

INTERFACE BETWEEN COMPETITION AND CONSUMER PROTECTION LAW IN INDIA

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ABSTRACT

Several studies have been conducted to study the impact on consumers and producers of anti-competitive policies in both developing and developed countries. Damages caused to developed countries by such policies have consequences for consumer buying power through price increases. A World Bank report shows that developing countries imported products worth US\$ 81.1 billion in 1997 from sectors where firms were engaged in price-fixing deals in the 1990s. These products accounted for 6.7% of imports and 1.2% of GDP in developing countries, respectively. These statistics show the importance of the economic effects of the harm done to developing economies by anti-competitive practices. The most evident consequence of such activities is seen in the form of price rises in markets involving cartels that limit production or control the price and abuse of dominant market power by the firms. Government policies such as consumer protection, macroeconomic policies and poverty reduction, the growing synergies between competition and consumer protection law enforcement to ensure consumer interests is an important driver for economic growth. This paper tries to understand the objectives and goals of competition law and consumer protection law to attain consumer welfare and highlight how they communicate with each other, and whether Indian laws protect consumer welfare, competition or competitors.

Keywords: Consumer Welfare, Consumer Law, Competition Law, Anticompetitive Practices

INTRODUCTION

“Good Consumers and Competition Policy have the same goal to help markets work for consumers and for all the fair dealings enterprises that serve consumers well”- Philip Loweⁱ

Competition law and a consumer law are the key drivers to attain consumer welfare. Competition policy refers to a set of government measures that improve competition, give market forces primacy, facilitate entry and exit, decrease administrative controls and minimise regulations. Competition law refers to a law prohibiting and penalising anti-competitive practices and regulating potentially anti-competitive mergers. The main objective of competition law is to prevent practices having an adverse effect on competition and to promote competition. Competition Protection Act 1986 mainly deals with the protection of consumer interest against the deficiency in services or goods being purchasers from sellersⁱⁱ

An important and common Objective of consumer protection and competition law is the promotion of consumer welfare and the safety of consumers. The core of both consumer and competition is to accept the unequal relationship amongst the Consumers and producers, this protection of consumers is achieved by setting minimum quality specification and safety standard for both goods and services and establishing grievance redress mechanism. The Competition objectives are achieved by ensuring that there are enough producers so that no producer can achieve a dominant position in the market. Competition law also aims to prevent other forms of market failure, for example, the formation of cartels which lead to collusive pricing, market division, and joint supply reduction decisions. Mergers and acquisitions must also be regulated, as they are considered to be reducing competition.

Consumer interest and public interest are often regarded as being synonymous. They are not, however, and need to be differentiated. Many government policies that are either anti-competitive in nature or that appear themselves in anti-competitive behaviour are formulated in the name of the public interest. Consumer interest and consumer welfare should have primacy in all government policy formulations if the consumer is at the centre.ⁱⁱⁱ Part I of the paper will focus on the goals and objectives of competition law as regards to attaining consumer welfare. Part II will focus on the Consumer Protection Act, and an overview of consumer welfare Part III will give the concept of ‘consumer welfare.’

Consumers are members of a broad class of individuals who buy, use, maintain and dispose of goods and services. Pricing policies, financing practises, the quality of goods and services, and different trade practises affect consumers. They can clearly be distinguished from producers who manufacture goods and from wholesalers or retailers who sell goods. Public interest, on the other hand, is something in which a competitive market is interested in society as a whole. There is, however, a justifiable apprehension that government policies which may not be in the ultimate interest of consumers may be fashioned and presented in the name of the public interest. Public interest, on the other hand, is something in which a competitive market is interested in society as a whole. There is, however, a justifiable apprehension that government policies which may not be in the ultimate interest of consumers may be fashioned and presented in the name of the public interest. The asymmetry arises from the fact that producers are all consumers, but most are also producers.

Main objectives and goals of Competition policies:

The ultimate goal of competition policy is enhancing consumer well being this ensures the effective functioning of markets. Competition policy is generally aimed towards supply side to provide good and affordable choices to the consumer.^{iv} This also ensures a level playing field among market players which help for competition in markets. The benefits and the main objective of competition policy ^vare

1. *Economic efficiency*

The competition aims to bring enhanced efficiency in a static and dynamic sense. The firm when it produces goods /services in the lowest possible cost, such cost savings are passed to consumers and firms are motivated for research and development to meet the customer needs.

