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## **Competition Law and Consumer Welfare: Issues and Challenges**

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#### **Abstract**

*As far as protection of consumer's interest is concerned, it is basically understood as injustice which is suffered by the consumer in the commercial street in the form of quality, price, and guarantee choice extra which needs to be redressed by justified means. Competition which has got affected to a large extent by Globalization can unearth a lot of intricacies in the system of consumer protection strategy because of the ever changing size and involvedness of production and allocation attributions. So much so the consumer's mobility has also resulted into the decrease of face to face interaction between vendor and vendee. On the other hand the new economic and competition policy making process with special focus on Globalization has also given rise to the competitiveness ensuring good quality, consumer satisfaction as well as low cost. The methodology of rivalry amongst the firms for the making of market structures conducive to such rivalry makes for such competition stuff viable. In the light of the above, this article makes an attempt to minutely analyze the bridge in between the protection of the consumer's interest and the promotion of justified competition at length.*

***Key Words: Competition, Law, Consumer, Rivalry, Method.***

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**Introduction<sup>1</sup>:** As far as the consumer is concerned, he is considered to be the king in the free market economy and the vendors are supposed to be guided by the very thought process of the consumer. In the constitution of India we have articles-38, 39 which mandate upon states to secure a proper order so as to promote the welfare of the people. So much so the globalization has also become a reality thereby giving dynamism to the concept of competition as well. As we know that consumer needs good products at lower prices. Therefore, if there is competition in the market, the said market players so as to survive will be forced to bow down to the demands of the consumer.

**Regulatory efforts: worldwide<sup>2</sup>:** One could be forgiven for thinking that consumerism was largely invented by Mr. Ralph Nader, the well-known American Advocate. History of protection of Consumer's rights<sup>3</sup> by law has long been recognized dating back to 1824. Every year the 15th of March is observed as the World Consumer Rights Day. On that day in 1962 President John F. Kennedy of U.S. called upon the U.S. Congress to accord its approval to the Consumer Bill of Rights. President Gerald R. Ford added one more right i.e. right to consumer education. Further other rights such as right to healthy environment and right to basic needs (Food, Clothing and Shelter) were added. In India we have recently started celebrating 24th December every year as the National Consumer Rights Day. United Nations has done commendable work by giving guidelines for the consumer's protection which were accepted by the UNGA in the year 1985. Such guidelines have also been amended in the year 1999. Main emphasis has been led on the followings:

1. Right to safety.
2. Right to be informed.
3. Right to choose.
4. Right to consumer education.
5. Right to representation.
6. Right to be heard.

Above mentioned are the consumer rights which have also been lawfully accepted in the form of Consumers Protection Act and some glimpses can also be found in Competition Law 2002.

#### **The nexus between Consumer's Protection and Competition Law: Analytical Viewpoint<sup>4</sup>:**

It may be mentioned at the outset that anyone<sup>5</sup> interested in the task of consumer protection movement has to be well versed in various laws and not merely with the Consumer Protection Act, 1986. He should have knowledge of laws relating to Contract, Tort, Railways, Telegraphs, Telephones, Post, Air Travel, Insurance, Electricity, Water, Housing, Medicine, Banking, Finance, Engineering, Motor Vehicles, Hotel Industry, Entertainment, Cooperative Societies, Tourism Agencies, Sales Tax, Central Excise, Limitation, Transport etc. There is no limit to subjects, which may come before a Consumer Forum / Commission for decision. In addition, one should also be well versed with the laws relating to unfair trade practice and restrictive trade practices. As far as consumer protection act is concerned, it provides rights and relief to the individual consumer where as competition commission's powers are more of public interest based. The essence of the competition commission is that of a regulatory body. The consumer protection act only deals with consumption and the consumer's interest and not with markets as a whole. In this regard, the competition law deals with the market as a whole. Therefore we can say that consumer law can be said to be the basic document whereas competition law may be considered as the refined protection oriented document thereby speaking of the provisions associated with consumer's interests.<sup>6</sup> In a case "Ashoka Smokeless Coal Ind.Pvt. Ltd v. Union of India" the Supreme Court was of the view that in a market governed by free economy where competition is the buzzword, produces, may fix their own price. It is however difficult to give effect to the constitutional obligations of a state and the principles leading to free economy at the same time.

**Anti-competitive practices<sup>7</sup> and consumer protection: An overview:** The competition act 2002 seeks to protect the process of free market competition so as to ensure efficient allocation of economic resources. Therefore, its main objective is to operationalize the economic system in such a manner as to provide maximum satisfaction to the maximum number of consumers as such. If the nature of industry is such that dominance in terms of market share cannot be avoided, it tries to ensure that there is no misuse on account of such dominance.

Competition Law is to prohibit anti-competitive practices, abuse of dominant positions and not to give effect to such mergers or acquisitions which adversely affect the healthy competition practices. According to economic theory<sup>8</sup>, cartels will be inherently unstable since there shall always be an incentive to cheat.

In a case "Haridas Exports v. All India Float Glass Manufacturers Association" held that the mere formation of cartels will not give rise to action. Something must have to be proved to demonstrate the detrimental effect on consumers. Companies participating in the cartels formation produces less and earn high profits. That is why cartels formation is highly condemned worldwide.

