

# Competition Law and Consumer Protection Law

India has a **special legislation** providing for **protection of consumers** known as the Consumer Protection Act, 1986. The Competition Act, 2002 provides for protection of **consumers interest**. It is necessary for us to understand whether both these laws cater to consumer protection and should understand the perspective and focus of these two laws also will **differentiate the definition** of “**consumer**” under the Consumer Protection Act and the Competition Act and rights and reliefs available to consumers under these Acts.

## **Objectives:**

- To know ‘who is a consumer’ under the Consumer Protection Act and the Competition Act and understand the concept of consumer protection under the Acts
- To know how the Competition Act protects consumer interests.
- To know rights of consumers under both the Consumer Protection Act and the Competition Act
- To know the reliefs available to consumers

<b>Objectives</b>			
Who is a consumer’ under the Consumer Protection Act and the Competition Act?	How the Competition Act protects consumer interests?	What are the reliefs available to consumers?	what are the rights of consumers under both the Consumer Protection Act and the Competition Act

**Introduction:** There has been a debate whether competition policy and the consumer policy have similar object of protecting consumer interest. If both the policies are complementary to each other they should be applied in the same manner to achieve their goals of consumer welfare. Competition policy promotes efficient allocation and utilization of resources which in turn leads to increased competitiveness resulting in higher growth and development. Competition Policy promotes fair competition in the market which ultimately leads to consumer welfare in the end. Consumer protection policy is more diverse in nature and empowers

consumers as it provides reliefs directly in the hands of the consumers. It provides for protection of consumers against unfair and restrictive trade practices apart from defects and deficiencies in goods or services respectively. The Competition Act and the Consumer Protection Act are enacted and enforced by the Government under the competition and consumer policy respectively.

In **OECD roundtable** on the Interface between competition and consumer policies, it was stated that **“Now it is widely understood to have a single purpose: the enhancement of Consumer welfare. Thus, competition policy and consumer policy now speak the same language; they have a common overarching goal”**. However, the two policies address this goal from different perspectives. Competition policy approaches a market from the supply side; its purpose is to ensure that through competition, consumers have the widest possible range of choice of goods and services at the lowest possible prices. Consumer policy approaches markets from the demand side: to ensure that consumers are able to exercise intelligently and efficiently the choices that competition provides. Consumer policy addresses, among other things, information asymmetry as between sellers and buyers, false and misleading advertising, and contract terms that are not understandable or disproportionate. Competition policy and consumer policy reinforce one another. In markets that are effectively competitive, producers have internal incentives to further consumer policy objectives, for example, to develop a relationship for quality or to attract customers away from rivals by providing the necessary information to minimize switching costs. At the same time, when consumers are able to exercise their choices effectively, they can act as a competitive discipline upon producers.

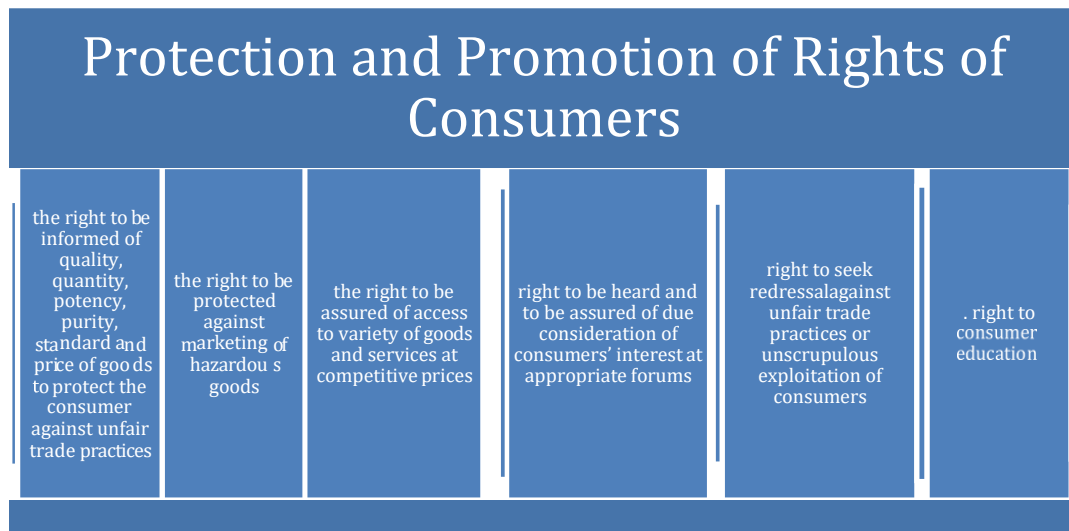
Competition Policy contributes to economic growth to the ultimate benefit of the consumers, in terms of better choice, better quality and lower prices. Competition policy may serve as a complement to consumer protection policies to address market failures such as information asymmetries, lack of bargaining position, towards producers and high transaction costs.