2. *Economic growth and development*

Economic growth is given a broader meaning and includes the economy's well being, which provides for employment growth and other measures of quality of life. The economic efficiency and wastage reduction by the firms may bring more significant economic growth; thus the market can reallocate available resource and improve productivity. The sustained economic growth will lead to a better quality of life.

3. *Consumer welfare*

Competition policy contributes to economic growth by better choices, better quality and lower prices. There may be an imbalance between consumers and producers because of market failures like information asymmetry, high transaction cost. Competition policy may serve as a complement to consumer protection policy to address such market failures.

CONSUMER PROTECTION LAW IN INDIA AN OVERVIEW

In India, the consumer movement is as old as trade. There are references in Kautilya's Arthashastra to the concept of consumer protection against exploitation by traders and retailers in terms of quality, short weight, measurement and adulteration of goods. Yet there was no systematic movement in the country until the late 1970s to safeguard consumer interest. But the level of consumer awareness and protection is now widely recognised as a valid indicator of the country's development and progression. The critical reason for this is the rapidly increasing array of goods and services made available by modern technology. Moreover, the growing size and complexity of production and distribution systems, the high level of sophistication in marketing and selling practises as well as in advertising and other forms of promotion, mass marketing methods, and increased mobility of consumers resulting in reduced direct contact between buyers and sellers, have led to the increased need for consumer protection.^{vi}

In modern times the protection of consumer rights dates back to 1962. On 15 March 1962, the U.S. President proclaimed the Consumer Bill of Rights in a message to Congress. The message claimed: the right of choice; the right of information; the right of security; and the right of hearing. Consumer International subsequently added the right to consumer education, the right to a healthy environment and the right to necessities I.e food, clothing, and shelter. As the Consumer Protection Act, 1986 was enacted on, 24 December it is celebrated in India as National Consumer Rights Day. 15 March has been observed as World Consumer Rights Day since 1983, as it was declared so by the International Consumer Unions. On 1985, the United Nations General Assembly adopted a set of guidelines for consumer protection, and the United Nations Secretary-General was authorised to persuade member countries to adopt those

guidelines through policy changes or legislation. These guidelines bring out a comprehensive policy framework outlining what governments should do to promote consumer protection in the following areas such as physical safety, security and promotion of consumer economic interests, consumer goods/services safety and quality standards, redress measures for consumers, measures to specific areas like food, water and pharmaceuticals, consumer education and information programme.

The Consumer Protection Act isn't the first and only Act of its kind. It was preceded by a law known as the Monopolies and Restrictive Trade Practices Act, 1969, which dealt primarily with conditions of competition in the market that affected consumer rights.

The thrust of the MRTP Act is directed to prevent the concentration of economic power, control of monopolies, prohibit restrictive trade practices, monopolistic trade practices and unfair trade practices the major criticism was that the statute prohibited growth. However, it regulated growth but didn't prohibit it only controlled growth if it was detrimental to the common good.

In the post-globalisation and digitisation process of India, more than three decades of working on the Consumer Protection Act in 1986 required a paradigm change. On 9 August 2019, the Consumer Protection Act, 2019, passed and obtained presidential approval, repealing the Consumer Protection Act, 1986, to reinforce consumer rights and dispense consumer justice. In the post-globalisation and digitisation process of India, more than three decades of working on the Consumer Protection Act in 1986 required a paradigm change. On 9 August 2019, the Consumer Protection Act, 2019, passed and obtained presidential approval, repealing the Consumer Protection Act, 1986, to reinforce consumer rights and dispense consumer justice.

CONCEPTUALISING CONSUMER WELFARE

Consumer Welfare refers to the consumer surplus obtained by final consumers wherein consumer surplus refers to the difference between consumers' willingness to pay and the actual price paid. Producers' surplus is the difference between the producer's price and the cost of production. The consumer surplus and producers surplus together constitute Total Welfare (Consumer Surplus +Producers surplus =Total Welfare) It is widely held that the final goal of competition law is to enhance consumer welfare.^{vii} The term consumer welfare can be traced

to Robert Bork's *The Antitrust Paradox*^{viii} according to Bork consumer welfare is greatest when social resources are allocated in the best way thus allowing the consumer to satisfy their wants to the optimal degree. Therefore, as per Bork's interpretation consumer welfare is equated to the total welfare that is consumer welfare is same as total welfare it is required to understand whether the existing law is committed to the goal of enhancing total welfare.

