An Interface between Competition Law and Consumer Welfare

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The “Consumer is sovereign” and “Consumer is the king” meaning thereby that consumers are the king in free market, and the sellers are supposed to be guided by the will of a consumer in such markets. However the facts remains that the consumers are still the victims of unscrupulous and exploitative practices. The “Consumer is sovereign” and “Consumer is the king” are nothing but a myth in the present scenario especially in a developing society like ours in India. The exploitation of consumers takes place in various forms such as high prices, poor quality, deficient services, deceptive advertisements, hazardous products, etc. Therefore the Consumer Protection laws comes into picture which developed as a natural response to the recognition of rights of every consumer to be protected against exploitation and abuse by any manufacturer or supplier of goods or provisions of services.

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Competition is the rivalry regulated by laws and policies in a market to attain the objective of efficient economy, consumer welfare and restraining economic concentration. The fundamental purpose of Competition law is to preserve and promote competition for efficient allocation of resources in an economy by prohibiting anti-competitive practices in a market, which ultimately creates benefits for consumers such as lower prices, enhanced quality; increase in choices, and better services. However there lies a dispute, which will be analyzed in this article, that whether the consumer protection is the ultimate goal of Competition Law or the enforcement of Competition Law leads to the protection of Consumers Interests as a consequence. Finally this article will be concluded by discussing various areas of Indian Competition Act, 2002 furthering the concept of Consumer Welfare by way of prohibiting anti-competitive practices in the market.

Meaning of Consumers

In general terms consumer signifies a broad class of individuals or households that use goods and services generated within the economy. However there lies a basic difference between definition of Consumer in Competition Act, 2002 and Consumer Protection Act, 1986. 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 and exploitative practices.

Thus a person if hires services even for commercial purpose, he will come under the category of a consumer and enjoys “consumers” rights under Competition Act whereas under Consumer Protection Act the same person will not be considered as a consumer and thus will have no consumer rights.

Concept of Consumer Welfare

There is as such no agreed definition of Consumer Welfare. However a fair understanding of the notions surrounding Consumer Welfare can be gathered by looking at the United Nations Guidelines for Consumer Protection, adopted by the UN General Assembly in 1985, amended in 1999. These Guidelines represent an international regulatory framework for governments to use, for the development and strengthening of consumer protection policy and legislation, aimed at promoting Consumer Welfare.

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6 § 2(f).
7 § 2(d).
There are eight themes enumerated in UNCTAD 2001 which are physical safety, economic interests, standards, essential goods and services, redress, education and information, specific areas relating to health, sustainable consumption.\(^{11}\) The Guidelines have implicitly recognised eight consumer rights, which were made explicit in the Charter of Consumers International as Right to basic needs, safety, choice, redress, information, consumer education, representation, healthy environment.\(^{12}\)

These eight consumer rights can be used as the touchstones for assessing the consumer welfare implications of competition policy and law, and to see how they help or hinder the promotion of these rights.

Consumer welfare, generally, can be understood to stand for correcting market failures in order to improve the consumer’s position in market transactions. It is concerned with efficient transactions and cost-savings but it is also directed at social aspects of the market such as the safety and health of consumers.\(^{13}\)

**Various Legislative Instruments Protecting Consumers**

Consumers have always been one of the most important pillars of the production system and economy of any nation. Therefore protection of consumers from exploitative practices and ensuring their rights has become an important task of government policies and legislations.

The aim of consumer protection laws is primarily to protect the end consumers who are the victims of market failures resulted due to unequal bargaining power between the consumer and the seller.\(^{14}\) Generally the consumer is assumed to be at disadvantageous position in the market with respect to the seller due to which consumer needs to be protected from potential malpractices of the seller.\(^{15}\) There are various legislations in India dealing with Consumer Protection, some of which can be discussed as follows:

**Criminal Law**

The first ever notable provisions for consumer protection adapted in India are found in the Indian Penal code, 1860. The fraudulent use of false instruments for weighing\(^{16}\); and fraudulent use\(^{17}\), possession\(^{18}\) and making and selling\(^{19}\) of false weights and measures are made punishable under the code with imprisonment extendable to one year or with fine, or with both. Further Sections 272 and 273 deals with the offences affecting public health, make the offences of adulteration of food or drink, making it noxious, sale of noxious food or drink punishable. Sections 274 to 276 make the offences of adulteration of drugs intended for sale, sale of adulterated drugs, and sale of drug as a different drug or preparation punishable.