## The Consumer Protection Act, 1986:

Consumer protection is the central theme of the Consumer Protection Act, 1986. The Consumer Protection Act, 1986 was enacted as a result of widespread consumer protection movement. The preamble of the Act says that this Act was enacted to provide for the protection of interests of consumers. According to the preamble, it is an Act to provide for the better protection of the interest 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 objective is to render simple, inexpensive and speedy remedy to consumers. The Act is reactive in nature and provides for special forums for redressal of consumer grievances. It provides a new remedy leaving the substantive rights to be the same as they were earlier. The provisions of this Act are in addition to and not in derogation of the provisions of any other law for the time being in force. According to statement of objects and reasons, the Act seeks to promote and protect the rights of consumers such as:

- a) the right to be protected against marketing of hazardous goods.
- b) the right to be informed of quality, quantity, potency, purity, standard and price of goods to protect the consumer against unfair trade practices.
- c) the right to be assured of access to variety of goods and services at competitive prices.
- d) right to be heard and to be assured of due consideration of consumers' interest at appropriate forums.
- e) right to seek redressal against unfair trade practices or unscrupulous exploitation of consumers.
- f) right to consumer education



The Act provides for establishment of central, state and district consumer protection councils. The objects of such councils are to protect and promote the rights of the consumers which include the right to be assured, wherever possible, access to a variety of goods and services at competitive prices.

### **The Competition Act, 2002:**

The preamble of the Competition Act, 2002 says that the Act is to provide keeping in view the economic development of the country for establishment of a Commission to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect interests of consumers and to ensure freedom of trade. Therefore, the scope of the Competition Act, 2002 has been restricted by the preamble in its preamble to following four categories:

- a) prevention of practices having adverse effect on competition.
- b) promotion and sustaining competition in markets.
- c) protect interests of consumers.
- d) ensuring freedom of trade

The Competition Act prohibits anti-competitive agreements amongst manufacturers and producers like agreements for price fixing, market allocation, output restriction, bid rigging and collusive tendering, which are presumed by the Act to have negative effect on consumer interests. Besides such agreements, there are certain agreements which are likely to have adverse effect on competition. Such agreements may include tie-in-arrangements, exclusive supply and distribution agreements, refusal to deal and resale price maintenance. The Competition Act also prohibits abuse of dominant position by enterprises by identifying categories of abusive use of dominant position. Abusive use includes unfair or discriminatory trade practices, limiting production or technical or scientific development, denial of access to market, barriers to entry and expansion, imposition of supplementary obligation and protection of other markets. The Competition Act reduces barriers to entry in the market making the environment conducive for growth of business. The Act also prohibits combinations of enterprises which are likely to appreciable adverse effect on competition in India. Therefore, before any merger or amalgamation if the emerging enterprise is likely to cross thresholds limits for money value of asset or turnover, sanction of Competition Commission of India becomes mandatory. The Commission may approve, reject or suggest modifications in order to get approval to the scheme of merger or amalgamation. The Commission also has the power to order for division of an enterprise which is likely to appreciable adverse effect on

competition in India.

