

Competition law and consumer welfare in India

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Abstract. With the liberalization of the economy and enhancement of market in the competition, nowadays in India the role played by Competition Commission as a regulator gains utmost importance. The Hon'ble Supreme Court in *Ashoka Smokeless Coal India. Pvt. Ltd. v. Union of India*¹ has observed that in a market governed by free economy where producers fix their own prices. Competition can be defined as a process wherein cost efficient production is achieved in a structure having reasonable number of players (producers and consumers) with simple entry and exit procedures and where exists a close substitution between products of different players in a given industry². The aforesaid level playing field can be achieved when there is a choice and competition in the market for procurement of goods. If the policy of the open market as to be achieved the benefit of the consumer must be kept uppermost in mind by the State. This paper explores the correlation between consumer protection and the Competition Commission of India. The work begins by explaining perfect market conditions and ideal consumer behavior and then goes on to discuss what variations are present in reality. The author explains the need for the rationality behind consumer protection and also goes on to explain the different standards on which consumer protection policy can be based for the welfare of consumer in the market in the competition. The evolution of the competition law of India is also critically analyzed for a better understanding of how the needs of consumer protection changed over a time. The paper goes on to discuss the effects of anti-competitive practices on the consumer and how the law provides for inquiry into alleged contravention of provisions relating to anti-competitive agreements, abuse of dominance and combinations by the Competition Commission of India. There undergoes a review of the cases accepted by the Competition Commission of India and a critical analysis of the reasoning behind various decisions by giving some conclusions and suggestions.

Keywords: Consumer welfare, competition law, competition policy, competition commission, anti-competitive practices.

¹T. Ramappa, *Competition Law in India: Policy, Issues and Developments*, 1(Oxford University Press, New Delhi, 3rd edn., 2014)

²Raj Kumar S. Adukia, An Overview of Provisions Relating to Competition Laws & Consumers Protection Laws in India, p.1, available at: <http://www.caaa.in/Image/competition%20laws.pdf>, accessed on: 15th May, 2018.

INTRODUCTION

The need for evolving and stating the competition policy of India can hardly be overemphasized. In fact, it has long been overdue. What has pushed it to the forefront by the government now is the entry of multinational industries which have significant positions in international markets and which should be expected to use this to their advantage. Indian industry, used to protection, has belatedly recognized the gross inequality between them, and the multinationals in terms of size and experience, and now expects the government to lay out what is customary called a level playing field, to borrow a cliché from the language relating to sports, a field not compatible with the spirit in which commerce should usually be expected to be carried on. Competition can be defined as a process wherein cost efficient production is achieved in a structure having reasonable number of players, that is, producers and consumers, with simple entry and exit procedures and where exists a close substitution between products of different players in a given industry. Competition refers to a market situation in which sellers independently strive for buyer's patronage in order to achieve the business objectives of profit, sales turnover and market share.³ In other words, it is the act of competing by an enterprise against other business enterprises for the purpose of achieving dominance in the market or attaining a reward or goal. It is the foundation on which a market system works. For market economy to function effectively, this competition has to be free and fair.⁴ Such a competition stimulates innovation and productivity and thus leads to the optimum allocation of resources in the economy; guarantees the protection of consumer interests; reduces costs and improves quality; accelerates growth and development and preserves economic and political democracy.⁵

Without sufficient protections, endeavors may undermine the market by falling back on uncalled for rehearses for their transient additions. Subsequently, advertise distortionary practices and anti-competitive forces may limit the working of healthy competition in an economy. In this manner, there emerges the need of an appropriate administrative condition which can guarantee a healthy competition with the goal that all business undertakings can develop and grow and animate monetary advancement of the nation. Enactment of a powerful competition law ought to contain here and now and long haul strategy alternatives that can direct the opposition use to run the economy on a sheltered track with maintaining speed.⁶

In the wake of globalization, India has received progressive measures of opening up of its economy, by resorting to unfair practices for their short term gains. As

a result, market distortionary practices and anti-competitive forces may restrict the working of healthy competition in an economy. Since quite a while, we have been seeking after the experts in India that it is imperative to situate and illuminate buyer activists on the advantages of an opposition law and approach. All things considered, one of the objectives of an opposition administration is purchaser welfare. The Competition Act in India, as a substitution to the obsolete Monopolies and Restrictive Trade Practices Act, 1969, was ordered in 2002.⁷