Although no mention of consumer welfare can be found in the Statement of Objects and Reasons of the Competition Act, the preface to the Act explicitly defines its spirit by specifying that it intends to. The protection of the interest of consumers has drawn parliamentary consideration when enacting the Competition Act, and the Hon'ble Supreme Court has also confirmed the same. Consequently, the Competition Commission of India's role is not only to supervise and maintain market competition but also to protect the interests of consumers. The Commission was given broad authority and discretion to deal with the facts, as can be seen from the following observations in the case of the Steel Authority by the Hon'ble Supreme Court.

“Under the scheme of the Act, this Commission is vested with inquisitorial, investigative, regulatory, adjudicatory and to a limited extent, even advisory jurisdiction. Vast powers have been given to the Commission to deal with the complaints or information leading to the invocation of the provisions of Sections 3, and 4 read with Section 19 of the Act.”

The budget speech by the Honourable Finance Minister^{ix} for 2009-2010 may also be referred,

“The government has established competition commission of India, an autonomous regulatory body to promote and sustain competition and market, protect the interests of consumers and to prevent practices having an adverse effect on competition.....The benefits of competition should now come to more sectors and their users and consumers. Now is the time for us to work on these aspects to eliminate bottlenecks, enhance productivity, reduce costs and improve the quality of goods and services supplies to consumers.”

The Commission must therefore exercise its powers in the light of the legislative intent as set out in the provisions of the Act and as explained by the Honourable Supreme Court.^x

Section 62 clearly provides that, in addition to, and not in derogation from, the provision of other statutes, the provisions of the Act are aware of the fact that there may be grey areas of

overlap or obvious conflict between the provisions of this Act and other statutes and the domains assigned to the various regulators.

Neeraj Malhotra v. Deutsche Post Bank Home Finance^{xi} was a landmark case in the evolution of India's competition law after parliamentary approval of the legislation in 2003. The order relates to the pre-payment penalty levied on housing loans by banks and non-banking financial companies. That is any effort by borrowers to close a loan for a housing project prematurely attracts a penalty ranging from 1% to 4%. It indicates the inability of the Commission to apply thorough economic analysis of law, with a 4-2 majority ruling, CCI has ruled that the banks' prepayment penalty does not fall foul of competition law. Asset Liability Management (ALM) was one of the crucial arguments advanced by banks in favour of the prepayment penalty. The majority order lacks a detailed economic study of ALM, as stated by the minority decision in this case. In addition, the majority did not understand that banks aim to extend the network impact through the prepayment penalty, thus raising the switching and transaction costs for current borrowers who are unfairly locked in.^{xii} However Reserve bank of India has rectified this practice of pre-payment penalty and issued direction to stop the penalty.^{xiii} Infact there was a decision prior to the RBI circular in *State Bank of India v. Usha Vaid*^{xiv} wherein the Delhi State Commission held that no bank can be allowed to indulge in Restrictive Trade Practice by binding customer to go and avail loan even when they are charged with high rate of interest, this was upheld by National Commission.

In *Ramakanth Kini v. Dr L.H Hiranandini Hospital*^{xv} was dealing with tying and exclusive dealings by hospital that provided maternity services, one of the patient requested hospital to allow Life cell, a stem cell banking service provider to collect the stem cells within 10 minutes after her delivery. Hospital refused the request telling that it will not allow Life Cell to enter the hospital and informed that if it wants her child stem cell collected she can obtain the service from cryobank were the O.P. Hospital had exclusive agreement. CCI has declared that this tying agreement as null and void a December and imposed penalty on the Hiranandini Hospital. The order of CCI was set aside in order dated 18 December 2015 by Competition Appellant Tribunal.^{xvi}

The main concerns from the Hiranandini case is within the Patient Doctor relationship which may cause consumer harm that is when a patient who an expecting mother in advanced

pregnancy would not like to change the doctor or the hospital as she develops trust in the treatment of hospital when a woman wants stem cell banking services of her choice she either has to change the hospital or need to engage the services given by the hospital. No patient will be willing to change the services thus leading to compulsion or no choice and thus will lead to consumer harm. The efficiency justification on the exclusive dealing may not always end to achieve consumer welfare aspects when looked into consumer law perspective but under competition law the total consumer welfare is looked upon that is there are various alternatives to Patient as regarding primary functions and the hospital was not a dominant player in the relevant market.

