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Competition Law ensuring Consumer Welfare: A Critical Evaluation

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Abstract – This Article will deal with the role of Competition law in consumer welfare. Competition law concentrates in maintaining the process of competition between enterprises and tries to remedy behavioral or structural problems in order to re-establish effective competition in the market. The consequence of this is higher economic efficiency, greater innovation and enhancement of consumer welfare. It explains whether consumer protection is the ultimate goal of competition law or the enforcement of competition law leads to the protection of consumer interest, as a consequence

Key Words – Globalization, Competition, Competition Law, Anti-Competitive Agreements, Consumer Welfare, Competition Policy, Consumer Policy

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INTRODUCTION

Power corrupts and absolute power corrupts absolutely. This is often said of political institution; but it is not said to be no less true of economic power. Economics power leads to many manifestations in the economic activity. One such manifestation is acquiring dominant position by one or more unit in the market that they are able to control the market by regulating prices or output or eliminating competition. Another is the adoption by some producers and distributors, even though they do not enjoy such a dominant position, of practices which restraint Competition and thereby deprive the community of the beneficent effects of the rivalry between producers and distributors to give the best service.[2]

In the world of globalization, Competition is inevitable among the sellers and manufacturers. In general terms competition can be stated as struggle for superiority, however, on other side in commercial world it is stated as striving for two thing firstly consumers and secondly business of other operators/competitors in market place.[3]

The primary goal of Competition Law is to promote and maintain competition in the market. It does so by distinguishing legitimate business transactions from those practices that shall have an adverse impact on the functioning of competitive markets. Competition law ensures the competitiveness of the market by prohibiting certain Anti-Competitive Agreements (Horizontal and Vertical) and the abuse of market power held by a particular firm. Primarily, it is concerned with the efficient allocation of resources which is ensured through the existence of competition in the market.

On the other hand, the goal of consumer law is primarily to protect the end consumer from the market failure that may arise due to unequal bargaining power between the consumer and the seller. It is assumed that the consumer stands at a disadvantageous position in the market with respect to the seller due to which the consumer needs to be protected from the potential malpractices of the seller. It seeks to correct the consumer’s position in the market with respect to the supplier, so that cost effective and efficient transactions are ensured.

COMPETITION LAW AIMS AT WELFARE OF CONSUMERS

Competition stimulates innovation, productivity, competitiveness and contributing to an effective business environment which generates economic growth and employment, creates possibilities for small and medium sized enterprises, remove barriers that protect entrenched elites and lastly, reduces opportunities for corruption.

Consumer welfare is the maximization of consumer surplus and this is realized through calculation of direct and explicit economic benefits which are received by the consumers. It argues that the ultimate goal of Competition Law should be to prevent increases in consumer prices, restriction of

[2] Monopolies Inquiry Commission Report (1965).
[3] Richard Wish and David Bailey , *Competition Law*(Oxford University press, New Delhi, 2008)

output or deterioration of quality due to the exercise of market power by dominant firms.

In this sense, competition generates and protects total consumer welfare, by ensuring them, the right of access to the non-hazardous products and adequate information for making informed choices as per ones owns wish and needs for effective redress.

The ultimate process of competition is to deliver all the benefit to the consumers, however, consumer benefit is restricted by producers decision, thus, competition is acknowledge as the best process for ensuring that consumers will get better service as well as protection from the malpractices of the sellers.

In regard with aforesaid it can be said that the Competition Law aims at welfare of consumers and works for the benefit of the consumers directly as well as indirectly, by playing important role in:

1. Promoting economic growth and reducing poverty.

2. Enhancement of choices and reduction in cost.

Thus, consumers who know their rights and enforce them are known as empowered consumers, and are subject to fewer abuses which directly improve their welfare. Thus, Competition law and policies focuses on building the community of empowered consumers.