Competition law in India

India had its own adaptation of such a law through the Monopolies and Restrictive Trade Practices Act, 1969 (MRTP Act). Be that as it may, an amended new enactment codified for the liberalized and growing Indian economy, the Indian Competition Act was passed in 2002. While the Act was passed in 2002, it has been put into force in stages. In an important advancement, the legislature on 15th May, 2009, issued notifications giving the impact from 20th May, 2009 to, among others, the provisions dealing with anti-competitive agreements (Section 3) and abuse of dominance (Section 4) in the Act. These sections regulate all type of agreements which, among other things, manage creation, supply, appropriation, stockpiling, and control of goods and services and regulate the abuse of dominance by an enterprise or group.

India had its own version of such a law through the Monopolies and Restrictive Trade Practices Act, 1969 (MRTP Act). But an updated new legislation formulated for the liberalized and booming Indian economy, the Indian Competition Act was passed in 2002. While the Act was passed in 2002, it has been put into force in stages. In a significant development, the government on 15th May, 2009, issued notifications giving effect from 20th May, 2009 to, among others, the provisions dealing with anti-competitive agreements (Section 3) and abuse of dominance (Section 4) in the Act. These sections regulate all types of agreements which, among other things, deal with production, supply, distribution, storage and control of goods or services and regulate the abuse of dominance by an enterprise or group.

The Competition Commission of India (CCI) will have the power to initiate cases against enterprises (i) where the enterprise is involved in anti-competitive agreements; and (ii) where the enterprise is indulging in abusing its/their dominance in the relevant market.

The important components of the Competition Act, 2002 are:

³*Id.*

⁴*Id.*

⁵*Ibid.*

⁶*Supra Note*, 4 at pp.3-4.

⁷*Supra Note*, 4 at pp.3-4.

- Anti-competitive agreements
- Abuse of dominance
- Regulation of combinations
- Competition Advocacy

The Competition Act provides that an anti-competitive agreement shall be void and prohibits an enterprise or a person from entering into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services which causes or is likely to cause an appreciable adverse effect on competition in India.

Abuse of dominant position has been defined in the Competition Act to incorporate specifically or by implication forcing uncalled for or oppressive conditions or costs in buy or offer of merchandise or administrations; confining or restricting generation of products/administrations or market or constraining specialized or logical advancement identifying with products or administrations to the preference of buyers; enjoying works on bringing about refusal of market get to; utilizing strength in one market to move into or ensure different markets.

The Competition Act looks to direct combinations which incorporate acquisitions or mergers or amalgamations of endeavors. Securing of at least one enterprise by at least one people or merger or amalgamation of endeavors is a combination on the off chance that it meets the jurisdictional limits in view of aggregate estimation of benefits or turnover. Higher edges of benefits or turnover host been endorsed when gatherings to mix have a place with a gathering or have resources or turnover outside India.

The Competition Commission of India attempts advancement of rivalry support and formation of mindfulness about rivalry issues in India and abroad by programs, exercises and so forth in such manner, by constituting Advocacy Advisory Committee(s), by creating and dispersing backing writing, by embraced studies and statistical surveying for this reason and furthermore by empowering scholarly and proficient foundations to incorporate rivalry law and approach in the educational module controlled by them.

Competition approach

Competition approach is characterized as those administration measures that influence the conduct of endeavors and structure of the business with a view to advancing effectiveness and boosting purchaser or social welfare.

Abuse of dominant position has been defined in the Competition Act to include directly or indirectly imposing unfair or discriminatory conditions or prices in purchase or sale of goods or services; restricting or limiting production of goods/services or market or limiting technical or scientific development relating to goods or

services to the prejudice of consumers; indulging in practices resulting in denial of market access; using dominance in one market to move into or protect other markets.

The Competition Act seeks to regulate combinations which include acquisitions or mergers or amalgamations of enterprises. Acquisition of one or more enterprise by one or more persons or merger or amalgamation of enterprises is a combination if it meets the jurisdictional thresholds based on total value of assets or turnover. Higher thresholds of assets or turnover have been prescribed when parties to combination belong to group or have assets or turnover outside India.