Tying is the practice of suppliers of one product (tying product) requiring a buyer to buy a second product (tied product), different forms of tying are contractual tying. Refusal to supply, withholding of a guarantee, technical tying and bundling. Negative effects of tying arrangements are that few efficient sized competitors can survive in the market, sometimes purchaser will be forced to purchase the tied product at prices other than the available competitive prices.^{xvii}

Network effects are more evident in multi-sided digital platforms. New customers tend to prefer platforms that already have a broad user base that can eventually contribute to a company's dominance in the industry. There is no question that network effects can also promote the launch of new products, but it cannot be denied that network effects can increase user switching costs and entry barriers to potential competitors. As a result, business entrants are less likely and consumers turn to other suppliers less often, which has a business power enhancing impact. That is this designs favours consumers by providing specialised result designs like Google. If the actions of Google affected competition, this would be anticipated to result in an obvious foreclosure of competition due to the suspected abusive activity. In the digital economy, because of the "winner takes all" phenomenon, players with a good market position also enjoy virtual power. This also corresponds to the presence of two-sided impacts on the market or network. Network effects arise when a product's value rises more than proportionately to the number of consumers of the product or compatible goods. This has a beneficial external impact on its current customers as new consumers enter the network of existing consumers.

While these effects do not inherently contribute to the dominance of a single company, they include possible anti-competitive risks since they may promote the establishment of a dominant position and curb the competition of the market, because the company that already has the largest consumer base is now the most attractive to new customers. Commission has also noticed that the design of the product is a significant and fundamental aspect of competition and that any excessive interference in SERP designs may have an effect on legitimate product changes resulting in harm to the customer.^{xviii}

In *MCX Stock Exchange Ltd. vs. India Ltd. 's National Stock Exchange*^{xix} demonstrates that, any interference by the Commission would cause harm to consumers with the option of switching from one service provider to any of the other two, customers have been and are getting good quality service at zero price. The simplicity of the IT-based method helps the user to make informed choices, too. Any interference by the Commission and guiding NSE to impose fees for services currently being rendered free of charge would obviously be focused on the argument, which is not backed by any robust harm theory in this case, that, over the longer term, non-intervention would lead to the charging by NSE of unjustifiably high or super-competitive rate

In *Shamsher Kataria case*^{xx} the Commission was of the opinion that the refusal to access branded or alternative spare parts and technical manuals or repair equipment required for the repair of sophisticated consumer durable goods, such as automobiles, is frowned upon both in the mature and emerging competition law regimes of the world, because such practises limit consumer choice in addition to foreclosing the repair and maintenance market.

The fact that the competition law authorities in both developed and developing countries have drawn the same conclusions, i.e. requiring the removal in practises restricting the supply of spare parts and repair equipment, reflects the fact that the practises of the OEMs have been found to rest regardless of the size, nature of the level of development of the automotive industry in those countries. When cars are repaired through independent repairs, the market for independent repairers is totally foreclosed, barriers to entry are created and consumers are deprived of any choice in the aftermarket for spare parts and repairs.^{xxi}

In terms of improved choice (new products), higher quality and lower costs, market policy leads to economic growth for the overall benefit of customers. In order to redress a perceived

imbalance between the market power of consumers and producers, consumer welfare protection may be required. The disparity between consumers and producers may stem from market weaknesses such as knowledge asymmetry, a lack of producer bargaining position, and high transaction costs. Competition policy can be used to resolve such market deficiencies as a supplement to consumer protection policies.^{xxii}

Considering consumer needs, particularly in developing countries, and the economic, educational, and bargaining power imbalances that they face, UNCTAD published the Consumer Protection Guidelines.^{xxiii} The goals set out in the Guidelines include, assisting countries in controlling abusive business practises by all enterprises, which adversely affect consumers, and promoting the growth of market conditions that give consumers wider choice at lower prices. These aims point to the close link between consumer protection and competition policies.