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16 Indian Penal Code 1860, § 264.
17 *Id.*, § 265.
18 *Id.*, § 266.
19 *Id.*, § 267.

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Also Section 153 of the Code of Criminal Procedure, 1973 entitles any officer incharge of a Police Station to enter, without warrant, any place within the limits of such station for the purpose of inspecting or searching for any weights or measures or investments for weighing, used or kept therein; he even has the power to seize the same and send the information of such seizure to the nearest magistrate.

The Essential Commodities Act, 1955

It aims at maintaining supplies of the essential commodities and to ensure their availability to all people at fair prices. The Central Government has been given regulatory powers through licenses, permits or other measures to control production, storage, transport, distribution, acquisition and consumption of any essential commodity falling under the purview of the Act. Provisions have also been made for the seizure of essential commodities traded in contravention of its provisions. The recognised consumer associations have been empowered to make a report in writing of the facts constituting the offences under the Act for the purpose of taking cognizance by Courts.

The Prevention of Food Adulteration Act, 1954

It is concerned with eradicating the evil of food adulteration which is rampant in the present times. It prohibits adulteration and misbranding of food stuff and prescribes punishment for food adulteration. In broader terms, it regulates consumer-supplier relations. It tries to ensure that the food is prepared, packed and stored under sanitary conditions and accordingly made available to the people.

The Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992

It aims at advancing the cause of breast feeding in preference to the growing trends of bottle feeding. It prohibits advertisement of infant milk substitutes and feeding bottles. Measures have been prescribed to ensure that in the marketing of infant milk substitutes, no impression should be given that the feeding of these products is equivalent to or better than breast-feeding. It further provides for the regulation of production, supply and distribution of infant milk substitutes, feeding bottles and infant foods with a view to protect the interests of the consumers and to ensure proper use of infant foods. There are various guidelines mentioned in the act helpful for the consumers like printing of “important notice” in every packet saying “mother’s milk is best for baby.”

The Bureau of Indian Standards Act, 1986

It is one of the most important legislations relating to prescription of a standard and their enforcement. The Bureau of Indian Standards has been established under this Act for the task of preparing and promoting standards of production in various sectors of national economy. From the consumer point of view, the Act is very important legislation for standardisation and quality control.

Apart from the legislations discussed above there are various other instruments protecting consumers and

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20 Essential Commodities Act 1955, § 11.
21 S.K. Verma, supra note 4, at 60.
22 Id. at 95.
24 S.K. Verma, supra note 4, at 158.

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**Consumer Protection Act, 1986 (COPRA)**

This is the most important legislative enactment directly protecting consumers and performing consumer welfare. The Indian Consumer Movement was given a fresh impetus with this enactment.  

It contains provisions for consumer representation as well as simple, speedy, inexpensive, and informal justice, to consumers, by means of establishing a separate appeal and redressal mechanism. The preamble of the Act states its objective, i.e., to provide for better protection of the interests of consumers. 

There is three-tier simple quasi-judicial machinery at the district level, state level and the apex National Commission at New Delhi. Each has monetary jurisdictions and entertains appeals from the lower forums. Furthermore the Act also aims to promote and propagate consumer rights, through consumer education and the establishment of consumer councils at the state and district level, besides the apex Central Consumer Protection Council at New Delhi.

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27 Id. § 4 - 8B.
Consumer Welfare vis-à-vis Competition Law

Before embarking upon the consumer welfare aspect of competition law, first we need to understand the basic meaning and purpose of Competition laws. Competition is defined as a “struggle or contention for superiority.” Therefore, in a commercial marketplace, “competition is about the struggle by firms to achieve superiority over other firms.”