Competition Policy generally has as its aim to increase the overall material welfare of society through maintaining rivalry among firms. The ultimate goal is to increase overall economic efficiency while providing consumers with fair share of this total wealth. While society's total welfare is usually the ultimate goal of competition policy it is rarely its exclusive goal. Competition Policy usually focuses on a specific reconciliation of the overall interest of the society with the particular interests of consumers.

VARIOUS DIMENSIONS OF PROCESS OF COMPETITION:

Competition as a process of rivalry: This is the meaning normally attributed to the word because rivalry is the means by which a competitively structured industry creates and confers benefits. Identifying competition with rivalry makes rivalry an end in and of itself, no matter how many or how large the benefits flowing from the elimination of rivalry. Thus, it always invites the wholly erroneous conclusion that elimination of rivalry is always illegal. But at times, restricting rivalry might be more beneficial to economic efficiency and consumer welfare.

Competition as the absence of restraint: Competition might be understood as the absence of restraint over economic activities of one undertaking by another undertaking.

Competition as a state of Perfect Competition: As per Stigler's words, the state of market in which the individual buyer or seller does not influence the price by his purchases or sales, i.e., the elasticity of supply facing any buyer is infinite, and the elasticity of demand facing any seller if infinite, for such a competitive market to arise four conditions must be satisfied i.e., the perfect knowledge, large numbers, product homogeneity and divisibility of output.

Competition as the existence of fragmented industries and markets: Competition was also understood as the existence of fragmented industries and markets preserved through the protection of viable, small, locally owned businesses.

Competition as a state of economic freedom and dispersal of private economic power: Competition is a process whereby the market players participate in economy without constraints from accumulated private or public power. So, the goal of competition policy is seen as a protection of individual economic freedom as an end in itself so that the distributive concerns lead to use competition law to protect the competitors and small and medium sized enterprise.

COMPETITION AS A STATE OF AFFAIRS THAT MAXIMIZES CONSUMER WELFARE:

The best definition of competition as provided by Chicago School that competition may be read as designating a state of affairs in which consumer welfare cannot be increased by moving to an alternative state of affairs through the intervention of antitrust law and that, conversely, monopoly designated a situation in which consumer welfare could be so improved so that to monopolies would to use practices inimical to consumer welfare. This interpretation of competition coincides with everyday parlance as the competition for the man in the street implies low prices, innovation and choice among differing products. Competition thus equates with consumer welfare as the sole meaning thereby that antirust law's sole goal is the maximization of consumer welfare. Consumer welfare is greatest when society's economic resources are allocated so that consumers are able to satisfy their wants as fully as technological constrains permit. Consumer welfare, in this sense, is merely another term for the economic wealth of the nation.

Three approaches are possible while establishing competition law and policies, which are as follow:-

1. **Firstly**, competition policy may ignore consumer interests and focus solely on total welfare and economic efficiency.

2. **Secondly,** it may recognize the immediate and short-term interests of consumers as the primary aim of competition policy.

3. **Thirdly,** competition policy might recognize consumer welfare as an essential long-term goal where the immediate interests of consumers are subordinated to the economic welfare of the society as a whole.

The **first approach** seems to have little attraction for policy-makers as it ignores the wealth transfer from consumers to producers and thereby neglects any kind of protection for consumer interests.

The **second approach** would prefer immediate short-term consumer interests and producer's incentives to sustain innovation and productive efficiency. This policy disregards efficiency gains and benefits that drive productivity growth and innovation and that could actually benefit consumers in the long run.

The **third approach** aims at long-term consumer interests through subordinating short term consumer interests to the overall welfare of the whole society on condition that consumers are provided with a fair share of the overall economic welfare. Competition Policy following this approach will, however, only allow activities that increase the overall welfare of society but harm consumer's short-term interests.[4]

Competition law and policies have become crucial in transition economies and protection of the consumer welfare due to privatization policies, where there is always a risk of Anti-Competitive practices.