The Competition Commission of India undertakes promotion of competition advocacy and creation of awareness about competition issues in India and abroad by programmes, activities etc. in this regard, by constituting Advocacy Advisory Committee(s), by developing and disseminating advocacy literature, by undertaking studies and market research for this purpose and also by encouraging academic and professional institutions to include competition law and policy in the curricula administered by them.

Competition policy

Competition policy is defined as those government measures that affect the behavior of enterprises and structure of the industry with a view to promoting efficiency and maximizing consumer or social welfare (Khemani and Dutz, 1996). There are two components of a comprehensive competition policy. The first involves putting in place a set of policies that enhance competition or competitive outcomes in the markets, such as relaxed industrial policy, liberalized trade policy, convenient entry and exit conditions, reduced controls and greater reliance on market forces. The other component of competition policy is a law and its effective implementation to prohibit anti-competitive behavior by businesses, to prohibit abusive conduct by dominant enterprise, to regulate potentially anti-competitive mergers and to minimize unwarranted government regulatory controls (Basant and Morris, 2000).

The World Trade Organization (WTO) defines competition policy as: "the full range of measures that may be used to promote competitive market structures and behaviour, including but not limited to a comprehensive competition law dealing with anti-competitive practices of enterprises", and similarly, the World Bank (1996) defines competition policy as: "government measures that directly affect the behaviour of enterprises and the structure of industry (Sharma, nd). An appropriate competition policy includes both:

- (a) Policies that enhance competition in local and national markets, and
- (b) Competition law, also referred to as anti-trust or anti-

monopoly law.”

Whereas, Competition Policy provides guidance for government entities for use in analyzing policies, laws, and regulations that affect market activity and help achieve national strategic objectives such as attaining highest sustainable levels of economic growth with inclusion, improving investment climate and attracting investment, generating entrepreneurship and employment, checking inflationary forces, promoting economic democracy, protecting economic rights of citizens for just, equitable, inclusive and sustainable economic and social development and supporting good governance by restricting rent seeking practices, competition law sets forth binding prohibitions of anti-competitive agreements. It would be seen that a competition law is a regulatory instrument to check the prevalence of anti-competitive practices whereas a competition policy is a proactive and positive effort to build competition culture in an economy. To strengthen the forces of competition in the market, both competition law and competition policy are required- the two complement each other. The competition law prohibits and penalizes anti-competitive practices by enterprises functioning in the market i.e. addresses market failures whereas competition policy seeks to correct the anti-competitive outcomes of various government policies and laws, and help in development of competitive markets (Mehta, 2010).

Competition law aims to protect competition in the market as a means of enhancing consumer welfare and ensuring the efficient allocation of resources. While to a large extent, it is therefore a ‘consumer-focused competition policy.’ Protection of consumer interests runs through the Competition Act. The preamble of the Competition Act clearly states that the CCI is to protect the interests of the consumers. The Hon’ble Supreme Court of India in the case of *Competition Commission of India v. Steel Authority of India Ltd*⁸, observed; The principle objects of the Act, in terms of its preamble and Statement of Objects and Reasons, are to eliminate practices having adverse effects on the competition to promote and sustain competition in the market, to protect the interests of the consumers and ensure freedom of trade carried on by the participants in the market, in view of the economic developments of the country. In other words the Act requires not only protection of trade but also protection of consumer interest. Subsequently, it can be seen that assurance of purchasers’ advantage has drawn in the parliamentary consideration while ordering the Competition Act and the same has been emphasized by Hon’ble Supreme Court. In this manner the capacity of the CCI is not just to administer and manage competition in the market yet in addition to ensure the interests of the consumers. Thus consumer protection is a vital element

of Competition Law, but the question that arises is whether Consumers can be protected by mere implementation of competition policies or that both Competition Law and Consumer Protection Policy should go hand in hand.

