PROTECTING CONSUMER INTERESTS UNDER COMPETITION LAW

INTERNSHIP PROJECT REPORT

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1. **INTRODUCTION**

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

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

The kind of protection accorded to consumers under the Competition Act and the Consumer Protection Act can be inferred from the definition of the word ‘consumer’ under the two statutes.

The definition of ‘consumer’ under the Consumer Protection Act, 1986, includes any buyer or user of goods or services but does not include a person who obtains such goods for resale or for any commercial purpose. However, the definition under the Competition Act, 2002, recognizes a person who buys or uses goods or services for commercial purpose or for resale, as a consumer. In this way, the Competition Act aims to protect the larger public interest from anti-competitive practices.
This project will be dealing with the various issues relating to consumer protection under the competition law in India, and the position in various other countries. Whether consumer protection is the ultimate goal of competition law, or the enforcement of competition law leads to the protection of consumer interests, as a consequence. What is the stand taken by the Competition Commission of India, regarding cases involving consumer grievances, what is the standard of consumer welfare required to be taken into consideration while dealing with competition issues, and to what extent is protection accorded to consumers under other legislations. Whether there is a need for a unified redressal agency for cases regarding competition and consumer protection, or an amendment to the Competition Act for ensuring better protection to consumers.
2. PROTECTING CONSUMER INTEREST

Consumers have been recognized as an important component of the economy, and protecting them from exploitation and ensuring their rights has become a vital feature of government legislations and policies. Apart from the legislation enacted for consumer protection, a number of other laws provide for the protection of consumer interests.

2.1. Consumer Protection Act, 1986

The Consumer Protection Act, 1986 (COPRA) provides a three-tier, simple, quasi-judicial machinery, at the National, State and District levels, for the protection of consumers. The preamble of the Act states its objective, i.e., to provide for better protection of the interests of consumers and for that purpose to make provision for the establishment of consumer councils and other authorities for the settlement of consumers' disputes. The Act establishes Consumer Councils at the National, State and District level, the object of which, under Sec. 6, is to promote and protect the rights of the consumers such as, redressal against unfair trade practices, consumer education, protection against hazardous goods, right to be heard, right to be informed etc. A recent amendment of the COPRA among other things deals with rights of complaint, monetary jurisdiction and enforcement. The amended Act provides for attachment and subsequent sale of the property of a person not complying with an order. Proceeds from such sales may go to pay the damages of the aggrieved consumer.

Thus, COPRA is a comprehensive piece of legislation, dealing with all the aspects of consumer protection in India, and ensuring consumer rights in the best possible way. It provides redressal even to an individual consumer grievance, unlike competition law.

2.2. Financial Sector

Consumers of financial services are often more vulnerable than consumers of ordinary goods and require a special effort by the State. Apart from the remedies available through the courts of law and consumer courts, consumers of financial products and services may also resort to mechanisms set up by product specific regulators.
2.2.1. Credit

The central bank, the Reserve Bank of India, is the regulator of the banking system and consequently oversees the consumer protection regime for credit products in India. The RBI issues guidelines from time to time covering various aspects of consumer protection.

While the RBI was set up in 1934, it has become far more active in protecting the interests of end-consumers primarily in the past two decades, reflecting, in some senses, the creation of the SEBI in 1992 and the IRDA in 1999 to protect the interests of investors and purchasers of insurance products.

The matrix of consumer protection for aggrieved consumers of credit today is as follows: (a) Information dissemination to customers mandated by the Banking Codes and Standards Bureau of India (BCSBI) / Fair Practices Code adopted by banks. (b) In-house grievance redressal mechanisms set up by banks (c) Office of the Ombudsman, created by RBI in almost every state of the country, that could enquire into complaints not properly resolved by the concerned bank. Banking Ombudsman Scheme is fully funded and managed by India’s central bank. Bank customers can lodge a complaint with any of the 15 offices of the Banking Ombudsman situated across the country, on 27 different grounds of “deficiency in banking services”. (d) Consumer Courts under COPRA (e) Courts of law.

2.2.2. Securities

Aspects of consumer protection relating to securities in India are regulated by the Securities Exchange Board of India. Set up by an Act of Parliament in 1992, the SEBI was set up “...to protect the interests of investors in securities and to promote the development of, and to regulate, the securities market...”.

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The matrix of consumer protection for aggrieved consumers of securities in order of access is as follows: (a) SCORES: SEBI Complaints Redress System – an online portal for investors to register their complaints against listed companies and intermediaries. (b) SEBI Tribunal: SEBI Tribunal has exclusive jurisdiction in matters falling under the scope of the SEBI Act to the exclusion of courts of law and by extension, consumer courts (c) Securities Appellate Tribunal (SAT): Forum for first appeal from decisions of the SEBI Tribunal (d) Supreme Court: Second appeal lies directly to the Supreme Court but only on “questions of law”

2.2.3. Insurance

The insurance sector in India (both life insurance and general) is governed by the Insurance Regulatory and Development Authority, set up by an Act of Parliament in 1999 “…to protect the interests of the holders of insurance policies, to regulate, promote, and ensure orderly growth of the insurance industry…”. The IRDA also passes regulations from time to time regulating both substantive as well as procedural aspects of the above consumer protection structure.

The matrix of consumer protection for aggrieved consumers of insurance in order of access is as follows: (a) Grievance redressal cell within each of the life and non-life companies mandated by IRDA (Protection of Policyholders’ Regulations), 2002. (b) IRDA Grievance Cell / Director of Public Grievances (only for public sector insurance companies). These remain the second port of call, coming into play in practice only after the consumer has sought redress through the in-house grievance cells. The latter, the Director of Public Grievances entertains complaints against the public sector insurance companies (including LIC, GIC, United India, National, New India, Oriental) and is based within the Cabinet Secretariat of the Government of India. (c) Insurance Ombudsman: First created by Government of India notification in 1998. There are 12 such ombudsmen in India. Insured is necessarily required to first approach the concerned insurer, failing which he may approach these ombudsman. (d) Consumer courts under COPRA (e) Civil courts
2.2.4. Pensions

The pension sub-sector of the financial products and services sector falls under the regulatory ambit of the Pension Fund Regulatory and Development Authority (PFRDA), established “to promote old age income security by establishing, developing and regulating pension funds, to protect the interests of subscribers to schemes of pension funds and for matters connected therewith or incidental thereto”.

However, from the point of view of consumer protection, uncertainty still pervades this sub-sector as even though the PFRDA was first established through an executive Government of India order dated 10th October, 2003, the PFRDA Bill providing statutory legitimacy to the same has yet to be passed by Parliament. Till date, no consumer grievance redressal mechanism in the pension sphere analogous to those existing in the insurance, credit and securities’ spheres has been set up by the PFRDA, on account of its lack of statutory legitimacy.

2.2.5. Financial Sector Legislative Reforms Commission

The government of India has recently up set up the Financial Sector Legislative Reforms Commission (FSLRC) to examine, amongst other things, the architecture of the regulatory system governing the financial sector in India. Focusing on consumer protection is the ultimate objective of financial sector regulation.