**Interface:** While looking at objective of both laws it can be said that the aim of Consumer Protection Act is to protect the right of the consumer to be assured of access to variety of goods and services at competitive prices whereas the Competition Act assures availability of goods and services at competitive prices for consumers. It ensures better and new products/services and lower prices.

The Consumer Protection Act deals with vertical relationship between a manufacturer or producer and a consumer whereas the Competition Act deals with horizontal relationship between manufacturers and producers. Both deal with distortions in the market place, which is supposed to be driven by the interaction between supply and demand. Anti-competitive practices like price fixing or exclusionary practices distort supply side because they restrict supply and increase prices. Unfair trade practices like deceptive or misleading advertisements distort the demand side as they create the impression that a product or service is worth more than it really is<sup>4</sup>. In Competition Act, distinction between 'per se' and 'rule of reason' cases is maintained. In 'per se' the only important issue is whether the conduct or practice occurred and requires no further inquiry into the practice's actual effect on the market or the intentions of those individuals who engaged in the practice. In 'rule of reason' the court applies a totality of the circumstances test and asks whether the challenged practice promotes or suppresses market competition because the conduct or practice may have both adverse as well beneficial effects. It is necessary to prove adverse market effects. Defense will be on the ground that adverse effects are outweighed by the beneficial effects<sup>5</sup>. Intent and motive may be relevant in predicting future consequences during a rule of reason analysis. A presumption exists in favor of the rule of reason for ambiguous cases. A practice which misleads consumers will be deemed to be a 'deceptive practice' and there is likelihood that it will affect the purchase decision of consumers. Such deceptive practices are unfair to consumers. Under the Competition Act, unfair or discriminatory trade practices fall under first category of abuse of dominant position. Therefore, unfair trade practice will fall within purview of Competition Act only when the enterprise is in dominant position.

### **Whether protection of consumers a common goal?**

According to Neil and Lande, antitrust and consumer protection share a common purpose in that both are intended to facilitate the exercise of consumer sovereignty or effective consumer choice. Consumer sovereignty exists when two fundamental

conditions are present. There must be a range of consumer options made possible through competition and consumers must be able to choose effectively among these options. The antitrust laws are intended to ensure that the market place remains competitive, so that a meaningful range of options is made available to consumers. The consumer laws are then intended to ensure that consumers can choose effectively from these options without any deception or withholding of material information. He says that protection at both levels is necessary in order to ensure that a market economy can continue to operate effectively.

According to Chicago School of anti-trust law, 'competition' may be read as designating a state of affairs in which consumer welfare cannot be increased by moving to an alternative state of affairs through intervention of anti-trust law. Consumer welfare is greatest when society's economic resources are allocated so that consumers are able to satisfy their wants as fully as technological constraints permit<sup>9</sup>. Consumer welfare in this sense is merely another term for economic wealth of the nation. According to Knight, the role of Competition law in relation to consumer welfare may be viewed under two aspects, allocation of available productive forces and materials among the various lines of industry and effective coordination of various means of production in each industry into such groupings as will produce the greatest result. Allocative and productive efficiency together make up the overall efficiency that determines the society's economic wealth which is termed as consumer welfare by the Chicago School.

According to Eliot G. Disner, both Chicago School and market structuralists agree on per se illegality of horizontal price fixing and related collusive activity. Such conspirators are so likely to raise prices or reduce quality that consumers will be affected adversely by anyone's measure.

Under EC Competition Law, 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 consumer is not specifically and technically speaking the beneficiary of the EC competition rules; these rules aim at guaranteeing workable competition rather than at protection of individual freedom but the enforcement ultimately serves consumer interests, 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 interest in the market economy.

Under the basic constitutional provisions of the USA, the EU and many European countries, the overall purpose of legal rules against private restraint on competition is to favour economic prosperity, which includes consumer welfare. The mandate of the Constitution is to protect competition law directly by the individual's freedom to compete. By doing so, consumer welfare is promoted indirectly as the experience shows. It is not the promotion of consumer welfare which should become the goal of competition law. Instead the freedom of individuals to compete and thus the free competitive process should remain the goal, especially since this concept promotes consumer welfare indirectly in an effective way.

