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FACULTY OF JURIDICAL SCIENCES

COURSE: B.A.LL.B. IX th Semester

SUBJECT: COMPETITION LAW

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LECTURE 27

TOPIC: PROTECTION OF CONSUMERS UNDER THE COMPETITION ACT

In the recent times, there has been major changes and emergence of various competitive practices in economies across the world. Due to the increasing competition, adverse consequences are produced. These repercussions do not remain limited to the market stakeholders but are extended to the consumers as well. The major problem arises when the effects of such competition become non-quantifiable and non-obvious. Until the late 1970s, there was no systematic movement in lieu of taking steps for the protection of interests of the consumers. In the recent consumer friendly environment, it is acknowledged that the true indicator of a country's development and its progressiveness is a level of consumer awareness and protection in the territory. The factors that have led to an increase in need of consumer protection are multifold. These include increasing the complexity of production and distribution system, greater levels of sophistication in selling and marketing, advertising and promotional practices, increased mobility of consumers and lack of or reduction in the interaction between the consumers and sellers.

In order to tackle this problem, enactment of Competition laws is the best suitable recourse. Taking into consideration the consumer needs and imbalances faced by them in economic terms, education levels and bargaining power, there are various guidelines that have been made in furtherance of consumer protection. Such guidelines have been formulated or expanded to include 'sustainable consumption' as an important subject matter. These guidelines have been helpful in setting up international accepted set of objectives particularly for the developing countries in order to help them identify priorities and hence structure their consumer protection policies and legislations.

Enforcement of Consumer protection through Competition laws

It is an acknowledged fact there exist an unequal relationship between the producers and consumers. Competition Law, therefore, restricts the producers from abusing the dominant position of theirs in the market. The Supreme Court of India has observed that the main objective of Competition law is to use competition as a tool to promote economic efficiencies and assist in creating the market as responsive to consumer preferences.

Using Competition as a tool bears following benefits for the consumers:

- It is a means of lowering prices and improving quality. Consumer prices get lowered because with a better degree of competition, productivity of the industries increases. Not only consumer prices get lowered but also employment increases.
- It leads to consumer empowerment because of promotion of factors like higher degree of consumer protection, freedom of individual choice and abhorrence of concentration of power and decentralized economic efficiency
- It also aims for open market so that situations of shortages can be avoided, and therefore allocative efficiency may be increased;
- By achieving all these objectives growth and development get accelerated, and political and economic democracy gets preserved.
- It also produces better and wider choices.

It has been observed that there is a strong commonality between consumer protection policy on one hand and competition law and policy on the other hand. An effective and efficient competition policy if implemented in a proper manner can reduce the amount of trade barriers on entry and exit. Such reduction in barriers can help in making the market environment more conducive for not only promoting entrepreneurship but also for small and medium scale enterprises and their respective growth and provide scope for consequent expansion. Competition law and Policy aims at maintaining the ambit and process of competition between various enterprises and also provide for remedies to behavioral and structural problems so that competition can be re-established in the market. If all the above-mentioned objectives are met then benefits like greater economic efficiency, higher innovation, and enhancement of consumer welfare can be achieved.

Consumer welfare would be achieved because now the consumers shall have greater choices and more availability of goods at reasonable and affordable prices. On the other hand, consumer policy deals with the nature of consumer transactions, steps, and strategies that can help in improving market conditions so that the consumers can effectively make an informed choice. Irrespective of the fact that the two policies focus on varying market failures and their respective remedies, but it is noteworthy that their aims coincide in a way that they both aim at maintenance of well-functioning and competitive markets that promote consumer welfare. It is because of this common feature that they are termed as mutually re-enforcing.

The ultimate objective of competition policy is to formulate such legal framework which shall empower other policies to facilitate competitive outcomes in the country. A good competition policy is not only an essential element of economic policy framework but also maximizes consumer and social framework. It benefits the consumers in the way that it creates a business environment where efficient resource allocation is ultimately curbing or preventing abuse of market power.

In the Indian matrix, along with the Competition Act, it was suggested in the Tenth Five-year plan that a National Competition policy should also be articulated. This National Competition Policy would reflect nation's need for an accelerated economic growth and improvement in the quality of life of the people, nation's image and self-esteem etc. It was further put forth that the National Competition Policy would help in bringing about a competitive culture among various organizations, therefore maximizing economic efficiency, protecting consumer interests and improving international competitiveness.

Provisions in the Competition Act that enforce consumer protection

Expressly, the Competition Act, 2002 gives protection to the consumers by way of Section 4, where it is recognized that an enterprise or group shall be termed as abusing its dominant position if it limits or restricts technical or scientific development relating to goods or services to the prejudice of consumers. Definition of the dominant position of a firm or enterprise is gauged by various factors. Among all other factors, it is defined as a position of strength enjoyed by an enterprise, in the relevant market, in India, which enables it to affect its consumers or the relevant market in its favor.

According to Section 18 of the Act, the Competition Commission of India has the power to take *suo moto* action in order to eliminate *practices having adverse effect on competition, promote and sustain competition, protect the interests of consumers and ensure freedom of trade carried on by other participants, in markets in India.*

According to Section 19(4), among other factors, dominant position is also determined by the dependence of consumers on the enterprise and entry barriers including barriers such as regulatory barriers, financial risk, high capital cost of entry, marketing entry barriers, technical barriers, economies of scale, high cost of substitutable goods or service for consumers. Section 19(6) and 19(7), the relevant geographical market and product market are determined by the many factors. One of the major factors among all others is consumer preferences.

Protection from the Unfair Trade Practices and Restrictive Trade Practices to consumers

The Competition Act, 2002 does not recognize unfair trade practices. Such practices have been recognized in the Consumer Protection Act, 1986, and any person found in contravention of such provisions is penalized. However, the Competition Act, 2002 recognizes the Restrictive Trade Practices. A Restrictive Trade Practices is defined as the one which has the potential of bearing effects such as preventing, distorting or restricting competition. In particular, any trade practice that obstructs the flow of capital or resources into the stream of production can be termed as Restrictive Trade Practice.

Examples of such practice include price manipulation, the imposition of such conditions on the delivery or supply of goods that have an effect of imposing unjustified costs and restrictions etc.

Exercise:

1. The market in which producer and consumer have perfect knowledge of the market

a) Imperfect Competition
b) Monopoly
c) Perfect Competition
d) Oligopoly

2. Competition Commission of India aims to establish a ____________ competitive environment

a) Feeble
b) Anti-consumer
c) Medium
d) Robust

3. Relevant product market means a market comprising all those products or services which are regarded as _____________ by the consumer

a) Interchangeable
b) Substitutable
c) Both a & b
d) None

4. The chairperson or any other member of CCI may, by notice in writing under his hand addressed to the _________ resign his office

a) Chief Justice of India

b) Law Secretary

c) Secretary (Consumer Affairs)

d) Union Government

5. What is the duty of CCI?

a) to eliminate practices having adverse effect on competition

b) promote an sustain anti-competition

c) protect the interest of meddlers and non-consumers

d) ensure restriction on freedom of trade in India