Headed by former justice BN Srikrishna, the Financial Sector Legislative Reforms Commission has suggested that key regulators like SEBI, IRDA, PFRDA and FMC should be merged into a unified financial redressal agency (FRA) to address consumer complaints against companies across the financial sector. The agency would have front ends in every district of the country, where consumers of all financial products would be able to submit complaints. Technology would be used to connect up these front ends to a centralized adjudication process. Consumers will deal only with FRA when they have grievances in any financial activity, and not with multiple regulators.
Some of the rights and safeguards FSLRC proposed for consumers are protection against unfair terms of contract, against misleading and deceptive conduct, the right to receive support to enter suitable contracts, the right to receive reasonable quality of service, and the right to data privacy and security.²

2.2.6. Company law

The Companies Act, 1956 does not expressly provide for the protection of consumer interests. However, shareholders can be considered as consumers by the following interpretation: Firstly, shareholders buy shares and earn dividend. This payment of dividend is a service offered by the company in exchange of the price offered by the shareholders for the shares. Under the Consumer Protection Act, any person who hires or avails any service for a consideration is a consumer. Secondly, shareholders under the Companies Act, have limited liability, unlike the owners, who have an unlimited liability. Therefore, shareholders cannot be considered as owners, and thus can be considered as consumers.

2.3. Redress mechanisms in other Sectors³

Other than COPRA, redress mechanisms are also to be found in the Arbitration and Conciliation Act 1996, and through codes of business ethics. Some sectoral regulators like telecom and electricity also have redress mechanisms. Thus there is generic complaint redress by TRAI, telephone adalats, grievance redressal mechanisms of state electricity commissions etc.

State electricity regulators in Himachal Pradesh, Haryana, Karnataka and other states have set up consumer grievance redressal mechanisms including electricity ombudsman in some cases. The Ministry of Consumer Affairs has also set up a national consumer helpline for information and complaints purposes. Some big companies including banks, airlines, hotels

have their own customer feedback and customer solutions mechanisms. With increased competition the need for customer feedback on part of companies would no doubt increase. The suggestion for setting a ‘consumer ombudsman’ has often been voiced by consumer activists. A ‘consumer ombudsman’ or a state level competition and regulatory agency, could be helpful in dealing with local-level monopolies and collusive practices which a consumer often encounters. A consumer ombudsman will also take the pressure off consumer courts and formalize and strengthen the prevalent practice of out-of-court settlements mediated through consumer groups. The banking and insurance sectors, as mentioned above, already have such a system.

2.4. Monopolies and Restrictive Trade Practices Act

Redressal mechanisms are an essential component of the competition legislation of any country and so is the case in India where the MRTPA has in-built grievance redressal provisions. With subsequent developments in the Indian economy, there were nine amendments to the MRTP Act before it was finally repealed by the Competition Act. Of these, the amendments of 1984 and 1991 are significant. Prior to 1984, the MRTP Act contained no provisions for the protection of consumers against false or misleading advertisements and other similar Unfair Trade Practices (UTPs). It was felt necessary to protect them from such practices resorted to within trade and industry to mislead or dupe them. The Sachar Committee therefore recommended that a separate chapter be added to the MRTP Act defining the various UTPs so that consumers, manufacturers, suppliers, traders and others in the market could conveniently identify practices that are prohibited. The provision as to UTPs in the MRTP Act was introduced in 1984. With the restructuring of the MRTP Act through the 1991 amendments, the thrust shifted to curbing MTPs (Monopolistic Trade Practices), RTPs (Restrictive Trade Practices) and UTPs with a view to preserve competition in the economy and safeguard the interests of consumers by providing them protection against false or misleading advertisements and/or deceptive trade practices. Thus, the Consumer Protection Act, 1986 and the Monopolies and Restrictive Trade Practices Act, 1969 had been playing complementary roles in promoting consumer welfare in India.
However over the years, because of its inefficiency (factors like inadequate budgetary allocation and lack of autonomy) the MRTPC was not very effective in providing redress as number of cases kept piling up. Moreover the MRTPC solved the cases that were less damaging for the consumers and the economy, whilst the relatively more damaging cases remained unattended.4

2.5. Competition Act, 2002

Effective competition regime provides necessary conditions for maximizing the interests of the consumers. Protection of consumer interests runs through the Competition Act. The Preamble of the Act and subsequent provisions like Sec 18, 19 etc. expressly provide for protection of consumer interests. Sec. 2(f) defines ‘consumer’ which, as earlier mentioned, is much wider than the definition given under the Consumer Protection Act, 1986. Further, under the chapter on Duties, Powers and Functions of Commission, it is provided that the Commission shall, while determining the "relevant geographic market" and "relevant product market", have due regard to consumer preferences.

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

The inefficiency and inadequacy of the MRTPA led to the formulation of the Competition Act, and the establishment of the Competition Commission of India to enforce its provisions. The Competition Commission of India is expected to serve consumers better as far as redress is concerned. Among other things the Competition Act allows individual consumers or their associations to present their grievances for redressal, before this forum. However cost considerations and other factors may deter individual consumers or local consumer groups to approach the CCI. The need for regional benches of the Commission is again felt in this context.

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SECTORAL OVERLAPS

There are innumerable instances of ostensibly overlapping jurisdictions on questions of competition. Legislators have not been very careful in allocating specific areas of work for economic regulators. Their muddled understanding of competition policy is evident in both their recent and past work. This awkward body of legislation also reflects a lack of comprehension of regulatory jurisprudence.

A. The Petroleum Regulator

In spite of the Competition Act, one of the objectives behind the recently drafted Petroleum and Natural Gas Regulatory Board Act, 2006, (“PNGRB Act”) is “to promote competitive markets” and “protect the interest of consumers by fostering fair trade and competition amongst the entities.” Interestingly, the PNGRB Act borrows the concept of “restrictive trade practices” from the MRTP Act—a concept that the Competition Act sought to repeal. After four years of drafting the Competition Act, the framers appear to have either forgotten about the earlier act or developed cold feet about the need for modern competition legislation.

B. The Electricity Regulator

The Electricity Act is another example of the confusion caused by overlapping jurisdictions of regulatory authorities in India. Though the Electricity Act was passed by the Parliament on May 26, 2003—a good four and a half months after the Competition Act was passed on January 13, 2003—one of its objectives is the promotion of competition. Indeed, the framers of the legislation ignored the competition legislation and conferred power upon the electricity regulator, the CERC, to deal with anti-competitive agreements, abuse of a dominant position, and mergers impeding competition in electricity markets.

The CERC has also been entrusted with the task of advising the government on competition within the electricity sector.

C. The Telecom Regulator

It was established, inter alia, in order to ensure orderly development of the telecom sector. Accordingly, one of its critical functions is to “facilitate competition and promote efficiency.” Nevertheless, the appellate authority established to adjudicate telecom disputes has no jurisdiction over competition matters, or at least those arising under the old MRTP Act.