Further it is an established principle that a healthy competition is desirable. Thus the role of competition law can be understood as to prevent lessening of competition in market. Therefore, in a commercial marketplace, “competition is about the struggle by firms to achieve superiority over other firms.”

Thus preserving and promoting competition ensures efficient allocation of resources in an economy resulting in the best possible choice of quality, the lowest prices, and adequate supplies to the consumers. In other words, competition law is used to bring fairness in the market, which finally benefits the consumers.

Competition forces the producers to offer the best price and quality products. In competitive markets, if a consumer does not like offerings of one producer, he can turn to others. The consumers’ ability to shift expenditures imposes a rigorous discipline on each seller to satisfy consumer preferences.

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, and by regulating certain combinations having anti-competitive effect on market.

Competition in a market increases consumer’s right to choice and thereby increasing consumer’s surplus. The vulnerable sections of the society are more liable to fall into traps of poverty by price hikes and other shocks generated by absence of competition. Moreover competition spurs innovation, increases static and dynamic efficiency and improvements in the quality of goods and services.

28 Pradeep, supra note 10.
30 Robert Lane, EC Competition Law 6 (2000).
productivity, thus lowering price with simultaneous improvement of quality of goods and services. Further competition fosters economic growth, thereby creating opportunities of employment; the essential tool for alleviating poverty.\(^{35}\)

The role of competition law is to maintain a free and fair competition in the market as no matter how well informed and rational consumer is present he cannot stop or prevent the anti-competitive agreement or formation of cartel or abuse of its dominant position in a market by a firm, that would limit his options or source of supply in the market.\(^{36}\)

**Consumer Welfare as a Goal of Competition Law**

There is a lot of debate regarding whether Consumer Welfare is a direct goal of Competition Law or it is a result of enforcement of Competition Law.

The goal of competition law is not to promote consumer welfare directly. Rather, it is done indirectly by protecting the freedom of actors to compete in markets. The reason for this is that freedom to compete generally leads to competition, and competition leads to an efficient allocation of resources and thus to consumer welfare. Therefore, the goal is to safeguard the competitive process and neither the competitors nor the consumers.

The Competition enforcement authorities do not have the same objective as that of Consumer forums. The primary tasks of them is to balance the expectations of consumers in the short term and focus upon prohibiting anti-competitive conduct and abuse of dominance, regulating mergers and forestalling market failures, and therefore ultimately protecting the interest of consumers.\(^{37}\)

It would become clear by applying Charles Darwin’s theory of the survival of the fittest to the competition law. According to him, only the fittest will survive in nature and the weaker will be eliminated by natural forces like enemies, weather, etc. Applying this to market competition, the fittest market player will survive and all weaker market players will be eliminated by market forces. The firm to remain fit has to attract more and more consumers, and consumers want less prices, better quality, etc. Thus it is the consequence of competition that consumers get benefits.\(^{38}\)

Hence the Consumer Welfare is not the ultimate goal of Competition law but it is the result of enforcement of Competition Policies. In simpler terms, Competition Law promotes Consumer Welfare indirectly.

**The true Competition Law Standard: Total Welfare or Consumer Welfare?**

Consumer Welfare is the consumer satisfaction from price, quality, range and service and also contains non-economic factors.\(^{39}\) It is understood through the eight consumer rights and eight consumer themes from the U.N.

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36 Averrit, supra note 1, at 729.


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100 COMPETITION LAW REPORTS ∙ DECEMBER, 2013

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guidelines including Charter of Consumers International.\textsuperscript{40} Whereas Total Welfare is the combined welfare of the consumer and producer, which consists of consumer surplus and producer’s gross profit on the market.\textsuperscript{41} Total Welfare standard reflects the most for society as a whole and treats the distribution of wealth between consumers and producers neutrally. But Consumer Welfare Standard considers this transfer of wealth from consumer to producer as harmful, even if total welfare is improved.\textsuperscript{42}