Concept of consumer protection

The United Nations Guidelines for Consumer Protection adopted by the UN General Assembly in 1985 and amended in 1999. It represents an international regulatory framework for governments to use for the development and intensification of consumer protection policy and legislation, aimed at promoting consumer welfare. The UN Guidelines call upon governments to develop, strengthen or maintain a strong consumer policy, and provide for enhanced protection of consumers by enunciating various steps and measures around eight themes. These eight themes are:

1. Physical safety
2. Economic interests
3. Standards
4. Essential goods and services
5. Redress
6. Education and information
7. Specific areas concerning health
8. Sustainable consumption

These guidelines have implicitly recognized eight consumer rights which were made explicit in the Charter of Consumers International as follows:

1. Right to safety - This right gives protection against marketing of goods which are hazardous to life and property;
2. Right to be informed - The consumer needs to be informed about the quality, quantity, potency, purity, standard and price of goods to protect the consumer against unfair trade practice.
3. Right to Choose - The consumers should have access to an authority of goods at competitive prices.
4. Right to be heard - The consumers interests should receive due consideration at appropriate forums,
5. Right to seek redressal - There should be redressal system against unfair trade practices or unscrupulous exploitation of consumers.
6. Right to consumer education - Creation of consumer awareness is a must to serve the purpose of the law to secure the interests of consumers
7. Right to representation
8. Right to healthy environment

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.

⁸Civil Appeal No. 7779 of 2010.

Definition of consumer

In simple words, 'Consumer' is a broad label for any individuals or households that use goods and services generated within the economy. But there exists a difference in the way 'consumer' is defined in the Consumer Protection Act and the Competition Act (Singh and Naruka, nd).

Consumer Protection Act

Section 2(d) of the Consumer Protection Act, 1986 defines 'Consumer' as,

(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, but does not include a person who obtains such goods for resale or for any commercial purpose; or
(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.

The Competition Act

Section 2 (f) of the Competition Act defines 'Competition' as,

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

Thus it can be argued that there is a difference as far as the scope of definition of Consumer is concerned in both these Acts. Under the competition law a trader who buys goods for commercial purposes is also considered as a consumer but the same person will not be treated as a consumer under the Consumer Protection Act. Thus the scope with respect to definition of consumer of competition law is larger than the Consumer Protection Act. The Competition Act enables a person who buys goods for resale to challenge anti-competitive practices as a consumer. Thus it can be said that under Competition Law if a person hires services even for commercial purpose then as well he comes under the category of a consumer and enjoys consumers' rights but under Consumer Protection Act the same person will not be considered as a consumer and thus will have no consumer rights. It was held in the case *Laxmi Engineering Works v. P.S.G. Industrial Institute*⁹ that a person who exclusively buys goods to use himself comes within the definition of Consumer in the Consumer protection Act, 1986.

Interplay between consumer protection and competition law

There exists some distinction between the Consumer Protection Act and the Competition Act with reference to their particular provisions for consumers.

Firstly the meaning of consumer differs a little under the two acts. The Competition Act takes a more extensive perspective of the term 'consumer' and furthermore incorporates a man who purchases goods or hires services for business usage. Be that as it may, under the Consumer Protection Act, such a man is not a consumer. Consequently there is likewise a distinction in the description of consumer who may complain. While in Consumer Protection Act the consumer should be an end user and must utilize the goods for his own purpose though under Competition Law consumer may be a commercial element reusing the goods for business purposes (Sorabjee, 2010).

Secondly, the Consumer Protection Act gives rights and reliefs to an individual consumer, that is, a man can claim compensation for the specific case of inability to give sufficient goods and services in a specific case, while the Competition Commission's powers are more of public interest based, that is, it is the obligation of the commission to ensure reasonable competition in the whole market (Sorabjee, 2010).

Thirdly the substance of the competition commission is that of a controller, and not to give recitative or equitable relief to people who complain. Fourthly, the Consumer Protection Act only deals with consumption and the consumer's interest and not with markets as a whole, though Competition Law manages a market in general.

⁹1995 CTJ 299 (SC) (CP).

Consumer protection is a consequence of competition

Competition promotes efficiency and productivity. 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 maybe 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. Now 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, that is, quality products at lower prices.