D. The Securities Market Regulator

The securities market regulator, the SEBI, is one the oldest regulators and was set up on the point of market reforms in India. The SEBI has been entrusted with the dual task of protecting investors’ interests and developing the securities market. It also has authority to regulate “fraudulent and unfair trade practices.” While the enactment does not venture to define fraudulent and unfair trade practices, the regulator nevertheless oversees mergers.

Implications:

There is possibility for conflict between jurisdictions of the CCI and other sectoral regulators For example, under the Electricity Act, 2003, the power is with the Central Electricity Regulatory Commission to issue directions to a licensee or generating company if it enters into any agreement or abuse of their dominant position or enter into a combination, this is likely to cause an adverse effect on competition in electricity industry. Now this poses a question as to who would exercise jurisdiction and opens up the doors for forum shopping. This is definitely a challenge, and one which requires answers at a policy level.

The present situation, therefore, demands harmonization. The Raghavan Committee recommended that the coordination and cooperation between the CCI and sectoral
regulators should be maximized. An option is to make the Commission responsible for both sector specific regulation as well as overarching competition enforcement. This approach is advantageous, as it reduces the multiplicity of regulators and accumulates sectoral expertise. Indeed, Australia has used this approach to create an economy-wide economic regulator that integrates technical and competition regulation.

From the above discussion, it can be concluded that consumer protection has become an important aspect of various legislations, and same is the case with competition law. The legislators are realizing the vulnerability of consumers, and are trying to incorporate the relevant provisions in the legislations of the sectors which are more likely to affect the consumers.
3. CONSUMER WELFARE
AS A GOAL OF COMPETITION LAW

Competition law has multiple goals, which include:

- Ensuring an effective competitive process
- Promoting consumer welfare
- Enhancing efficiency
- Ensuring economic freedom
- Ensuring a level playing field for small and mid-sized enterprises
- Promoting fairness and equality
- Achieving market integration
- Facilitating privatization and market liberalization and
- Promoting competitiveness in international markets.

Consumer welfare is therefore, one of the goals of competition law. Competition law aims to protect competition in the market as a means of enhancing consumer welfare and ensuring the efficient allocation of resources.

Consumer welfare also known as consumer surplus refers to the difference between what consumers are willing to pay and what they actually pay. The level of consumer surplus is shown by the area under the demand curve and above the ruling market price.

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6. 2007 ICN Report
Competition is now universally acknowledged as the best means of ensuring that consumers, even more so the *aam adami* or common man, have access to the broadest range of services at the most competitive prices.\(^7\)

At this stage, a brief discussion on the difference between consumer interest and public interest may be necessary to help appreciate the analysis.

The Report of the High Level Committee on Competition Policy and Law,\(^8\) popularly known as the Raghavan Committee, explains that often consumer interest and public interest are considered synonymous, but they are not and need to be distinguished. In the name of public interest, many Governmental policies are formulated which are either anti-competitive in nature or which manifest themselves in anti-competitive behaviour. If the consumer is at the fulcrum, consumer interest and consumer welfare should have primacy in all Governmental policy formulations.

Consumer is a member of a broad class of people who purchase, use, maintain and dispose of products and services. Consumers are affected by pricing policies, financing practices, quality of goods and services and various trade practices. They are clearly distinguishable from manufacturers, who produce goods and wholesalers or retailers, who sell goods.

Public interest, on the other hand, is something in which society as a whole has some interest, not fully captured, by a competitive market. It is an externality. However, there is a justifiable apprehension that in the name of "public interest", Governmental policies may be fashioned and introduced which may not be in the ultimate interest of the consumers. The asymmetry arises from the fact that all producers are consumers but most are producers as well. What is desirable for them in one capacity may be inimical in the other capacity. A simple example will make the point clear. A farmer wants the price of goods he consumes to be as cheap as possible but wants the highest price for its produce. A Government wishing to encourage agriculture for self-sufficiency in food as a national

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\(^{7}\) National Conference on "Competition Regime – Benefiting the Consumer", New Delhi, October 2010 available at http://www.cuts-ccier.org/National_Conference_on_Competition_Regime-Benefiting_the_Consumer.htm accessed on 16/10/12

security measure faces the conflict: should it support high prices to encourage production or low prices to protect the consumer? This is a characteristic public interest-consumer interest conflict. In general, it can be stated that buyers want competition and sellers monopoly. The economists’ answer is that there are in a society too many such divergent interests and therefore the resolution is best left to markets without Government intervention. They are all too conscious of the possibility of abuse of the expression "public interest" by vested interests.

11th Planning Commission Report⁹ states that promotion of consumer welfare is the common goal of consumer protection and competition policy. At the root of both consumer protection and competition policy is the recognition of an unequal relationship between consumers and producers. There is strong commonality between competition policy and law on the one hand and consumer protection policy and law on the other. An effective competition policy lowers entry and exit barriers and makes the environment conducive to promoting entrepreneurship, which also provides space for the growth of small and medium enterprises and consequent employment expansion.

Competition and consumer policies aim at increasing consumer welfare in the total welfare equation, by protecting consumer’s economic interests. When the two policies are applied properly they have a complementary effect because they reinforce one another despite the fact that, they deploy different approaches in regulating conducts of markets.

Thus, the end objectives of both the policies are essentially the same. However, competition policy is more of a proactive policy that inter alia attempts to promote consumer interest in the marketplace, whereas consumer protection policy puts forward mainly a reactive agenda to protect the interests of the consumers, and provide access to redressal against abuses. Of course, consumer protection policy also has some proactive elements. In this regard there is a strong complementarity between the two policies in that consumer welfare is a common goal.

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There are two approaches to development. The first one is concerned with fulfilling the minimum basic needs of the people, removing the sources of poverty and marginalization, focusing on problems like unemployment, basic health services and so on. The second approach to development is concerned with latest technologies, exports, industrialization, more competition to provide better choice and so on. At the core of this lies enhancement and maintenance of competitiveness. Consumer protection policy is part of the strategy that emanates from the first approach, while competition policy is an integral part of the second approach though there are significant overlaps. However, it may be noted here that the two approaches do not mean two alternatives, but rather two instruments that must be used simultaneously.

Competition law concentrates in maintaining the process of competition between enterprises and tries to remedy behavioral or structural problems in order to re-establish effective competition in the market. The consequence of this is higher economic efficiency, greater innovation and enhancement of consumer welfare. Thereby the consumer experiences wider choices and greater availability of goods at affordable prices. On the other hand, the consumer protection policy and law are primarily concerned with the nature of consumer transactions, trying to improve market conditions for effective exercises of consumer choice. Thus, the two disciplines focus on different market failures and offer different remedies, but are both aimed at maintaining well functioning, competitive markets that promote consumer welfare. The two disciplines are mutually re-enforcing.\footnote{Competition Protection and Competition Policy, available at http://planningcommission.nic.in/plans/planrel/fiveyr/11th/11_v1/11v1_ch11.pdf, accessed on 18/10/12}

protects consumers directly and indirectly. The substantive provisions of competition legislation are grouped under two broad headings: consumer protection and competition protection. The groupings are misleading; however, in the sense that it suggests that consumer protection and competition protection are distinct objectives. In practice, however, both sets of provisions are alternative means of achieving the common goal of promoting consumer welfare. The competition process provides the greatest incentives for merchants to offer consumers the best quality goods and services at the lowest possible prices. The competitive process generates the greatest possible level of public surplus. By protecting the competitive process, therefore, competition protection provisions indirectly promote consumer welfare.

