

# Protecting Consumer Interests under Competition Law and International Perspective

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**Abstract – This topic will be dealing with the various issues relating to consumer protection under the competition law in India, and the position in various other countries. Whether consumer protection is the ultimate goal of competition law or the enforcement of competition law leads to the protection of consumer interests, as a consequence. What is the stand taken by the competition of India, regarding cases involving consumer grievances, what is the standard of consumer welfare required to be taken into consideration while dealing with competition issues, and to what extent is protection accorded to consumers under other legislations. Whether there is a need for a unified redressal agency for cases regarding competition and consumer protection, or an amendment to the competition act for ensuring better protection to consumers.**

**Keywords – Competition, Consumer, International, Protection**

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## INTRODUCTION

Competition in a market promotes efficiency, increases consumer welfare, offers wider choice, better products and services, and contributes to the progress of an economy.

In an industry where there is intense competition, often, there is a tendency, that the industry would become better and efficient. This happens because competition eliminates the poor performing products or services and leaves only Good and outstanding products for the general masses to consume. This particular advantage of competition is more likely to benefit the general population, since they would have better quality products and services for cheaper prices. As there exists competition in the market, the market players try their best to provide consumers what they need. Consumers need good quality products at lower prices. If there is competition in the market, the market players in order to survive will be compelled to bow down to the demands of the consumer, i.e. quality products at lower prices. Competition law, therefore, is designed for the regulation of competition, thereby ensuring economic growth. It is commonly believed that competition law is ultimately concerned with the interest of the consumers.

The definition of 'consumer' under the consumer Protection Act, 1986, includes any buyer or user of goods or services but does not include a person who obtains such goods for resale or for any commercial purpose. However, the definition under the Competition Act, 2002, recognizes a person who

buys or uses goods or services for commercial purpose or for resale, as a consumer. In this way, the competition Act aims to protect the larger public interest from anti-competitive practices.

## COMPETITION ACT, 2002

Effective competition regime provides necessary conditions for maximizing the interests of the consumers protection of consumer interests runs through the competition Act. The preamble of the Act and subsequent provisions like sec 18, 19 etc. expressly provide for protection of consumer interests. Sec. 2(f) defines 'consumer' which, as earlier mentioned, is much wider than the definition given under the consumer protection act, 1986. Further, under the chapter on duties, powers and functions of commission, it is provided that the commission shall, while determining the "relevant geographic market" and "relevant product market", have due regard to consumer preferences.

The national competition policy, 2011 also stated that fundamental role of competition policy is to guarantee consumer welfare by encouraging optimal allocation of resources and granting economic agents appropriate incentives to pursue productive efficiency, quality and innovation.

The inefficiency and inadequacy of the MRTPA led to the formulation of the Competition Act, and the establishment of the competition commission of India to enforce its provisions. The competition commission of India is expected to serve consumers better as far as redress is entries are

protection of concerned. Among other things the competition Act allows individual consumers or their associations to present their grievances for redressal, before this forum. However cost approaches the CCI. The need for regional benches of the commission is again felt in this context.

## COMPETITION LAW AND INTERNATIONAL PERSPECTIVE

This chapter attempt to analyze the competition policies of various countries throughout the world. To what extent is consumer protection guaranteed under different systems of competition law, and whether the primary goal of competition law in these countries is protection of consumer interests, or regulation of competition.

### 1) ANTITRUST GOALS IN U.S.A.

Beginning in the late 1970's the courts and agencies began to adopt the theories of a group of university of Chicago academics, who taught that the only legitimate goal of antitrust laws was to promote consumer welfare.<sup>7</sup>

It was held in the case **Broadcom Corp. v. Qualcomm Inc.**<sup>8</sup> that the primary goal of antitrust law is to maximize consumer welfare by promoting competition among firms. Further in the case **LAPD V. Gen. Elec. Corp.**<sup>9</sup> the United States court of appeals observed that the antitrust law is designed to protect consumers from the higher prices and society from the reduction in allocate efficiency, which occurs when firms with market power curtail output.

The International Competition Network (ICN) recently completed three surveys of its member competition authorities to identify their countries antitrust objectives. The third survey, conducted in 2011, explored fifty- seven countries conception and application of one often cited goal, promoting consumer welfare.<sup>10</sup>

The Supreme Court's decision 1999 in California Dental holds the promise for healing the divide between the Harvard School and the Chicago School. By adopting te continuum based approach proposed in that case, the courts and agencies can retain both the clarity of the Harvard School and the economic sophistication of the Chicago school. This approach will clarify the standards of competition for American business, insuring that firms avoid contact harmful to consumers and pursue conduct with the potential to promote consumer welfare.

<sup>7</sup> S.M. Dugar, MRTP Law Competition law & Consumer Protection Law, Lexis Butterworths, Nagpur, vol.

<sup>8</sup> 2008 WI 66932

<sup>9</sup> 132f.3d 402 (1997)

<sup>10</sup> 2011 ICN survey

### 2) EU COMPETITION POLICY

The European Commission competition regime is closer to the German model where Public interest considerations are imperceptibly taken into account than the US model that is more centered on the consumer welfare notion.

As Goyder observed, EC competition policy as such is generally driven by economic considerations, where economic goals coincide with consumer interests then a certain consumer protection function will be performed by competition rules.