Competition law and consumer protection law complement one another and strengthen one another. Market competition increases efficiencies, and fosters innovation. Competition also creates incentives to differentiate between products and improves the quality of the goods and services provided. Competition in this sense helps to enhance consumer welfare by offering consumers a wider choice at competitive prices. Consumer protection is boosting market competition.^{xxiv} When consumers are so well informed, they make informed decisions about their preferences for goods and services in the respective markets. This increases competition between companies and leads to efficiency and/or improvement in quality , which in turn benefits consumers There is seemingly universal worldwide agreement that the primary goal of both competition law and consumer protection law is to protect consumers. It remains understudied what the harm to be avoided or remedied and this (consumer harm) may vary in both consumer protection and competition law. It is also necessary to understand what 'consumer' means and whether competition and consumer protection laws are the same thing.^{xxv}

The Consumer Protection Act, 2019 expanded the 'consumer' definition to include 'individuals who engage in offline or online transactions by electronic means or by teleshopping or direct selling or multi-level marketing. The remedy for multi-level marketing is envisaged not only for the manufacturer of the product, but for all entities involved in the different stages of production and marketing. Services that are provided free of charge, on the other hand, will not

be regarded as consumers who firmly exclude medical services from government hospitals, centres and dispensaries. In competition law and economics consumer means all purchasers be a natural or legal persons and in whatever economic chain (vertical or horizontal) where they carry out economic activity.^{xxvi}

There are also trade-offs between competition and consumer interest. Competition law functions to achieve market efficiencies. These efficiencies can be classified as productive, allocative and dynamic. All of these efficiencies are unlikely to attain at the same time. Therefore the competition authorities must make an assessment as to which efficiency in each competition case will be given more weightage. That creates a trade-off between different efficiency types. There are tensions between competition and consumer interest in situations where competition results in consumer-friendly outcomes such as high switching costs, price-quality trade-offs.^{xxvii} In addition, consumers may also have difficulties with price calculations because of the complex pricing schedules that companies offer. This problem is prevalent in recently liberalised sectors, such as utilities and professional services, where regulations may be needed to protect consumers and ensure an adequate quality of services. One trade-off is between static efficiencies and dynamic ones. Technological growth and innovation are playing an increasing role in today's knowledge-based economy, by continuously bringing new products and services to consumers. Accordingly, competition may be more important in product or process innovation than mere price competition. Thus, dynamic efficiency brought about by innovation can be in the consumer's long-term interest even if the consumers may not gain anything in the short term. Consequently, competition authorities have to be more aware of the welfare-maximising gains from dynamic efficiency. Likewise there is a trade-off between efficiencies in allocative and productive efficiency. This can happen when a more efficient and cost-effective company attempts to increase its market power by increasing its market share leading to higher productive efficiency as the average production cost in the industry would decline; on the other hand, it could lead to lower allocative efficiency due to higher market prices. In the case of a merger such a trade-off can be particularly compelling.

The link between competitive markets and consumer protection isn't always as straightforward as it would seem. Although much of the competition legislation avoids clear reference to the aim of increasing consumer welfare, there are many tacit references to consumer welfare in the

statutory texts and the case law. In their mission statements several antitrust authorities refer, directly or implicitly, to consumer welfare.^{xxviii}

Competition law has a broader role and is an integral part of the economic management institutional framework. Thus, in many economies, it is part of the process of economic reforms that liberalise and migrate to market-based economies. Competition law may be designed to serve different purposes aside from protecting and maintaining the competition process. These could be gains in economic efficiency, preventing a high level of economic power concentration and its consequent abuse for economic or even political purposes, maintaining the freedom of trade or occupation and protecting small and medium-sized enterprises. Consumer interest features as one of the elements in the middle of these different objectives, though an important one, and therefore it would be unrealistic to expect that competition law can protect consumer interest as a whole. There are certain aspects of consumer interest where competition law is absolutely impossible to reach. These are, for example, aspects relating to safety, health, the environment and privacy. Specialised laws have been enacted in various countries for the protection of consumer interest in these areas.