While it is apparent that the awareness of consumer interests in the enforcement of competition law is increasing, it is obviously not capable of protecting certain final consumers’ needs. Competition law has inherent limits in that respect. First, the notion of consumer under competition law is broader than under consumer law. This means that competition law might acknowledge certain situations as favourable for consumers while such situations do not benefit the final consumers; only the direct customers of the undertakings. Second, competition law is mostly concerned with the economic interests of consumers and while in a few cases it might take account of wider consumer interests it is definitely not concerned with other significant consumer interests like health and safety issues or information disclosure. Competition policy also has other goals than improving final consumers’ welfare and therefore final consumers cannot and should not become the sole focus of competition laws. 12

It is to be noted that even in developed countries, competition policy is not about just promoting maximum competition and hence maximum choice. An obsession with promoting choice may be counter-productive leading to inefficiency especially when goods and services concerned may tend to be homogenous or there are network externalities. For example, research on retail competition in electricity market of Britain shows that retail competition for small electricity consumers has been an “economic disaster” for them. The

study shows that even though the wholesale prices of electricity have fallen by 35% since 1999 and the price large consumers pay for generation have moved southwards by 22%, the price paid by small consumers has increased by 5%. This is because of duplication of competing facilities and lost scale of economies whose costs are ultimately borne by the consumers.  

Thus, the interaction between competition policy and consumer protection policy may often be complex. There are issues of trade-offs and striking the balance. Hence, there is a strong case for bringing competition policy and consumer protection policy under an integrated framework. Such attempts have been made in some countries, most notably in Australia. Such an approach can be found even in the US where the Federal Trade Commission deals with both competition and consumer protection issues. This of course does not necessarily mean that these two issues have to be dealt with by a single agency but there has to be sufficient coordination and congruence.

The following figure explains the interface between competition and consumer protection

![The Conceptual Framework](image-url)

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13 Nitya Nanda, Competition Policy and Consumer Protection Policy, available at [www.cuts-international.org](http://www.cuts-international.org) accessed on 01/11/12
14 Nitya Nanda, Competition Policy and Consumer Protection Policy, available at [www.cuts-international.org](http://www.cuts-international.org) accessed on 01/11/12
Thus, Competition Policy deals with the relations of economic operators with each other (eg: cartels, mergers etc), while Consumer Policy deals with the behaviour of economic operators in their direct contact with consumers. Despite the differences in their field of operation and types of remedies, it is essential for competition and consumer policy to operate in a complementary and mutually enhancing way, in the interest of the consumers and competitiveness.\textsuperscript{15}

An analysis of laws in the US and EU shows that the goal of competition law is to protect the freedom of individuals to compete. The goal of competition law is not to promote consumer welfare directly. Rather, this is brought about 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.

This philosophy of modern competition law differentiates ‘competition law’ from special consumer protection measures, like the Consumer Protection Act. The decisive adjudication principle is undue competition restriction and not consumer welfare. Thus, the expression “to protect the interest of consumers” in the Act, must be interpreted broadly in deciding disputes of individual consumers. One should not lose sight of the fact that as a specialized body, the CCI may not have been created to do the same job for which there is a body already in existence in the form of a Consumer Forum. The challenge before the CCI 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, ultimately protecting the interest of consumers.\textsuperscript{16}

\textsuperscript{15} George Lipimile, Achieving Consumer Welfare through Competition Reforms in Zambia
Competition law, therefore, prevents anti-competitive practices like abuse of dominant position, anti-competitive agreements, combinations etc. These practices, if prevail in the market, will harm the consumers.

Thus it can be inferred that consumer welfare is not the ultimate goal of competition law, but the implementation of Competition policies leads to consumer welfare. In this way, Competition law promotes consumer welfare indirectly.
4. CONSUMER PROTECTION: INTERNATIONAL PERSPECTIVE

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

4.1. Antitrust goals in U.S.A.

Beginning in the late 1970’s, the Courts and Agencies began to adopt the theories of a group of University of Chicago academics, who taught that the only legitimate goal of antitrust laws was to promote consumer welfare.\footnote{Thomas A. Piraino Jr., Reconciling the Harvard & Chicago Schools: A New Antitrust Approach for the 21st Century, at Pg. 346.}

It was held in the case Broadcom Corp. v. Qualcomm Inc.\footnote{2008 WL 66932.} that the primary goal of antitrust law is to maximize consumer welfare by promoting competition among firms.

Further, in the case LAPD v. Gen. Elec. Corp.,\footnote{132 F.3d 402 (1997).} 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.

The International Competition Network (ICN) recently completed three surveys of its member competition authorities to identify their countries’ antitrust objectives. The third survey, conducted in 2011, explored fifty-seven countries’ conception and application of one often cited goal, promoting consumer welfare.\footnote{2011 ICN SURVEY.} However, most of the countries considered consumer welfare as a ‘natural result of enforcement activities but not necessarily an underlying goal.’\footnote{Maurice E. Stucke, Reconsidering Antitrust Goals at Pg. 571}
Moreover, the Harvard scholars opposed market concentration, even when it might lower costs and prices, thereby benefitting consumers.\textsuperscript{22} Harvard scholarship convinced many judges to presume the illegality of any conduct by firms with market power, regardless of its effect on consumers. Judge Hand’s decision in the case United States v. Aluminum Co. of America\textsuperscript{23} penalized Alcoa simply for engaging in aggressive competition that benefitted consumers. The Harvard School approach had a similar effect in deterring consumer-friendly mergers. In 1963, the Government persuaded the Supreme Court to preclude a merger between two banks in the Philadelphia area that together held only thirty percent of the relevant market. The Court deemed irrelevant the defendants’ arguments that the merger might have enhanced their ability to provide better services to their Philadelphia customers.\textsuperscript{24}

The Supreme Court’s decision 1999 in California Dental\textsuperscript{25} holds the promise for healing the divide between the Harvard School and the Chicago School. By adopting the continuum-based approach proposed in that case, the courts and agencies can retain both the clarity of the Harvard School and the economic sophistication of the Chicago school. This approach will clarify the standards of competition for American business, insuring that firms avoid contact harmful to consumers and pursue conduct with the potential to promote consumer welfare.