**The concept of dominant undertakings:** Truth be told, the competition law does not prohibit dominance but the abuse of dominant position. The use of dominant position by a dominating firm directly affects the consumer due to malpractices like predatory pricing and creations of barriers to the new lawful entrants. This gives rise to a monopoly where the consumer gets exploited by the vendors. In this way the health competition is not found in the market and the consumer's situation also becomes perplexed. US supreme court in a case "Utah Pie v. Continental Co" considered the price below the full cost as Predatory Price which is highly competitive in nature. Such a price initially benefits the consumer by offering goods and services at lower price and when the players using such anti-competitive measure are able to eliminate competition, they start exploiting the customers.

**Judicial Perspective:** Hon'ble supreme court of India in a case "Competition Commission of India v. Steel authority of India Limited" held that the principle objects of the said act in terms of its preamble and statements of objects and reasons, are to get rid of practices having adverse effect on competition thereby promoting the health competition as envisaged by the Competition Act, 2002. Therefore, the functions of CCI are not only to supervise and sustain competition but also to protect the consumer's interest. Therefore, it becomes the utmost duty of the CCI to look into matters relating to mergers and combinations which are hampering the justified growth of the market in our country. Supreme court has also taken tough measures from time to time with regards to the adverse effects of the anti-competitive practices on the consumers thereby making it mandatory that no such making of combination, cartels, or mergers should be made possible. CCI<sup>9</sup> has also been pro-active in order to get along with such decisions being made by Hon'ble Supreme court of our country.

**Critical Perspective:** <sup>10</sup>The interface between the Competition Commission vis-à-vis sectorial regulators is critical. The basic premise to be recognized is that sectorial regulators have domain expertise in their relevant sectors. The Competition Commission, established under the Competition Act, 2002 on the other hand, has been constituted with a broad mandate to deal with competition for which certain community. The Commission has been given, under the Act, the mandate to generate public awareness; its efforts in this area may be further strengthened. The Commission<sup>11</sup> should formulate, publish and post in the public domain, guidelines covering various dimensions related to competition law for enhancing public awareness. Such guidelines will help enterprises by bringing greater clarity about the provisions of the competition law and the manner of its enforcement. The Commission should also engage in Compliance Education for business. Truth be told, there has to be synchronization between the competition act, 2002 and the consumer protections act. It becomes mandatory for the competition policy not to assume that consumers will be protected as a result of competition in the market, but to work in a joint manner with the consumers protection act. The ultimate satisfaction level of the consumer must be taken into consideration.

**How Competition Regime Impacts Quality:** In the *Allied Tube* (Allied Tube & Conduit Co. v. Indian Head, Inc., 486 U.S. 492 (1988)) case, the US Supreme Court found that a subgroup of the standard setting organization effectively "captured" the whole group, and harmed competition by excluding an innovative product. In this case, an association that published a code of standards, for electrical equipment, required the use of steel conduits in high-rise buildings, but a new entrant into the market proposed to use plastic conduits. The new product was allegedly cheaper to install, more pliable, and less susceptible to short-circuit. The incumbent steel conduit manufacturers agreed to use the association's procedures to exclude the plastic product, from the code, by sending new members to the association's annual meeting, whose sole function was to vote against the new

product. As a result, the potential entrant's ability to market the plastic conduit was significantly impaired, and consumers were denied the benefit of a potentially significant product innovation<sup>12</sup>.

**Conclusion:** <sup>13</sup>Consumer welfare is not always an automatically generated function of the working of the competition regime, as it exists in India today. Yet a robust competition regime in tandem with parallel mechanisms and a strong civil society can go a long way in buttressing the rights of the consumer. The previous discussions have pointed to the fact that there exist gaps both in policy design, implementation and structural anomalies that still keep consumers open to abuse. The poor consumers are at a greater disadvantage. The COPRA<sup>14</sup> and the extensive system of consumer courts do serve the consumer, but this mechanism also runs a huge backlog. While more appropriate umbrella competition legislation has been designed, its implementation is incomplete while amendments are being discussed. Among these amendments is a suggestion to do away with regional benches which would mean lesser checks on anti-competitive practices at regional or local levels. Nor is there a formal mechanism for an interface between the competition authority and the consumer courts mechanism born out of COPRA (which often handles grass root competition abuses). This is essential if the two systems should work in tandem for the protection of the consumer. There is also a need for wider civil society involvement in the issue of competition and consumer protection, something, which the new competition law would hopefully foster.

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<sup>4</sup> Supra Note-3

<sup>5</sup> Key Challenges in Enforcement of Competition Law in India.(2008,March 7), Law and Enforcement. Retrieved from [http://circ.in/pdf/Key\\_Challenges\\_in\\_Enforcement\\_of\\_Competition\\_Law\\_in\\_India\\_Ashok\\_Chawla.pdf](http://circ.in/pdf/Key_Challenges_in_Enforcement_of_Competition_Law_in_India_Ashok_Chawla.pdf).

<sup>6</sup> Ibid

<sup>7</sup> Unfair Trade Practices and Institutional Challenges in India : An Analysis.(2012,March 9) CUTS International. Retrieved from [http://www.cuts-ccier.org/pdf/Unfair\\_Trade\\_Practices\\_and\\_Institutional\\_Challenges\\_in\\_India-An\\_Analysis.pdf](http://www.cuts-ccier.org/pdf/Unfair_Trade_Practices_and_Institutional_Challenges_in_India-An_Analysis.pdf).

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<sup>10</sup>Consumer Protection Policy (2009, May7) Planning Commission of India: [http://planningcommission.nic.in/plans/planrel/fiveyr/11th/11\\_v1/11v1\\_ch11.pdf](http://planningcommission.nic.in/plans/planrel/fiveyr/11th/11_v1/11v1_ch11.pdf).

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