EUROPEAN UNION

The Treaty on European Union does not refer to consumer welfare as such, but rather refers to Europe's broad notion of sustainable development focused on balanced economic growth, price stability and a highly competitive free market economy. Article 3 of the Treaty on the Functioning of the European Union^{xxix}(TFEU) applies to the E.U.'s exclusive power to lay down the competition rules essential to the functioning of the internal market. Article 12 TFEU is more specific as it states that *Consumer protection requirements shall be taken into account when defining and implementing other policies and activities of the European Union*^{xxx}

E.C. law gives implicit references to the promotion of consumer welfare as a desirable consequence of making markets competitively operate. In fact, the basic prohibitive provisions mention consumer welfare twice i.e in the possibilities of exemption under the prohibition of cartels, and again in the examples given of abuse of a dominant position. Article 101(3) TFEU, one of the exemption conditions under European equivalent, is that the consumer must receive

a 'fair share of the resulting benefit.' However, there is no requirement that this 'fair share' outweigh any potential negative effect on consumer welfare resulting from the restriction to which the exemption applies. The nuances of the relationship between consumer welfare and competition are clearly revealed in the GlaxoSmithKline judgement^{xxxii} of the ECJ. In that case, the Court stated that 'there is nothing in Article 81 E.C. [currently Article 101 TFEU] to indicate that only those agreements which deprive consumers of certain benefits may have an anti-competitive object'. The Court further observed that 'it must be borne in mind that the Court held that Article 81 E.C. [currently Article 101 TFEU] aims, like other competition rules laid down in the Treaty, to protect not only the interests of competitors or consumers, but also the market structure and thus competition as such. Consequently, it is not necessary to deprive final consumers of the advantages of effective competition in terms of supply or price for a finding that an agreement has an anti-competitive object.

U.S. ON CONSUMER WELFARE

The Structure-Conduct - Performance model in the U.S., the hallmark of the Free Market Economy, was the first school of economic thought that prevailed in the 1930s. It has also been referred to as the "Harvard School" of antitrust research. According to this school of thought, business behaviour is determined by the structure of the market and that behaviour determines market performance, such as profitability, efficiency, technical progress and growth. This school believed that business performance was dictated by the market structure and antitrust law should therefore be concerned with structural remedies rather than behavioural remedies. Therefore, the focus was on focused and dominant firms where entry barriers were widespread. Until the 1960s, this school of thought remained popular and it led to an extremely interventionist policy of antitrust enforcement in the U.S.^{xxxiii} The transition came in the form of the "Chicago School" of thought that created a revolution in U.S. antitrust thinking. The fundamental view of Chicago is that the sole objective of antitrust should be to pursue efficiency that is allocative efficiency.

The allocative efficiency that is the corner stone of the Chicago School is based on the idea of total welfare, i.e. the producers' and consumers' welfare. The customer and the producer both have the same surplus in a perfect competition. The difference between what the customer is

willing to pay and what he actually pays is consumer surplus. The producer surplus is the amount of income a producer receives in excess of what it would require in order to supply a production unit. Where consumer surpluses are equal to producer surpluses and allocative efficiency is achieved in a state of total welfare, total welfare is achieved. It is sometimes also known as "social welfare".

MARKET FAILURES EFFECTING CONSUMER SOVEREIGNTY

Consumer sovereignty can be described as the state of affairs in which consumers, in their individual interests, have an unimpaired ability to make decisions, and markets function efficiently in responding to the collective effect of those decisions. For a variety of reasons, however, these market mechanisms can fail to work optimally, leading to an impairment of consumer sovereignty. Market failures can have two forms, some of which are external to the consumer or lead to the market being unable to provide adequate options. Other failures are internal to the consumer, in the sense that they render the consumer unable to choose among the options available effectively. In economic terms, competition law and consumer protection legislation may be seen as intended to identify and compensate for the above said market failures.^{xxxiii}