\subsection*{4.2. EU Competition Policy}

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

\textsuperscript{22}75 HARV. L. REV. 655, 663-73 (1962).
\textsuperscript{23}148 F.2d 416 (1945)
\textsuperscript{25}California Dental Association v. FTC, 119 S. Ct. 1604 (1999)
As Goyder observed, EC competition policy as such is generally driven by economic considerations: where economic goals coincide with consumer interests then a certain consumer protection function will be performed by competition rules.\(^\text{26}\)

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

Despite former Competition Commissioner Brittan’s protestations that ‘for competition policy the interests of the consumer are paramount’,\(^\text{28}\) protection of consumers per se remains the goal achieved by coincidence rather than through positive action as consumers are assumed to be the ultimate indirect beneficiaries of this policy and of the single market that competition law strives to maintain. Stuyck notes that the consumer is not specifically and technically speaking the beneficiary of the EC competition rules; these rules aim at guaranteeing workable competition rather than at the protection of individual freedom but the enforcement ultimately serves consumer interest, directly, as by prohibiting abuses of monopoly power in inter alia consumer markets, and indirectly by safeguarding a certain level of effective competition. So in so far as the competition rules ensure a fair choice at a fair price of goods, or services of a good quality, they are indirectly promoting consumer interests in the market economy.\(^\text{29}\)

However, the Commission has recently undertaken a number of reforms to integrate consumer concerns more closely into its policy-making. For example, the Commission has appointed a consumer liaison officer charged with canvassing consumer opinion on


\(^{29}\)Eugene Buttigieg, id at Pg 65.
individual competition cases and it has for the first time explicitly stated that the overall goal of its competition policy is to benefit consumers.\textsuperscript{30}

Moreover, Neelie Kroes, the Commissioner for Competition, stated in her address at Strasbourg, that ‘defending consumers’ lies at the heart of the Commission’s competition policy.\textsuperscript{31} The statement reflected the importance of competition policy to consumers, and the importance of consumer welfare when implementing competition policy. Consumers are in most cases the final beneficiaries from strong enforcement of competition rules. They will also be the ultimate losers from any lack of competition since this will mean increased costs, less choice or lower service quality.

Consumers today, are more than simply passive beneficiaries or victims of competition. Informed, educated and active consumers are the real drivers behind a competitive marketplace. Consumers and their representatives are able to bring helpful information about potential market failure to the Commission’s attention.

The EU Competition policy therefore, focuses on protecting the interest of the consumers by ensuring: 1) Companies play fair 2) Examining Mergers 3) Opening up markets to Competition 4) Monitoring State Aid 5) International Cooperation

4.3. Competition and consumer laws in Australia

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

The object of this Act is to enhance the welfare of Australians through the promotion of competition and fair trading and provision for consumer protection.\textsuperscript{32} The ACL creates a

\textsuperscript{30}Alasdair Murray, Consumers and EU Competition Policy
\textsuperscript{31}http://ec.europa.eu/competition/publications/cpn/2009_1_7.pdf
\textsuperscript{32}http://www.comlaw.gov.au/Details/C2012C00411
single, national consumer law for Australia. It applies to all businesses regardless of their size or business structure. The ACL is enforced by the Australian Competition and Consumer Commission (ACCC), where it applies to the state and territory fair trading agencies and, where it applies to financial services, the Australian Securities and Investments Commission (ASIC). The ACCC promotes competition and fair trade in the marketplace to benefit consumers, businesses and the community.

Notwithstanding the fact that the statutory provisions relating to competition and consumer protection are contained in separate Parts of the Act, the government and the ACCC repeatedly emphasize the integrated and mutually reinforcing nature of competition and consumer policy in Australia. The Commission does not separate the staff working on enforcement in competition and consumer matters and does not distinguish between the two areas in statements on enforcement policy.\(^{33}\)

Thus, under Australian law, competition and consumer protection are intricately linked. Both are dealt by a single legislation and the same redressal agency.

### 4.4. Other Countries

#### 4.4.1. Botswana

The Government of Botswana adopted its competition policy in 2005 though it is yet to adopt a competition law. The main objectives of Competition Policy of Botswana are to maintain and promote competition, in order to achieve efficient use of resources, protect the freedom of economic action of firms and, as the ultimate goal, to promote consumer welfare.\(^ {34}\)

#### 4.4.2. Malawi

In 1990s, the Malawi Government adopted a policy of economic liberalisation to promote competition in the economy. In 1997, it adopted a competition policy for the country with a

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\(^{33}\) Competition Policy In Australia, OECD Reviews Of Regulatory Reform

\(^{34}\) Draft National Competition Policy 2011
broad policy objective to promote economic efficiency and protect consumer interest, comprising of three broad strategies, namely, lowering barriers to entry; curbing restrictive business practices; and protecting the consumer.\(^{35}\)

**4.4.3. Hong Kong**

The objective of the Government’s competition policy is to enhance economic efficiency and the free flow of trade, thereby improving consumer welfare. It is believed that the Government is now considering the introduction of a competition law.\(^{36}\)

**4.4.4. Cyprus**

The objective of Section 6 of the Protection of Competition Law 2008 is to prohibit abusive conduct by dominant undertakings and to maintain openness in the market which ultimately benefits the interests of the consumer.\(^{37}\)

**4.4.5. Germany**

The main objective of the Act against Restraints of Competition (ARC) is the ‘freedom of competition’, and that consumer welfare will be a (welcome) side effect of keeping the competitive process free from restraints.\(^{38}\)

**4.4.6. Sweden**

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


\(^{36}\)Ibid


\(^{38}\)Ibid
4.4.7. Turkey

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

Thus, the goals of competition law vary from country to country, but in majority of the countries, competition law, as the name suggests, is meant for the protection of competition, of which consumer welfare is a consequence.
5. POSITION UNDER INDIAN LAW

The judgment by the Hon'ble Supreme Court in the case Competition Commission of India v. Steel Authority of India Ltd. & Anr.\(^\text{39}\) pronounced on 9th September, 2010 stated that “The main objective of the Competition Law is to promote economic efficiencies using competition as one of the means of assisting the creation of market responsive to consumer preferences.”

The Competition Act, 2002, in its Preamble, states protection of the interests of consumers as one of its goal. Further, Section 18 of the Competition Act which defines the duties of the CCI clearly mentions that protection of interests of Consumers is one of the duties of CCI. The consumers or consumer associations are also given the right to complain against any anti-competitive practices in contravention of sections 3(1) and section 4(1) to the CCI under section 19(1) of the Act. Moreover, under section 19(3), the Commission shall, while determining whether an agreement has an appreciable adverse effect on competition under section 3, have due regard to the following factors, namely (a) creation of barriers to new entrants in the market; (b) driving existing competitors out of the market; (c) foreclosure of competition by hindering entry into the market; (d) accrual of benefits to consumers; (e) improvements in production or distribution of goods or provision of services; (f) promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services. Benefit to consumers is, therefore, one of the factors to be taken into consideration by the Commission. Similar is the provision while determining the dominant position of an enterprise under Sec. 19(4), and while determining the relevant geographical market and relevant product market under clauses (5) and (6) respectively.

Further, under Sec. 49(3) the Commission shall take suitable measures for the promotion of competition advocacy, creating awareness and imparting training about competition issues. As a consequence of the advocacy efforts and enforcement of the Competition Act there has been a perceptible increase in awareness among the business community and consumers, which was reflected in the number of cases that have been filed with the Commission alleging violation of Section 3 & 4. Consumer awareness is also a goal under the Consumer

\(^{39}\)Civil Appeal No. 7999 of 2010
Protection Act, and under Sec. 6, the right to consumer education is listed as an object of the Consumer Council. It is imperative for the consumer organizations to be aware of the Act and to be with the Commission for achieving the common objective of consumer welfare through competition. In this way, there is a commonality between both the laws. As has been mentioned earlier, the 11th Planning Commission Report states that promotion of consumer welfare is the common goal of consumer protection and competition policy.