Generally both needs to be balanced, that is, the end result of competition is the enhancement of aggregate of social wealth (total welfare) subject to the constraint that consumers shall receive an appropriate share of such wealth (consumer welfare).\textsuperscript{43} The economic rationale of competition is neither total welfare nor consumer welfare, it is rather competition welfare.\textsuperscript{44}

For example in Brunswick Corp. v. Reigel Textile Corp.\textsuperscript{45} firm X was selling a new technology and has gained monopoly in market. Firm Y steals the technology, got it registered as a patent and outs the firm X from the market by charging less for that technology. Consumer Welfare Standard, here, might not found any wrong since prices are reduced benefitting consumers. This will seriously affect production and innovation in the market. Thus the competition policy and enforcement agencies should ensure that consumer welfare by unfair competition should not be taken as a defence for not striking down an activity of a firm, which otherwise would have been.\textsuperscript{46}

\textbf{International Perspective}

It is pertinent to know the international stand on relation between consumer welfare and competition law. To what extent is consumer protection guaranteed under various competition laws and whether the consumer welfare is direct or indirect aim of competition laws.

\textbf{Anti-trust laws in USA}

US Competition laws were called “antitrust” because they were made as measures against 19\textsuperscript{th} century trusts.\textsuperscript{47} The U.S. Supreme Court gave a new perspective in 1979 by saying that “Congress designed Sherman Act, 1889 as a consumer welfare prescription”.\textsuperscript{48} Since then, consumer welfare has been the stated goal of U.S. Competition Laws.\textsuperscript{49} Before this acceptance of consumer welfare as an accepted goal, maintaining competition in the market was treated as the primary goal as well as the legislative intent of enacting Sherman Act.\textsuperscript{50}

\begin{footnotesize}
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\item \textsuperscript{40} United Nations Guidelines for Consumer Protection, supra note 9.
\item \textsuperscript{41} International Competition Network Annual Conference, supra note 39.
\item \textsuperscript{44} \textit{Id.}
\item \textsuperscript{45} 753 F 2d 261 (266).
\item \textsuperscript{46} Abir Roy & Jayant Kumar, Competition Law in India 26 (2008).
\item \textsuperscript{47} Barak Orbach & Grace Campbell Rebling, \textit{The Antitrust Curse of Bigness}, 85 S. CAL. L. REV. 605 (2012).
\item \textsuperscript{49} Barak Orbach, \textit{The Antitrust Consumer Welfare Paradox}, 7 J. Competition L. & Econ. 133 (2011).
\item \textsuperscript{50} Barak Orbach, \textit{How Antitrust Lost its Goal}, 81 Fordham L. Rev. 2253 (2012-13).
\end{itemize}
\end{footnotesize}
The Courts and the Agencies started adopting the theories of a group of University of Chicago academics that the only legitimate goal of anti-trust law is to promote consumer welfare.\textsuperscript{51} It was held in \textit{Broadcom Corp. v. Qualcomm Inc.}\textsuperscript{52} that the primary goal of anti-trust law is to maximize consumer welfare by promoting competition among firms. Further, in the case \textit{LAPD v. Gen. Elec. Corp.}\textsuperscript{53} 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 allocative efficiency, which occurs when firms with market power curtail output.

**European Union Competition Law**

There has been no traditional focus upon consumer interest with the exception of Article 102(b) of Lisbon Treaty, 2009 or Treaty of Functional European Union\textsuperscript{54} that says of abusive practices by a dominant firm “limiting production, markets or technical development to the prejudice of consumers” is prohibited.\textsuperscript{55} Many scholars like Stuyck notes that the consumers are not specifically and technically speaking the beneficiary of EC Competition laws. These Rules strive to maintain a workable competition in the market rather than protecting individual freedom but the enforcement ultimately serves consumer interest. The competition rules maintains a fair price of goods, better quality hence they indirectly promotes consumer interests in the market economy.\textsuperscript{56}

**United Kingdom Competition Law**

The position of United Kingdom’s Competition Act, 1998 is very much similar to the position of European Union Competition Policies. The competition law provides the framework for competitive activity. It protects the process of competition.\textsuperscript{57}

India enacted the Competition Act, 2002 to replace the earlier Monopolies and Restrictive Trade Practices Act, 1969 when it took economic reforms in 1990’s through adopting LPG model.