Consumer interest considerations as such are not traditionally a focus of EC competition law, with the exception of Article 82(b) that speaks of practices 'to the prejudice of consumers' that has at times been used to guarantee consumer choice as in Magill. 27EC competition law strives to achieve a multitude of goals. It is not solely designed and applied to achieve the pure competition goal of consumer well-being, but it has a multifarious mission that includes the application of 'extra-competition policies'.

The EU Competition policy therefore, focuses on protecting the interest of the consumers by ensuring: 1) companies play fair 2) examining mergers 3) opening up markets to competition 4) monitoring state Aid 5) international co-operation.

### 3) COMPETITION AND CONSUMER LAWS IN AUSTRALIA

The Competition and consumer Act 2010, formerly known as the trade practices act 1974, contains rules against anti- competitive conduct to ensure that there is fair and effective competition within Australia. The act also contains consumer protection rules- known as the Australian Consumer Law (ACL), which businesses must abide by in their dealings with consumers.

The object of this Act is to enhance the welfare of Australians through the promotion of competition and fair trading and provision for consumer protection. The ACL creates a Alasdair Murray, consumers and EU Competition policy single, national consumer law for Australia. It applies to all businesses regardless of their size or business structure.<sup>11</sup> The ACL is enforced by the Australian competition and consumer commission (ACCC), where it applies to the state and territory fair trading agencies and, where it applies to the state and territory fair trading agencies and, where it applies to financial services, the Australian Securities and investments commission (ASIC). The ACCC promotes competition and fair trade in the market

<sup>11</sup> <http://ec.europa.eu/competition/publications/cpn/2009-1-7.pdf>

place to benefit consumers, businesses and the community.

#### **4) OTHER COUNTRIES**

##### **(a) BOTSWANA**

The government of Botswana adopted its competition policy in 2005 though it is yet to adopt a competition law. The main objectives of competition policy of Botswana are to maintain and promote competition, in order to achieve efficient use of resources, protect the freedom of economic action of firms and as the ultimate goal, to promote consumer welfare.<sup>12</sup>

##### **(b) MALAWI**

In 1990s, the Malawi government adopted a policy of economic liberalization to promote competition in the economy. In 1997, it adopted a competition policy for the country with a competition policy in Australia, OECD Reviews of regulatory reform Draft National Competition Policy 2011 broad policy objective to promote economic efficiency and protect consumer interest, comprising of three broad strategies, namely, lowering barriers to entry, curbing restrictive business practices and protecting the consumer.<sup>13</sup>

##### **(c) HONG KONG**

The objective of the government's competition policy is to enhance economic efficiency and the free flow of trade, thereby improving consumer welfare. It is believed that the government is now considering the introduction of a competition law.<sup>14</sup>

##### **(d) CYPRUS**

The objective of section 6 of the protection of competition law 2008 is to prohibit abusive conduct by dominant undertakings and to maintain openness in the market which ultimately benefits the interests of the consumer.<sup>15</sup>

##### **(e) GERMANY**

The main objective of the act against Restraints of Competition (ARC) is the 'freedom of competition', and that consumer welfare will be a (welcome) side effect of keeping the competitive process free from restraints.<sup>16</sup>

##### **(f) SWEDEN**

The object of the competition Act is to eliminate and counteract obstacles to effective competition in the

field of production of and trade in goods and services. The ultimate aim of the field of production of and trade in goods and services. The ultimate aim of the legislation is to promote growth and efficiency in the Swedish market. Consumer protection is covered by other legislation, although consumer interests are often referred to in decisions under the act, since free competition is ultimately to the benefit of consumers.

##### **(g) TURKEY**

The primary aim of competition law is to protect competition. However, it is clear from the parliamentary discussions prior to the adoption of the competition law, that other policy goals, such as protection of consumer interests, encouragement of entrepreneurship, etc. apply.

#### **5) POSITION UNDER INDIAN LAW**

The judgment by the Hon'ble Supreme court in the case competition commission of India v. steel Authority of India Ltd. & Anr.<sup>17</sup> Pronounced on 9th September, 2010 stated that "The main objective of the competition law is to promote economic efficiencies using competition as one of the means of assisting the creation of market responsive to consumer preference."

The competition Act, 2002, in its preamble, states protection of the interests of consumers as one of its goal. Further, section 18 of the competition Act which defines the duties of the CCI clearly mentions that protection of interests of consumers is one of the duties of CCI. The consumers or consumer associations are also given the right to complain against any anti-competitive practices in contravention of section 3(1) and section 4(1) to the CCI under section 19(1) of the Act.

#### **CONCLUSION**

The Competition Act, 2002, in particular lays emphasis on protection consumer interest, since it is enacted to regulate the markets, of which consumers are an important component. In some countries, it is given paramount importance, in others, it is considered as a consequence of the operation of competition law. Australia, USA and EU provide for a unified redressal agency for competition and consumer issues. Unlike these countries, India has different redressal agencies for competition cases and consumer grievances. The cases relating to competition are dealt by the competition commission of India, while consumer complaints are addressed by the consumer dispute redressal agencies at the national, state, district level.

<sup>12</sup> Draft national competition policy 2011

<sup>13</sup> Report of the working group on competition policy, planning commission, Government of India, February 2007.

<sup>14</sup> ibid

<sup>15</sup> [http://www.concurrences.com/rubrique.php3?id\\_rubrique=562](http://www.concurrences.com/rubrique.php3?id_rubrique=562)

<sup>16</sup> ibid

<sup>17</sup> Civil appeal no.- 7999 of 2010.

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