While some jurists regard consumer welfare as the ultimate object of competition law, others consider it as a consequence of the operation of competition law. In order to clarify the position, the arrangement of the redressal agencies of the two laws may be taken into consideration.

Indian law provides for two separate machineries to deal with competition and consumer cases. The CCI addresses only those consumer complaints which involve a competition issue. For all other consumer grievances, there are Consumer dispute redressal agencies. Similarly, individual redressal mechanism while available under the Consumer Protection Act, are not open to address systemic anti-competitive practices, which call for a different approach and redress mechanism. From this kind of arrangement, it can be inferred that consumer protection and competition law, though have a common goal, are different in their approach regarding redressal.

5.1. Cases closed by the Competition Commission due to lack of a competition issue:

During the year 2010-11, the Commission received total 71 Informations under Section 19(1)(a) of the Competition Act, 2002. In 47 cases no violation or contravention was found, and these cases were closed under Section 26(2) of the Competition Act. A majority of these cases were filed by aggrieved consumers, but the alleged contravention of Competition Act was not proved, and hence the cases were closed. The following orders of the CCI further establish the distinction between competition law and consumer protection law.

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40 Annual Report of the Competition Commission of India, 2010-2011
Subhash Yadav v. Force Motor Ltd. & Ors.\textsuperscript{41}

The grievance of the informant, who is a customer, is that the performance of the SUV purchased by him was much below satisfaction.

The Commission observed that the aim and object of the Act, is to prevent the practices having adverse effect on the competition, to promote competition and thereby to protect the interest of the customers. In a nutshell the purpose of this Act is to protect and promote fair competition in the markets in India. However, 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. Therefore, there is a clear difference between the two statutes stated above. The Competition Act is primarily concerned with ensuring and maintaining free and fair competition in Indian markets and the Act of 1986 is looking after individual consumer grievances against unfair trade practices and deficiencies in goods/services.

It was held that in the light of aforesaid discussion, the information filed by the informant does not fall within the four corners of the Act. The Commission finds that no prima facie case is made out against the opposite parties either under section 3 or section 4 of the Act for referring the matter to DG for investigation. It is a fit case for closure under section 26(2) of the Act and is hereby closed.

Sanjeev Pandey v. Mahendra & Mahendra & Ors.\textsuperscript{42}

The Commission observed that the informant has misunderstood the Act and probably confused it with the Consumer Protection Act, 1986. The scope of the Act is primarily aimed to curb the anti-competitive practices having adverse effect on competition and to promote and sustain competition in the relevant markets in India. Whereas the Consumer

\textsuperscript{41}Case No. 32 of 2012
\textsuperscript{42}Case No.17/2012
Protection Act, 1986 is aimed to protect the interest of individual consumers against the unfair practices being widely prevalent in the market.

It was held by the Commission that in the instant case, the informant has failed to make out a case under the aegis of the Act as that the main grievance of the informant of allegedly not getting the delivery of the said vehicle from the dealer in time cannot be entertained under the Act.

**Smt. Geeta Chatterjee v. M/s Bongaon Gas Service**

The Commission concluded that the informant is a consumer of LPG gas connection and filed the compensation application claiming the compensation of Rs.2,28,260 towards her financial losses occurred due to the unfair trade practice of the respondent. The redressal sought by the informant cannot be given under the provisions of Competition Act, 2002 as this Act does not provide any consumer relief. To address the grievances of the informant, Competition Commission may not be the appropriate forum as this case does not attract any provision of the Competition Act, 2002.

**Shri Giriji Meena v. Mohan Gas Service**

The Commission observed that the grievance of the complainant who is an individual relates to non-supply of the equipment as promised by the opposite party. After taking into consideration the facts and circumstances relating to this matter and in particular, the petty nature of the matter, it would neither be expedient nor be justified to proceed further with the investigation or to conduct any other proceedings in this matter. At the most the prayer of the complainant appears to be for the redressal of a grievance which may be covered under the Consumers' Forum. Hence after considering the facts of this case, the Commission is of the view that no prima facie case is made out either under the provisions of MRTP Act

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43Case no. 192/2008
or under the provisions of the Competition Act for conducting any investigation or for proceeding further into this matter. Hence the matter required to be closed.

Thus, it is clear that the main goal of the Competition law in India is to regulate competition, which in turn benefits the consumer. For consumer grievances which do not involve the contravention of the Competition Act, Consumer Forums are the appropriate authority. It does not fall within the domain of Competition Act.

5.2. Protection of consumer interests by the Competition Commission

Notwithstanding the decisions taken by the CCI in the above mentioned cases, in cases involving a consumer grievance, if there is a competition concern also, it can be addressed by the Competition Commission. Such a situation mainly arises in cases of abuse of dominance. Whenever an enterprise abuses its dominant position in the relevant geographical or product market, it involves harming of consumer interests, as well as an anti-competitive practice under Section 4 of the Competition Act. The DLF case is a classic example.

Belaire Owner’s Association v. DLF Limited45

The case concerns competition issues and consumer interests in the residential real estate market in India. The complaint/information was filed by Belaire Owners’ Association for delay in possession and violating building restriction norms by increasing the number of floors to 29 from 19 and increasing the number of apartments to 564 from 384. The Association alleged that DLF has charged exorbitant late fees and interest, for delayed payments made by the buyers and the agreement between the apartment owners and DLF was also extremely one sided.

DLF contended that Agreement would not fall under the jurisdiction of the Commission as the Agreement entered into between DLF and the allottees was before setting up of the Commission and before section 4 of the Act was enacted. The Commission however held

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45Case No. 19 of 2010
that the Act applies to all the existing agreements and covers those also which though entered into prior to the coming into force of Section 4 but sought to be acted upon now thereby denying the contention of DLF.

Regarding the determination of the relevant market, the Commission noted that in the present case, Gurgaon is seen to be the relevant geographic market as a decision to purchase a high-end apartment in Gurgaon is not easily substitutable by a decision to purchase a similar apartment in any other geographical location. Further, for the question of dominance, the Commission held that in the relevant market, 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. For the year 2009-10 also, the Director General has shown the market share of DLF in relevant market to be about 50%. All these factors indicate that DLF Ltd. is fully capable of operating independently of competitive forces in the relevant market. On analysis, the Commission concluded that DLF Ltd. has significant advantages over competitors in size and resources and was in a position of dominance in the relevant market.

The Commission, for the purpose of determination of the issue of abuse of dominance, went through the Agreement, and considered the impact of conditions imposed wherein it specifically noted a number of terms reflected how heavily biased the buyers’ agreement. The Commission particularly noted the various clauses including: i) Unilateral changes in agreement and supersession of terms by DLF without any right to the allottees ii) DLF’s right to change the layout plan without consent of allottees. iii) Allottees have no exit option except when DLF fails to deliver possession within agreed time, but even in that event he gets his money refunded without interest only after sale of said apartment by DLF to someone else. iv) DLF’s exit clause gives them full discretion, including abandoning the project, without any penalty.