**Position in India**

India enacted the Competition Act, 2002 to replace the earlier Monopolies and Restrictive Trade Practices Act, 1969 when it took economic reforms in 1990’s through adopting LPG model. It is in economic terms a more sophisticated law and covers the three limbs of competition.

\textsuperscript{52} 2008 WL 66932.
\textsuperscript{53} 132 F.3d 402 (1997).
\textsuperscript{56} Id.
law anti-competitive agreements, abuse of dominance, and merger regulation; it also mandates the Competition Commission of India (hereinafter CCI) to undertake Competition Advocacy.

The apex court of India in the case of *Competition Commission of India v. Steel Authority of India Ltd*\(^{58}\) stated that promoting economic efficiencies using competition as one of the means of assisting the creation of market responsive to consumer preferences is the main objective of Competition law.

The Preamble of Competition Act, 2002 says that protecting consumer interests is one of the main purposes of Competition Law. Further Section 18 which outlays duties of CCI mentions protecting consumer interests will be one of the major duties. Moreover a consumer or association of consumers has been given right to complaint against anti-competitive agreements (Section 3) or abuse of dominance (section 4) to CCI under Section 19(1) of the Act.

The Indian Competition Act promoted competition which is important to protect consumer interest by offering wider choice, lower prices, better quality and access to goods & services. Consumer welfare is the central consideration in the scheme of Competition Act and that CCI accords a high priority to consumer welfare.\(^{59}\)

A more detailed analysis of pro-consumer policies under Indian Competition Act, 2002 can be done through analysing each anti-competitive practice at a time, as follows\(^{60}\).

### Anti-Competitive agreements and Consumer Welfare

The Act prohibits all enterprises and persons from entering into agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provisions of services which may have an appreciable adverse effect on competition and declares them void.\(^{61}\) Now, the term “appreciable adverse effect on competition” is not defined under the Act, but it is to be determined by CCI by considering factors mentioned in Section 19(3), of which one of the factor is “accrual of benefits to consumers”.

The practices which are prohibited under this clause are price fixing; limiting or controlling production, supply, markets, technical development; market sharing; bid rigging or collusive bidding; cartels \([\text{horizontal agreements}]\); tie-in arrangement; exclusive supply agreement; exclusive distribution agreement; refusal to deal; resale price maintenance \([\text{vertical agreements}]\). The prohibition of all these practices increases fair competition in the market resulting in fair prices, better quality, etc thereby ultimately benefits the consumers, thereby indirectly fulfilling goal of consumer welfare.

### Abuse of Dominant Position and Consumer Welfare

The Act prohibits every dominant enterprise from resorting to any activity which can amount to abuse of its dominant position.\(^{62}\) The CCI shall while determining dominant position has to

\(^{58}\) (2010) 10 SCC 744.


\(^{60}\) S.K. Verma, *supra* note 4, at 308.

\(^{61}\) Competition Act 2002, § 3.

\(^{62}\) Id. § 4.
give regard to various factors mentioned in Section 19(4) of which one of the factors is “dependence of consumers on the enterprise”. Moreover weightage has to be given to “consumer preferences” for determining relevant geographic market and relevant product market under Section 19(6) and Section 19(7).

The dominant position per se is not prohibited under the Act but its abuse is prohibited. Section 4(2) gives an exhaustive list of abusive practices—directly or indirectly imposes unfair or discriminatory condition in purchase, or price in, goods or provisions of services, including predatory pricing; limits production, markets or technical development to the prejudice of consumers; indulges in action resulting in denial of market access; makes the conclusion of contracts subject to acceptance by other parties; uses dominance in one market to move into or protect other markets. The prohibition of these practices will result in fair competition, and thereby protect consumers as, if these practices subsists the prices will increase, the quality will reduce, etc.