The competition movement gives the best impetus for dealers to offer consumers the best quality goods and services at the most reduced feasible costs. The competitive process brings about the greatest possible level of public surplus. By securing the competitive procedure, subsequently, competition protection provisions indirectly promote consumer welfare. Competition leads to reduced prices and to more choices, which benefits the consumer. Evidence has shown that with competition, prices go down while without competition, prices go up. Equally, there may be other benefits in terms of improvements not only in prices but also in services offered and choices available to consumers. Competition is therefore perceived as a driving force of choice. Competition among producers tends to lower prices, provide consumers with choice, generate more information for consumer decisions and open new markets for competitive firms. Competition is therefore seen as a necessary element for consumer welfare though not in itself a sufficient one. Thus consumer welfare is not the main goal of competition law, but the implementation of Competition Policies leads to consumer welfare.

Further, competition law stops anti-competitive practices like abuse of dominant position, anti-competitive agreement, combinations etc. these agreements if prevail in the market begin harming the consumers. For example if a firm attains a dominant status and starts abusing its position then it will lead to hike in prices and degradation of quality, etc, thus affecting the consumers. But competition policy will eliminate the existence of any such anti-competitive agreement thus subsequently protecting the consumers by its actions.

Consumer protection under the competition law

Section 18 of the Competition Act mentions that it is the

duty of the Commission to eliminate practices having adverse effect on competition, promote and sustain competition, protect the interests of consumers and ensure freedom of trade carried on by other participants, in markets in India. Thus here we can see that apart from promoting competition in the market it is also the duty of the Commission to protect the consumers from anti-competitive practices. An enquiry can be initiated by a consumer or a consumer association by giving information to the commission accompanied by the required fees. Inquiry can also be initiated by any enterprise in the same manner. Further CCI can initiate inquiry on its own motion or on reference made to it by the central or state government or a statutory authority.¹⁰

CCI while deciding if an agreement falls under the category of an anti-competitive agreement [Section 19(3)] will have due respect to factors like production of barriers to new entrants in the market, driving existing competitors out of the market, gathering of advantages to consumers, etc. Thus here we see that CCI will consider the total benefits of a consumer before tagging an agreement an anti-competitive. This surely will protect the consumer, due to the fact that his interests are being considered by the CCI in its course of action. Further to this the Competition Commission while inquiring whether a firm in misusing its dominant status shall under Section 16(4) give due regard to all or any of the factors like market share, size and resources of the enterprise and its competitors, comparison of economic powers of the enterprise and its competitors, dependence of consumers, etc. Here as well we can see that there exists a consideration for consumers in determination of a firm's dominant position by CCI. The intent of the person is relevant to the analysis as to whether the conduct is exclusionary or predatory and it has also been noticed that the conduct would be found predatory or exclusionary on the examination of the action of the undertaking concerned in the light of consumer interest, that is, as to whether it has impaired competition in an unnecessary restrictive way. Thus the competition law is designed as such to benefit the consumers along with economic growth, and the CCI as well has powers to determine anti-competitive practices, abuse of dominant position and mergers keeping the welfare of consumers in mind.

Section 27 of the Competition Act empowers the Commission to pass cease and desist order, impose penalty, award compensation to parties, direct modification of agreements or pass any such other order as it may deem fit, when after inquiry the Commission

¹⁰Section 19(1) The commission may inquire into any alleged contravention of the provisions contained in subsection (1) of Section 3 or subsection (1) of Section 4 either on its own motion or on-

- (a) receipt of any information, in such manner and accompanied by such fee as may be determined by regulations, from any person, consumer or their association or trade association; or
- (b) a reference made to it by the Central Government or a State Government or a statutory authority

finds that any agreement is in contravention of Section 3 or Section 4. When during an enquiry before the Commission, the Commission is satisfied that an act in contravention of Section 3(1) or Section 4(1) or Section 6 has been committed and continues to be committed or that such act is about to be committed, the Commission may, by order grant a temporary injunction restraining any party from carrying on such act until the conclusion of such inquiry or until further orders without giving notice to the opposite party, where it deems necessary. Section 41(2)¹¹ of the Act, 2002 confers upon the Director General, in the discharge of his duties, the powers as are vested in a Civil Court under the Civil Procedure Code, 1908.

Anti-competitive practices and consumer protection

The Competition Act, 2002 has been enacted to promote competition in India. The ultimate aim of competition law is to protect consumer welfare as competition in a market ensures that market players are looking to find the most efficient means of production (resulting in good quality services and goods at lower prices). However, unlike the previous Indian Competition Law, the Monopolies and Restrictive Trade Practices Act (MRTP ACT), the Competition Act 2002 does not apply to all 'unfair trade practices'. So, while many consumer disputes would have come under the MRTP Act, the new Competition Act will not always apply to such cases (Roy and Kumar, 2008).