The competition concern in this case is that a dominant builder is in a position to impose such blatantly unfair conditions in its agreement with its customers and bind them in such one-sided contractual obligation. In a competitive scenario, where the enterprise indulges in such anti-consumer conduct, there is sufficient competition in the market to provide easy alternatives for the consumer. The competitive forces would ensure that the builder / developer would soon face loss of customers, which would force it to become more
consumer-friendly. However, only when a dominant enterprise indulges in such conduct is there little hope for the consumers.

Keeping, in view the totality of the facts and circumstances of the case, the Commission concluded that DLF Ltd. is in contravention of section 4 (2) (a) (i) by imposing unfair conditions on the sale of its services to consumers. In exercise of powers under section 27 (a) of the Act, the Commission directs DLF Ltd. and its group companies offering services of building / developing:

i) to cease and desist from formulating and imposing such unfair conditions in its agreements with buyers in Gurgaon. ii) to suitably modify unfair conditions imposed on its buyers as referred to above, within 3 months of the date of receipt of this order. Further, the Commission passed an order imposing a penalty at the rate of 7% of the average of the turnover for the last three preceding financial year (i.e. Rupees Six Hundred and Thirty Crores) on DLF.

**Appeal to Competition Appellate Tribunal**: 46

DLF appealed against the order with the Competition Appellate Tribunal (CompAT). After a series of hearings, the tribunal directed a stay on the recovery of the amount imposed as penalty, and required the parties to submit the draft modification of the terms of the impugned agreement within a period of eight weeks of the order. By modification, the Tribunal asked CCI to initiate the process of removing the allegedly abusive clauses in the agreement that the buyers of DLF’s ‘Belaire’ project entered into with the company. The case is therefore, under modification before the Commission at present.

**Impact of the DLF order:**

It was believed that the CCI's findings against DLF open the door for other property owners to approach the CCI and complain about unfair or discriminatory practices adopted by real

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46 Appeal No. 20 of 2011
estate companies in different parts of the country. It could set the tone for reforms, and bring about change in the operations of the realty sector in the country.

The landmark decision might change the way builders operate. There should be deterrents for delay in construction, change in building plans, building without approvals. They also feel government authorities will now act better on complaints.

Encouraged by the penalty imposed on the biggest real estate company DLF, there has been a rush of complaints at the Competition Commission of India against several property majors since then. A number of cases that have come before the CCI against realtors under Section 4 have been dismissed for two main reasons, (a) that they relate to a consumer dispute and thereby do not fall under the provisions of the Act and (b) that the companies did not enjoy the position of dominance in the market. While dismissing one of the cases the CCI, in its order said, “It is quite possible that injustice has been done to the informant at the hands of the opposite party. However, for any injustice done by a builder to the consumer, the remedy does not lie under Section 3 or Section 4 of the Competition Act, neither Section 4 should be attracted for each and every building project, however big or small, started by an enterprise.”

Most of the complaints that have been dismissed by the CCI were directed towards seeking compensation from the developer for personal interests, for which CCI is not the platform.

**MCX Stock Exchange Ltd. v. National Stock Exchange of India Ltd.**

In June 2011, the Competition Commission of India imposed a fine of Rs. 55.5 Crores on the National Stock Exchange of India Ltd for abusing its dominant position in certain financial markets to protect its position in the currency derivatives market and by engaging in predatory pricing. A dissenting order was given by two members of the CCI.

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47 Case No. 13 of 2009
The case deals with the contraventions of competition law in India with respect to stock markets/exchange services in India, which is an important part of the financial market in the country.

The NSE is alleged to be in violation of Section-3 of the Competition Act, 2002 on account of anticompetitive behaviour and violation of Section 4 of the Competition Act, 2002 on account of abuse of dominant position by NSE which was in pursuance of i) Eliminating competition from the CD segment ii) Discouraging potential entrants from entering the relevant market for stock exchange services and iii) Achieving foreclosure of all competition in the market for stock exchange services.

The Director General has concluded that the acts of NSE have harmed competition in the Indian Capital Market, particularly in the CD segment. The behaviour of NSE is clearly exclusionary and the facts gathered during investigation indicate that they have been done with the intent to impede future market access for potential competitors and to foreclose existing competition. The harm of this anti-competitive conduct is enhanced because the relevant market of stock exchange services is a network effect of market. Any advantage gained by NSE would have manifold adverse impact on its competitors due to the network effect and held that NSE has abused its dominant position by its action in relation to waiver of transaction charges, data feed charges and admission fees and reduction of deposit levels by NSE in the CD segment are actions which violate section 4 (2) (a) (ii) of the Competition Act, 2002.

It was argued by the Opposite Party, that the Commission’s order had made no observation on whether the consumers are being harmed. It was submitted that “The Act mandates the Hon’ble Commission to protect competition and consumers and not competitors.” It was contended that the consumers have benefitted from NSE’s pricing policy and in fact “Competition has increased” and “the competitors of NSE have benefited.” On the basis of this argument, it was argued that no penalty or remedy may be imposed on this ground.

This contention, according to the Commission, deserves to be dismissed because section 4 does not require it to be established. The section first and foremost requires that it be established that an enterprise or group is in dominant position in the relevant market.
Thereafter, it is required to establish that it has engaged in a conduct as specified in clauses (a) to (e) of the section. Once both are established, there is no statutory requirement to examine any other additional impact on competitors or consumers or the market. The Commission, in its order has amply established the aforementioned two questions. Section 4 of the Act, unlike section 3 does not require evaluation of appreciable adverse effect on competition (AAEC) or evaluation of the factors mentioned in section 19(3), which include “accrual of benefits to consumers”.

Moreover, if an enterprise or group in a dominant position indulges in conducts enumerated in clauses (a) to (e) of section 4, it is resultantly bound to cause harm to the consumer by destroying competition. That is why the section does not require consumer benefit to be evaluated separately. It will not be out of context to mention that even under MRTP Act the monopolistic trade practice was deemed per se violation of public interest except in the circumstances stated in section 32 and defenses relating to its redeeming features like being beneficial to the consumers or users of goods or services not made tenable.

The order of the CCI in this case, though detrimental to some consumers since they were required to pay a higher price, similar to that charged from all the other consumers, is beneficial to the larger public interest and competition in the market. Hence it can be seen that the CCI does not necessarily protect individual consumer interests.