For example Predatory pricing is pricing goods or services in such a low cost so as to eliminate competitors and afterwards recoup the loss by increasing prices or decreasing the quality thereby affecting the interests of consumers.\textsuperscript{63}

Regulation of combinations and consumer welfare

The Act makes provisions for the regulation of combinations or cartels to prevent anti-competitive operations and anti-consumer policies.\textsuperscript{64} The acquisition of one or more enterprises by one or more persons or acquiring of control or merger or amalgamation of enterprises adverse to competition should be construed as combination. This is a kind of monopolisation of trade or supply.\textsuperscript{65} The Act prohibits any person or enterprise entering into combination which may cause an appreciable adverse effect on competition within the relevant market and declares them void.

\begin{quote}
If two major market players combine, they can start controlling the prices and eliminate the small industries
\end{quote}

If two major market players combine, they can start controlling the prices and eliminate the small industries easily. Ultimately it will be the consumers who will be affected. For example if Coca Cola and Pepsi, the two biggest market players in soft drinks industry will combine, the competition will be eliminated which will ultimately affect consumers as prices may go up and quality may go down, further the combination will try to eliminate all other small players leading to full market control leaving consumers with no other market entity to shift to. Therefore it is the duty of CCI to check and regulate these combinations.

The harm to competition will be more where the entities sell homogenous products or services or close substitutable products or services. In fact, the degree of closeness of competition between the merging firms decides the extent of harm to competition due to unilateral effects. A merger between firms that are each other’s close competitors or whose products are close substitutes is more harmful than merger between firms

\begin{itemize}
\item \textsuperscript{63} Id. Explanation (b) to § 4(2).
\item \textsuperscript{64} Id. § 5 & 6.
\item \textsuperscript{65} S.K. Verma, \emph{supra} note 4, at 310.
\end{itemize}
whose products are distant substitutes as it eliminates the competitive constraint which exists between the parties prior to the merger thereby reducing the effective competition in the market which is always detrimental to the consumer interest.

Combinations are sometimes encouraged since it might increase efficiency or reduce running cost of a company leading to economic development in some way. But consumer welfare must be kept in mind as it is one of the major objectives of the Act. CCI should take consumer welfare seriously and maintain a balance between consumer welfare and economic growth as both are its important objectives.

**Advocacy of Competition Policy**

The CCI shall take suitable measures for the promotion of competition advocacy, creating awareness and imparting training about competition issues. The advocacy efforts and enforcement efforts has increased the awareness among the business community and consumers, which can be seen from the number of cases filed with the CCI alleging violations of Section 3 and 4. Moreover the 11th Planning Commission Report has also stated that promotion of consumer welfare is the common goal of consumer protection and competition policy.

**Loopholes of Indian Competition Law**

The Indian Competition Act, 2002 albeit a laudable Act striving for development National Economy yet consists of certain loopholes which are needed to be removed. There are following loopholes in the act:

**No Individualistic remedy**

While the Consumer Protection Act, 1986 protects the interests of individual consumers. The Indian Competition Act, 2002 on the other hand does not provide for rights and reliefs to an individual consumer i.e. there is no individualistic remedy rather it safeguards the interests of classes of consumers through restraining anti-competitive practices adopted by enterprises.

This can be explained more elaborately through following case laws:

**Subhash Yadav v. Force Motor Ltd. & Ors.**

The grievance of the Informant, who was a customer, was that the performance of the SUV purchased by him was much below satisfaction. The CCI refused to act on the matter and closed it by saying that the purpose of this Act is to protect and promote fair competition in the markets in India through preventing the practices having adverse effect on the competition. And for the protection of individual consumer interest, there is another statute already in existence known as Consumer Protection Act, 1986 which mainly deals with protection of consumer interest against the deficiencies in services or goods being purchased by the consumers from sellers.