The Competition Act basically does three things. It prohibits:

1. Anti-competitive agreements
2. The abuse of dominant positions
3. Combinations (that is, large mergers, acquisitions and amalgamations) which hamper competition.

Effect of anti-competitive agreements on consumers

An agreement which attempts to control the market (through measures like fixing prices, controlling volumes of production so that prices rise artificially, blocking certain distributors or suppliers, etc.) is an anti-competitive agreement. Provision of Section 3(1) casts a duty on enterprises to examine the proposals for agreement or arrangement from its long term effect on competition in the market. The term 'Appreciable Adverse Effect on Competition' has not been defined under the Act. An anti-competitive agreement must result in an Appreciable Adverse Effect on Competition (AAEC) to be prohibited. For example, where an agreement between two business enterprises results in higher prices for

consumers' or in lower quality of goods, it will result in an AAEC and such an agreement is to be prohibited (Roy and Kumar, 2008).

Effect of dominant position on consumers

The extent of domination can be defined as the position of strength enjoyed by an undertaking that enables it to operate independently of the competitive pressures in the relevant market and also to effect relevant market, competitors and consumers by its actions. The Competition Law does not prohibit dominance but abuse of dominant position.¹² Section 4(1)¹³ of the Competition Act, 2002, specifically states that no enterprise shall abuse its dominant position and Section 4(2) of the Competition Act specifies the practices by dominant enterprises or group of enterprises as abuses such as directly or indirectly imposing unfair or discriminatory conditions or price in purchase or sale of goods and services, limits and restricts production of goods or provision of services or technical and scientific development related to goods etc. Further it has been suggested that even if the market share is lower, a dominant position may be inferred if there are high barriers to entry that guard the market share.

The abuse of its position by a dominating firm directly affects the consumer due to malpractices like predatory pricing and creation of barriers to the new entrants, thus eliminating competition. This leads to a situation of monopoly and oligopoly where the consumer gets vulnerable to be exploited. Now where there is no competition in the market and the dominant firm has no fear to lose its stand in the market it will start controlling the market, the demand and supply, the prices, etc, and all this will eventually lead to harming the consumers.

Effect of mergers and combinations on consumers

Regulation of combination or regulating merger control is the most striking feature of the new competition law. Powers of former commission in respect of merger control were limited. It could not of its own begin examination in a merger transaction. The power to do so rested with the Government. On receipt of any proposal of combination, the government after examining the matter at its level may either dispose of, the same or may send the same to the commission for opinion. The opinion so given to the Government would be Recommendatory in nature and not binding upon it. The Competition Act, 2002, does not define combination but states the conditions when a combination between persons and enterprises takes place. Section 5 of the Act

¹¹Section 41 (2) The Director General shall have all the powers as are conferred upon the Commission under subsection (2) of Section 36.

¹²*Sri Neeraj Malhotra v. North Delhi Power Limited, BSES Rajdhani Power Limited and BSES Yamuna Power Limited*, MANU/CO/0026/2011

¹³See Section 4(1)-No enterprise or group shall abuse its dominant position.

refers to the acquisition of enterprises, by one or more persons or merger or amalgamation, in the manner set out therein, which would be a combination. Under Section 2(l)¹⁴ the term 'person' would include an individual, a company and certain other entities. Combination of two firms can have an adverse effect on the market. 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, Coca Cola and PepsiCo the two biggest players in India in the soft drink industry combine then this combination will eliminate the competition in the market and the industry will be in a position to control the prices of the goods and thus this will harm the consumers and the economy of the country. The company formed after combination will try and eliminate the smaller industries and this will ultimately lead to full market control which will hamper economic growth and harm the consumers. Thus it is the duty of the Competition Commission of India to check on such combinations.

Consumer protection is one of the aims of CCI

Competition law aims to protect competition in the market as a means of enhancing consumer welfare and ensuring the efficient allocation of resources. While to a large extent, it is therefore a 'consumer-focused competition policy.' Protection of consumer interests runs through the Competition Act. The preamble of the Competition Act clearly states that the CCI is to protect the interests of the consumers. Preamble of the Competition Act; *"An Act to provide, keeping in view of the economic development of the country, for the establishment of a Commission to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers"*.