Thus, the approach of the CCI is not always to protect direct or short term consumer interests, but it is to maintain fair competition in the market, which may lead to benefit to the consumers, or in some cases, it might not. Moreover, from the abovementioned cases, it can be concluded that the competition law in India addresses consumer grievance when a contravention of the provisions of the Competition Act is also established. For any other kind of consumer complaint, the Competition Commission is not the appropriate forum. In order to further clarify the mandate of consumer protection in competition law, the provisions of Sec. 53N may be analysed. This Section empowers the Competition Appellate Tribunal to award compensation for any loss or damage suffered by the Central Government or a State Government or a local authority or any enterprise or any person as a result of any contravention of the provisions of Chapter II, having been committed by any enterprise. A consumer may be covered under the words ‘any person’, but an explicit reference has not
been made for compensation to a consumer. Further, Sec. 33 gives the Commission, the power to issue interim orders, by which, the Commission can temporarily restrain any party from carrying on an act which is in contravention of Sec. 3(1), 4(1) or Sec. 6. However, this is an exceptional relief, and is not granted on a regular basis. The Commission is strict on issuing interim orders against a party. Thus, these provisions, though aim to protect the interests of the consumers, are too remote in their application. Therefore, consumer protection cannot be considered as the primary goal of competition law.
6. CONCLUSION

The mandate of consumer protection has been gaining importance since the enactment of the Consumer Protection Act, 1986. Today, almost every sector provides for an in-built redressal mechanism for consumer complaints. The Competition Act, 2002, in particular, lays emphasis on protection of consumer interests, since it is enacted to regulate the markets, of which consumers are an important component. After analyzing the importance of consumer protection under competition law, it can be concluded that it is one of the goals of competition law. While in some countries, it is given paramount importance, in others, it is considered as a consequence of the operation of competition law. India falls in the latter category. The position can be further clarified by considering the redressal mechanisms. Australia, USA and EU provide for a unified redressal agency for competition and consumer issues. Unlike these countries, India has different redressal agencies for competition cases and consumer grievances.

The cases relating to competition are dealt by the Competition Commission of India, while consumer complaints are addressed by the Consumer Dispute Redressal Agencies at the National, State and District Level. As has been mentioned earlier, a number of cases have been rejected by the Competition Commission of India on the ground that they involve solely a consumer grievance, and not a competition concern. A majority of these complaints were filed by aggrieved consumers for seeking compensation for personal interests, for which CCI is not the platform. Only those consumer complaints, which also involve the contravention of the Competition Act, are addressed by the Competition Commission. The aforementioned DLF case perfectly illustrates the position. The Commission addressed the grievances of a number of consumers of real estate sector, whose interests were being prejudiced by the abuse of dominance by DLF. Considering the gravity of the situation, the Commission imposed a fine of Rs.630 crores on DLF, in order to deter such abuses by other real estate companies. This was a major step taken by the CCI, which, by addressing the competition issue, resulted into the protection of consumer interests.

Further, the CCI has been instrumental in investigating and controlling practices harming consumer interests in the market. Recently, the CCI has issued showcause notices to 17
automobile manufacturers on an alleged anti-competitive practice of selling spare parts at higher prices to consumers. The Commission also considered the possibility of existence of cartelisation in the aviation sector as a reason behind the rise in airfare, but confirmed in negative. In this way, the CCI has constantly been working for the protection of consumer interests.

Likewise, the Financial Sector Legislative Reforms Commission, in order to protect consumer interests, proposed the setting up of a unified financial redressal agency, so that the consumers will not have to deal with multiple regulators for grievances regarding the financial sector. This is a significant step taken by the Government, for recognition of consumer rights. The same unified set-up can be considered for the redressal of consumer complaints under the Consumer Protection Act and the Competition Act.

The question whether the two redressal systems should be unified, however, needs to take the practical realities into consideration. The Competition Commission of India functions at New Delhi, and does not have regional offices. An individual consumer, aggrieved in any other 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. Consumer Forums, on the other hand, are established at the District, State and National level. This ensures accessibility for the consumers. Moreover, the resources required for looking into consumer complaints are not available with the competition agencies. Also, the enormous population of the country is an impediment. The increasing number of consumer complaints will overburden the authorities dealing with competition cases. Another aspect to be considered is that there is no jurisdictional limit for the CCI. It can receive complaints from all over India, while the Consumer Forums are bound by jurisdiction, both territorial and pecuniary. Moreover, the Competition Commission is not concerned with the cause of action, unlike the Consumer Forums. It can address any issue relating to competition, irrespective of the cause of action in the brief. For unification, the wide jurisdictional powers will have to be either taken away from competition authorities or will have to be extended to consumer cases as well, which is not practicable.
Thus, considering the accessibility, affordability and feasibility, it can be concluded that the present redressal systems ensure efficient working in their respective fields, and a unified system is undesirable.

However, due to the lack of a unified redressal agency, a number of consumer complaints continue to flood CCI. In such a scenario, for the complaints which do not involve a competition problem, are liable to be dismissed. Nevertheless, for cases in which the contravention of the Competition Act is established, and there is also a consumer grievance, it is recommended that CCI should be given the power to award compensation to the aggrieved consumer, along with penalizing the concerned transgressor. For this purpose, the Competition Act needs to be amended to incorporate the necessary provisions for compensation of consumers aggrieved by anti-competitive practices. In such a situation, three types of jurisdictions can be considered to exist. Firstly, competition concerns, for which the CCI has the exclusive jurisdiction. Secondly, consumer complaints, which fall within the exclusive jurisdiction of the Consumer Forums, and thirdly, cases falling under the Competition as well as the Consumer Protection Act, i.e., involve an overlapping jurisdiction. For such cases, the CCI should be given the power to both restrict the anti-competitive practice and compensate the concerned consumers.

After the amendment of 2007, the power to grant compensation was taken away from CCI, stating that it is an expert body, and not a judicial body. This power was then conferred on the COMPAT under Section 53N. However, it is recommended that CCI should be empowered to grant compensation, on the following grounds. Firstly, the Commission is the body which receives the information, does the analysis, conducts hearings and after proper enquiry, passes the order. Therefore, it is the appropriate forum to decide whether compensation should be granted, and what should be the quantum of compensation. Secondly, if the CCI has the power to impose penalty, thus punishing the wrongdoer, then it should also have the power to compensate the informant, for whom, penalizing the opposite party might not amount to adequate redressal. Thirdly, if an aggrieved consumer has suffered losses by the anti-competitive conduct of the other party, he has no remedy to claim compensation in the forum which has held the other party guilty. He has to compulsorily go to COMPAT in order to receive damages, which is an unnecessary burden. Thus, it is
strongly recommended that by an amendment in the Competition Act, the Competition Commission shall be empowered to grant compensation to the aggrieved consumers.

Further, the issue of reference by one agency to another is to be considered. As has been discussed earlier, the CCI has closed a number of cases, stating that the contravention of the provisions of Competition Act has not been established, and hence the informant may seek redressal in the appropriate forum. In case of consumer grievances, the Consumer Forums are the appropriate forums and the CCI, while closing such cases, can refer them to the Consumer Redressal Agencies. In the same way, a case involving a competition issue, filed before the Consumer Forum, can be referred by the Forum to the Competition Commission for a pertinent order. In this way, both the systems can co-ordinate and thus operate in a harmonized way, for better redressal.

Therefore, competition law and consumer protection are interdependent concepts, but both operate in their own spheres. Competition law, while regulating the competition in the market, results in the protection of consumer interests, but consumer welfare cannot be considered as the sole or ultimate goal of competition law. It is one of the aspects of competition law, and should not be given undue importance in its enforcement.
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