Exercise of choice is the essence of consumer sovereignty. It is by selecting certain products or alternatives over others that customers satisfy their own desires and send their signals to the economy. It is therefore critical that protection be given to the exercise of consumer choice. There are two things required for an effective consumer choice: options in the marketplace and the ability to freely choose between them. Competition law shall not necessarily stop any conduct or transaction which has the effect of reducing the number of possibilities available to consumers. Nor does the law affirmatively require options to be created. Instead, it prevents business behaviour that artificially limits the natural range of marketplace options. The laws on consumer protection are similar in that they seek to safeguard consumers' ability to make informed choices between competing options, but they do not necessarily seek to ensure that consumers have absolutely perfect information or that they are acting with absolutely perfect rationality. It is possible to clarify the competition law in terms of protecting the supply of Market options, and the court decisions on consumer protection, can be explained in terms of

protecting the ability of consumers to choose among the options available. It is necessary to examine whether case law is consistent with consumer sovereignty in both the areas of antitrust and consumer protection.

A consumer has the right to choose the product of his choice and to purchase it. To choose the product of his choice, he should have access to a wide variety of goods. In a way that yields maximum satisfaction, a wise consumer tries to spend the money at his disposal. In other words, a variety of products should be supplied to the market, giving the consumer an option to choose from. In a market where choice is not available, the consumer is forced to purchase the product available at the price offered by the seller. No opportunity is given to the consumer to choose the product of his choice. The trader has no right to restrict the consumer's choice. Right of choice means the right of the customer to access a selection of products at reasonable prices, which is the right of the consumer to pick and buy the commodity of his choice from a range of goods available in terms of the quality and price of the goods.^{xxxiv} A shopkeeper cannot force or impress upon a customer to buy a particular brand or type of product. Similarly the consumer should not be forced to buy through any sale gimmicks. If the market does not have a range of products at competitive prices, the consumer is left with no choice other than to purchase the product available. In such situations, trade can fix the price that it likes, generate artificial shortages and increase prices, manipulate delivery conditions, affect the movement of goods to the market. This kind of market situation is a form of restrictive trade practise. The free flow of capital or resources into the production or finished goods stream in the distribution stream is obstructed by restrictive commercial practise at any point before they reach the hands of the end consumers.^{xxxv}

There are different approaches or objectives of Competition Law one among them is protection of competitive process. The main components of Indian Competition Law is testing parameters in Sec 19 which gives authority the decision making powers thus the law itself brings a balancing approach for anticompetitive or procompetitive this implies the competitive process itself . The decisions has not gone into the consumer harm aspects as determined by the U.S or E.U. Some of the take away from these are that the harm to single individual is not enough but it should be harm to the competitive process on the whole.

Competition law enhances consumer welfare through the promotion and preservation of competition in the markets. Therefore this is one of the justifications for competition law and also gives it in the public eye greater acceptability. Consumer interest may often be expressly listed as one of the objectives of competition law. Protecting the ‘interests of consumers’ is main objective in Indian competition law and can be seen in specifically both in the preamble to the Act and in the Commission’s duties. This is also reflected in a number of orders passed by the courts or the competition authorities. But competition law is not meant to protect all aspects of consumer interest, nor can it. The main focus of competition law is to protect and maintain the competition process in markets in order to improve the functioning of markets and thus result in the benefits of increased efficiencies, innovation and increased consumer welfare.

ENDNOTES

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ⁱⁱⁱ *Report Of Competition Policy And Law Of The High Level Committee*, Government of India, 2000 available at https://theindiancompetitionlaw.files.wordpress.com/2013/02/report_of_high_level_committee_on_competition_policy_law_svs_raghavan_committee.pdf last seen on 27/11/2020

^{iv} Excel Crop Care Ltd v. CCI and another, Civil Appeal No.2480 of 2014 (Supreme Court , 08/05/2017)

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^{ix} Neeraj Malhotra v. Deutsche Post Bank Home Finance Limited, Case No 9 of 2010, (Competition Commission of India, 2/12/2010).

^x *Ibid*

^{xi} *Supra* 9

^{xii} Rahul Singh, “The contours of competition” available at <https://www.livemint.com/Opinion/ay6RMFqgs1WR0wcHHtORNK/The-contours-of-competition.html>

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^{xv} Ramakanth Kini v. Dr L H Hiranandini Hospital, Case No 39 of 2012 (Competition Commission Of India, 05/02/2014).

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- ^{xxi} *Ibid*
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