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.¹⁵ Moreover the consumers or consumer

¹⁴"person" includes-

- (i) an individual;
- (ii) a Hindu undivided family;
- (iii) a company;
- (iv) a firm;
- (v) an association of persons or a body of individuals, whether incorporated or not, in India or outside India;
- (vi) any corporation established by or under any Central, State or Provincial Act or a Government company as defined in Section 617 of the Companies Act, 1956 (1 of 1956);
- (vii) anybody corporate incorporated by or under the laws of a country outside India;
- (viii) a co-operative society registered under any law relating to cooperative societies;
- (ix) a local authority;
- (x) every artificial juridical person, not falling within any of the preceding sub-clauses

¹⁵Section 18-Subject to the provisions of this Act, it shall be the duty of the Commission to eliminate practices having adverse effect on competition,

associations are also given the right to complain against any anti-competitive practices in contravention of Sections 3(1) and Section 4(1) to the CCI under Section 19(1) of the Act.

Further under Section 19(3), 19(4) due considerations are also given to the position of the consumers in determining whether a practice is anti-competitive or not. Under Section 19(3) the accrual of benefits to the consumers are seen to determine whether an agreement has an AAEC or not. Under Section 19(4) while inquiring whether an enterprise enjoys a dominant position or not under Section 4 the dependence of consumers on the enterprise is determined.

Competition Act also mentions protection of Consumer interests as one of its aims. In spite of having a dedicated Act for consumers, the fact that Protection of Consumer Interests is also one of the aims of the Competition Act points towards the fact that consumer protection is one of the aims of CCI. Further Section 19(1) says 'The Commission may inquire into any alleged contravention of the provisions contained in subsection (1) of Section 3 or sub-section (1) of Section 4 either on its own motion or on receipt of any information, in such manner and accompanied by such fee as may be determined by regulations, from any person, consumer or their association or trade association.

Section 19(1) has provisions for both the consumer or consumer association and person as well. Person is defined under Section 2(1) of the Competition Act and it also contains an individual or an association. In spite of the definition of person including an individual still the fact that Section 19(1) mentions both a person and a consumer conveys the importance; consumer protection is given under the Competition Act. From the above we can conclude that Consumer Protection is not just a mere consequence of Competition, but in fact one of the aims of the Commission.

CONCLUSION

The modern competition law seeks to protect the process of free market competition in order to ensure efficient allocation of economic resources. It is commonly believed that competition law is ultimately concerned with the interest of the consumers. The Constitution of India provides for the Directive Principles of State Policy and Articles 38 and 39 of the Constitution mandate upon States to secure a social order for the promotion and welfare of the people. This provision recognized the need to eliminate and minimize the inequalities in income, which applied not only to the individuals but also to the groups in different areas. Article 39(c) of the Constitution provides that the States shall strive to secure that the operation of the economic system does not result in the

promote and sustain competition, protect the interests of consumers and ensure freedom of trade carried on by other participants, in markets in India.

concentration of wealth and means of production to the common detriment. Competition policy is defined as those government measures that influence the conduct of enterprises and structure of the industry with a view to advance effectiveness and magnifying consumer or social welfare. After globalization and liberalization and a consistent high growth since reforms were adopted in 1990s, we have now become one of the largest economies of the world. In such an economy we need better policies to ensure that misguided government policies do not thwart competition. Efforts in the direction of envisaging competition policy should now be expedited. Above all, consumers should stand for their own rights. Consumers are stakeholders in any matter affecting competition; hence, they must remain aware on the issues concerning their welfare. Civil society shares the onus equally. Especially, in developing countries such as India, competition agencies have limitations pertaining to financial resources that hinder their ability to effectively implement their laws. Civil society, therefore, fills in the vacuum through mobilizing consumers to seek redressal against anticompetitive practices. It is, therefore, collective responsibility of the government, Civil Society Organizations (CSOs) and consumers themselves, with their respective resources to establish and improve the competition culture in India, so that we can grow and create more jobs for the poor.

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