The ultimate goal of both competition and consumer policies is to enhance consumer well-being. Both the policies are directed to ensure that market functions effectively and also to correct market failures. However, the approach of both the policies to achieve the said goal is different. Consumer policy tackles demand-side issues and aims to ensure that consumers can exercise their choices effectively, while Competition Policy addresses the supply side of the market and aims to ensure that consumers have adequate and affordable choices.

The United Nations Guidelines for Consumer Protection establishes the link between competition and consumer protection and states: "Governments should encourage fair and effective competition in order to provide consumers with the greatest range of choice among products and services at the lowest cost."[5]

Competitive markets provide incentives for firms to offer quality products and services at the best prices. Thus, eventually standard product and service will be addressed. Nevertheless, with the growing complexity of products and services, there will be a development and rapid diffusion of information and communication, technology and the opportunities that are offered to consumers. Thus, subsequently market will become more vulnerable to fraudulent and deceptive practices. Therefore, there is a growing need for consumer policy, which provides mechanisms to compensate for market failures and protect consumer's interests.

Consumer policy interventions ensure that consumers are correctly and sufficiently informed by advertising and labeling, that they are provided with fair contract terms and obligations and that their rights are respected. Related policy instruments make consumer choice an effective element in strengthening competition and send signals to firms that misleading and deceptive practices will not go unpunished. Informed consumers, being aware of their rights, may promote competition in markets by exercising choice.[6]

Apart from the aforesaid, there also exist many tensions between competition and consumer welfare. Fierce competition may result in unethical or criminal behaviour by firms in order to obtain a relative competitive advantage over other competitors. However, there is one way to avoid tensions between Competition and Consumer Policy which is to effect coordination between relevant policies. This is necessary to ensure two things i.e.

1. Policy coherence in addressing market problems and;

2. To select the most appropriate policy tools.

Further, three ways to enhance consumer benefits from competition policies are as follows:

1. **Coordination between Competition and Consumer Policies:** There is a need for policy coordination in order to address the sources of market failures and choose appropriate combinations of policy measures. Regardless of the institutional setting in competition and consumer policy implementation, one way to achieve policy

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[4]Competition enforcement and Consumer welfare, *available at:* https;//www/internationalcompetitionnetwork.org/wp-content/uploads/2019/11/Sp_CWelfare2011.pdf.

[5]*United Nations Guidelines for Consumer Protection*.(UNCTAD, 2003).

[6]The Interface between Competition and Consumer Policies, year 2008,*available at*:http://www.oecd.org/regreform/sectors/40898016.pdf

coordination is to focus on customer's interests in both competition law and consumer protection advocacy and enforcement.

Competition law enforcement can be coupled with consumer empowerment. Voluntary solutions/business and consumer education may complement enforcement efforts. Moreover, social media and communications tools may be used to coach consumers, particularly in regulated markets, to assist consumers in switching suppliers.

Increased competition may not necessarily improve outcomes for consumers in markets where consumers do not make well-informed decisions or switch suppliers. Thus, both competition and consumer policies are necessary to improve consumer welfare in this field. On one hand Competition policy measures include facilitating the market entry of finance institutions and restricting exclusive agreements between money transfer companies and agents and on another hand Consumer policy should focus on consumer education in order to increase the information available to remittance senders, in turn reinforcing competition

2. **Coherence between Competition, Consumer and Regulation Policies:** There is a need for coherence between Competition and Consumer Policies and Regulatory Policies to enhance Consumer Welfare and economic efficiency. Even when there is competition, appropriate regulatory frameworks are in place and consumers are informed about products and services, consumers do not always choose their best options. Switching costs and the complexity of products and pricing may contribute to this outcome. Switching costs may prevent consumers from achieving optimal outcomes and arise when transaction, learning or pecuniary costs are incurred by users who change suppliers. Switching costs affect both competition and consumers. Therefore, Governments and regulators need to understand switching costs in order to be able promote competition effectively.

In cases where switching costs adversely affect competition and raise average price levels, thereby causing consumer detriment, competition authorities and sector regulators may take necessary measures to reduce or eliminate harm to consumers caused by switching costs.