**Belaire Owner's Association v. DLF Limited**

The case concerned with residential real estate market in India, the information filed was for delay in possession and

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66 Competition Act 2002, § 49(3).
68 Dhanendra Kumar, supra note 59; see also Sanjeev Pandey v. Mahendra & Mahendra & Ors., Case No.17/2012.
69 Case No. 32/2012.
70 Case No. 19/2010.
violating building restriction norm by DLF. It was alleged that DLF is abusing its dominant position. The CCI took up the matter and noted Gurgaon as the relevant market, further held that DLF faces negligible threat from its rivals, including the new ones, particularly, since it has a strong presence in almost all related real estate sectors, it had the market share of 50% for the year 2009-10. CCI concluded that DLF has a position of dominance in the relevant market.

For checking the abuse of dominant position, CCI analysed the agreement with consumers alleged to be one-sided, wherein it specifically noted a number of terms reflected how heavily biased the agreement is. Finally CCI concluded that DLF is violating Section 4(2)(a)(i) by imposing unfair conditions on the sale of its services to consumers.

Thus CCI acts on consumer grievance only when there is some anti-competitive practice such as abuse of dominance. Like in present case an enterprise abused its dominant position in the relevant geographical or product market, it involved harming of consumer interests, as well as an anti-competitive practice under Section 4 of the Competition Act.

No equitable relief to the Complainant

Another drawback of the Competition Act, 2002 is that the essence of CCI is that of a regulator and not to provide a restitutive or equitable relief to the individuals who complain. The relevant sections which provided for power of CCI to order for payment of compensation have been omitted by the amendment of 2007 stating that it is an expert body, and not a judicial body.71

But according to my opinion, there must be some discretion vested upon Commission in awarding compensation or any other adequate relief to consumers when they complaint. An incentive must be given to them so that people are encouraged in bringing up complaints to the Commission. If there is no provision like this, no person will be willing to complain since there is only cost of maintaining a case and no benefit even after winning a case.

Feasibility of accessing redressal forum

This is one of the major practical problems in the enforcement of Competition Act, 2002. The CCI functions at New Delhi72 and does not have regional offices. An individual consumer aggrieved in any part of the country, will find it difficult to seek redressal for his grievance, especially when the economic status of the person is not good. Also, when the amount claimed is less, it will not be feasible for the claimant to incur additional travel and other expenses for seeking redressal. Therefore it is suggested that tier system should be made like in case of Consumer forums under Consumer Protection Act, 1986 i.e. District, State and National level.

Positive Aspects of Indian Competition Law

The Competition Act, 2002 in contrast to all other Acts deals with market as a whole, whereas Consumer Protection Act, 1986 deals with consumption and the consumer’s interest and not with markets as a whole.

Another positive aspect is the wider scope of the term “consumer” under Competition Act, 2002 than Consumer Protection Act, 1986. 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

71 Competition Act 2002, § 27 (c), 28(d) and 34.
72 Id. § 7(3).
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 anticompetitive and exploitative practices.

Conclusion

The consumers are the biggest losers because of the anti-competitive practices in the market in which they do not have any capacity to deal with it. Therefore protection of interests of consumers is very important so as to fulfil social and economic objectives enshrined in our Indian Constitution.

The primary aim of Competition laws are thus to protect consumer interests and perform consumer welfare. Generally competition law performs this task indirectly, as is the case of Indian Competition Act, 2002 which primarily prohibits anti-competitive practices such as anti-competitive agreements, abuse of dominance, regulation of combination, thereby promoting competition in the market which ultimately results fruits for consumers.

Further it can be said that the Competition Act, 2002 is of paramount importance even though there are a lot of enactments present for consumer protection because no other law deals with market as a whole and strives for developing national economy, by promoting the competition in the market. It strikes a balance between consumer welfare and total welfare in the form of competition welfare. Consumer welfare is not the sole or ultimate goal of competition law. It is one of the aspects of competition law achieved through competition in the market, therefore should not be given undue importance in its enforcement.

According to some scholars, competition is an end in itself, and for some others competition is a means to an end. However if we want progress in our nation then competition must be viewed as both an end in itself and a means to an end. And all that we need is effective competition laws which can regulate the market efficiently. In the words of Herbet Hoover:

“Competition is not only the basis of protection to the consumer, but is the incentive to progress”.

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75 31st President of United States of America (1929-33).