing factors, to some extent, to lack of competition are also the absence of comprehensive competition legislation, as well as regulatory inefficiencies.

***Legislation***

The first national telecom policy was adopted in 1992, and then later amended in 1999. The objectives of the policy were to:

- liberalise the telecom sector;
- increase private sector participation; and
- promote competition.

A Telecommunications Act was passed in 1998, which in turn lead to the privatisation of the NTC and the establishment of a regulatory body – the NTA, in addition to a Radio Frequency Determining Committee, to ensure that efficiency gains were passed onto the consumer.
The NTA was given the responsibility of:

- granting licences;
- prescribing, fixing and approving the quality of telecommunications plants and equipment;

**Box 23.2: Mobile Telecommunication Service: No End to Monopoly**

In 2000, a tender was floated to select the first private mobile telephone service provider, to compete with the State-owned monopoly – the NTC. An award was issued to Modi Group, the Indian mobile service provider, and a local investor, Khetan Group. Despite auspicious beginnings, the venture quickly became encumbered by a series of barriers.

First, a formal protest to the contract was issued by the NTC trade union. Whilst NTC was not involved directly, a petition from the labour union had special resonance in a society combating a strong Maoist opposition. The consortium overcame this impasse, only to be instructed to apply for a radio spectrum licence, a process that introduced a nine months delay.

Once the licence and spectrum issues were agreed, the Government demanded a bank guarantee for bid insurance – a condition that was not a part of the initial tender. The issue was resolved after months of negotiation when a local bank stepped in.

Finally, after all the legal, labour, regulatory, spectrum and financial impediments failed to deter the entrepreneurs; the Government threatened criminal inquiry and invoked an investigation by the Commission for Investigating Abuse of Authority. The group was cleared of charges. In the end, after four years of wrangling, no investment has been made, and the company has failed to initiate operations. In the mean time, NTC's operations have prospered.

*Source: Zita, Ken. 2004, www. ndaventures.com*

1 "Anticompetitive practices in Nepal", CUTS and SAWTEE, 2001.

- inspecting and monitoring the services provided by the operators;
- settling disputes between service providers; and
- providing suggestions to the Government, on policy matters and the optimal strategy to be undertaken in the respective sector, in order to make telecom services more reliable and easily available to consumers, whilst protecting consumer rights and promoting healthy competition in the telecom market.

A major barrier to entry, however, is the 'safeguard clause' in the 1998 Telecom Act, prohibiting more than two operators providing basic and mobile telephony services in the market. As a result, there are only two providers of basic telephone services in the country. Nepal Telecom, the only 100 percent government-owned company still dominates the sector, along with United Telecom Limited (UTL). This is a joint venture of three Indian companies, *Videsh Sanchar Nigam Limited* (VSNL), Telecom Consultants (India) Limited (TCIL) and a Nepali Partner – the Bishal Group.

The policy was revised and amended in 2004, in accordance with the Government's in-built agenda. This legislation could overrule the safeguard clause in the original act, depending on whether the NTA is able to take advantage of the loopholes. For example, by showing that the demand for telephone services is greater than the supply, in which case, more suppliers are needed and the duopoly clause is, in fact, hindering the growth and development of the telecommunications market. Therefore, the NTA can recommend that the clause be removed from the Act.

The new draft of the Act has been compiled with international assistance, and provides a more scrupulous schedule for rapid liberalisation, aiming to remove constraints on investment and quicken the market opening process.

The new draft details a liberal regulatory environment, based on:
- Open licensing;
- Widespread competition;
- Specific service obligations for licensed operators; and
- Proposed regime for non-compliance.

This was done due to WTO obligations and a sketch of the NTC reforms. The NTC was renamed Nepal Telecom (NT) in April 2004.

Some of the recommendations in the revised policy include:
- The opening of the telecom sector to new operators without restrictions, but with a limited amount of radio spectrum frequency allowance (Section 4.4);
- The introduction of a multi-service and multi-operator system, dependent upon the amount of radio frequency allowance. Operators are also allowed to resell (Section 5.4.1);
- The introduction of an open licensing regime with new and transparent licensing methods, that would create a level playing field (Section 4.5);
- The restructuring of NT in order to reduce Government ownership (Sections 4.10 and 5.10.3);
- The promotion of private sector participation - The Ministry of Information and Communication, along with the NTA should keep the private sector fully informed of sectoral reform developments and licensing opportunities in a transparent manner (Section 4.6);
- The introduction of new operators of mobile services through tenders on the basis of maximum rural coverage, defined as commercial coverage without subsidies (Section 5.1.1); and
- The Government should purchase the services from several operators, based on price and quality assessments, instead of from the incumbent NT (Section 5.4.6).

The revised policy takes relatively more rigorous steps towards liberalisation and a progressive telecom sector. Nevertheless, the policy is still abundant with vague clauses, undermining its purpose. The lack of clarity surrounding terms such as 'minimum requirements', as well as non-transparency in the allocation process of radio frequency, allow the prevalence of restrictive business practices and other unproductive, profit-seeking activities.

Efforts to bring about a competition regime seem to have been halted at the legislative level, with poor enforcement institutions, weak checks, and vested interests hindering the effective implementation of the legislation. Nepal has until January 1, 2009, under the WTO Agreement, to open up its telecom market.

**Concluding Observations and Future Scenario**

Nepal's industrial and economic development started only in the late 50s, and was dominated by the 'state allocation of resources' mindset. It was only after the restoration of multi-party democracy in 1990 that attempts were made to adopt a market-based economic policy. Different policies and laws, adopted by the Government after liberalisation, do have the underlying desire to enhance competition. Having said this, the Government has, however, not been able to deliver an explicit 'Competition Policy'. The challenge, thus, is to synchronise the different policies and laws that affect competition, and take appropriate steps to make them more effective in doing so.

The future of competition in the Nepalese economy also depends on the shape of the competition law, which, at present, is being shuttled between the Ministry of Industries, Commerce and Supplies, and the Ministry of Law. If the final law is to be as it is in the present draft, *i.e.* with an independent commission to oversee competition issues, Nepal is likely to have an effective mechanism for addressing competition concerns. On the other hand, if the competition authority is made part of an existing government department, such as the Department of Commerce, the law is likely to be as ineffective as the Consumer Protection Act.

In addition to the above, the inculcation of competition culture in Nepalese society, and winning the confidence of all the stakeholders are a must for the effective implementation of an effective competition regime in Nepal.

**Suggested Readings**


Competition Scenario in the Kingdom of Nepal. *CUTS and SAWTEE, Kathmandu*

*Adhikari, R.* Anticompetitive Business Conduct in Nepal (presentation), *SAWTEE, Kathmandu.*

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Ministry of Industry, Commerce and Supplies/His Majesty's Government Nepal. 2003, *Nepal Trade and Competitiveness Study*, Kathmandu


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