3. **Consumer Empowerment:** Governments recognize the role that informed consumers play as drivers of innovation, productivity and competition. In order to drive competition, consumers need objective, transparent and easily accessible and manageable information to make rational decisions that best respond to their needs and interests.

In this context, consumer empowerment has become more important in today's changing markets of new and complex products and services. Consumer Empowerment may be achieved through consumer education, as well as facilitating consumer to access to information and enhancing the capacity of consumers to assess information correctly to make optimal decisions.

Consumer Empowerment in markets which offer relatively more complex products may be more effective than regulatory interventions to solve problems.[7]

In view of the aforesaid, it can be said that both Consumer Law and Competition Law are concerned with the protection of 'consumer welfare'. Generally the role of consumer welfare in competition law is to determine the effects of anti-competitive practices of an impugned action on the marks. Thus, it can be said that competition law protects consumer interest in an 'indirect way'.

On the other hand, the Consumer Welfare standard in Consumer Law is of immense significance to determine the consumer harm in a particular transaction between the customer himself and the supplier.

Consumer under consumer law has been defined by stating that a consumer is usually the end user or the final user of the goods and services who does not avail it for commercial purpose[8].

Whereas under competition law, consumer has been defined by stating that consumer includes any person who purchases the goods and services, irrespective of whether it is purchased to be reused, resold or for personal consumption.[9]

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[7]The Benefit of Competition Policy on consumers (UNCTAD, 2014) *available at:*https://unctad.org/meetings/en/SessionalDocuments/ciclpd27_en.pdf.

[8]Section 2(d), The Consumer Protection Act, 1986 (Act no. 68 of year 1986)

[9] The Competition Act, 2002,(No. 12 of 2003) Section2(f):-
"Consumer" means any person who-
(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, whether such purchase of goods is for resale or for any commercial purpose or for personal use;
(ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the firs-

Despite all the benefits of competition, Anticompetitive Practices are common, with two root causes:

1. **Business conduct that restrains Competition:** This includes agreements between businesses, by stating and agreeing that they will not complete with each other.

2. **Government policies that burden competition:** Governments often have restrictive licensing regimes for certain sectors and products which burden competition.[10]

CONCLUSION

Thus, the goals of Competition Law are changing with new developments in the economy, and there is a proposed shift from ensuring the freedom to complete to promoting socio-economic welfare. Some academics believe that the two goals are not mutually exclusive and further, that it is competition that causes consumer interests to be normalized in the long run. Some do not see consumer welfare as the appropriate standard because of the inherent vagueness of the goal of 'Socio-Economic Welfare'. It would make it difficult to frame laws with certainty if there was no universally accepted or uniform definition of the goal itself. It necessarily assumes that competition authorities that follow this standard can foresee the future market outcomes. The Competition Authority has to see whether a particular economic decision by a firm would raise or diminish future Consumer Welfare, something that is impossible to determine accurately.

WORKS CITED

Monopolies Inquiry Commission Report (1965).

United Nations Guidelines for Consumer Protection. (UNCTAD, 2003).

Richard Wish and David Bailey , *Competition Law* (Oxford University press, New Delhi, 2008)

The Consumer Protection Act, 1986 (Act no. 68 of year 1986)

The Competition Act, 2002, (No. 12 of 2003)

Competition enforcement and Consumer welfare*, available at:* https;//www/internationalcompetitionnetwork.org/wp-content/uploads/2019/11/Sp_CWelfare2011.pdf.

The Interface between Competition and Consumer Policies, year 2008,*available at*: http://www.oecd.org/regreform/sectors/40898016.pdf

The Benefit of Competition Policy on consumers (UNCTAD, 2014) *available at:* https://unctad.org/meetings/en/SessionalDocuments/ciclpd27_en.pdf.

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mentioned person whether such hiring or availing of services is for any commercial purpose or for personal use;

[10] *Available at* :https://unctad.org/en/Pages/DITC/CompetitionLAw/why-competition-matters.aspx