Competition Law has a broader role and is part of the institutional framework for the management of the economy. It has indirect effect of protecting consumer interest. Competition law is neither designed to, nor can it, protect all aspects of consumer interest<sup>15</sup>.

### **Who is a consumer?**

It is necessary to understand who falls under the definition of consumer under Consumer Protection and Competition Act. Distinction in the definition of 'consumer' will show the distinction in the objectives and applicability of both laws.

Under the section 2(d) of the Consumer Protection Act, 1986, 'consumer' means any person who –

- i. buys goods for a consideration and includes any user of such goods other than the person who buys such goods for consideration. Consideration for the goods may have been paid or promised to be paid or partly paid and partly promised or is under any system of deferred payment. User of goods must have used goods with the approval of buyer of goods. It does not include a person who obtains such goods for resale or for any commercial purpose.
- ii. hires or avails of any services for a consideration and includes any beneficiary of such services other than the person who hires or avails of such services for consideration. Consideration for the services may have been paid or promised to be paid or partly paid and partly promised or is under any system of deferred payment. Availing of services must have been done by the beneficiary with the approval of hirer of services. It does not include a person who hires such services for any commercial purpose.

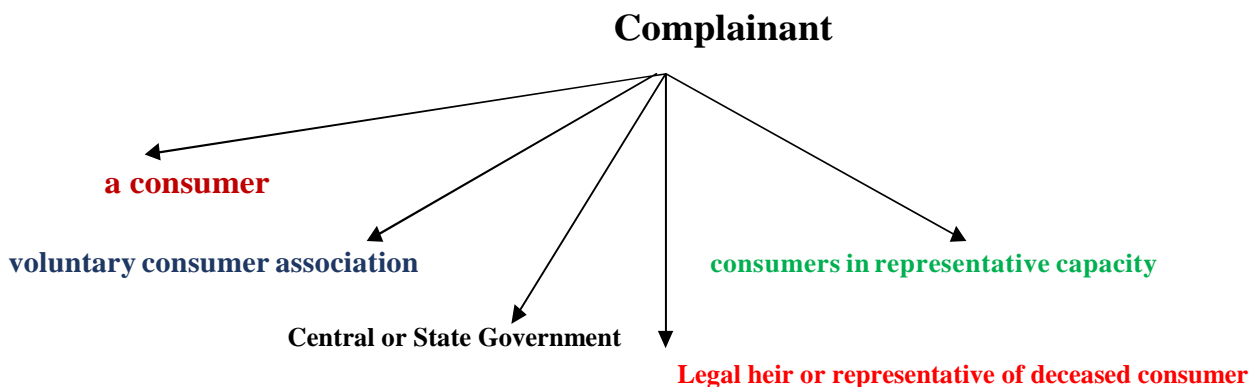
The term 'commercial purpose' does not include use by a consumer of goods bought

and used by him and services availed by him exclusively for the purpose of earning his livelihood, by means of self-employment.

Under s. 2(f) of the Competition Act, 1986, 'consumer' includes a buyer of good and user of goods with buyer's approval. It also includes hirer of services and any beneficiary of such services with the approval of hirer of such services. The only distinction between the definitions under the Competition Act and the Consumer Protection Act is that even if the goods are purchased for resale or for any commercial purpose or for personal use, purchaser of goods will be a consumer under the Competition Act. Similarly consumer will include hiring or availing of services even if such hiring or availing is for any commercial purpose or personal use under the Competition Act.

### **Complaint and complainant:**

Under the Consumer Protection Act, a complaint can be made for any unfair trade practices or restrictive trade practice adopted by any trader or service provider due to which complainant has suffered loss or damage, defects in goods or deficiency in services. The 'complainant' can be a consumer, voluntary consumer association, one or more consumers in representative capacity, Central or State Government and legal heir or representative of deceased consumer. The complaint can be made at district forum, State Commission or National Commission.



Under the Competition Act, 2002, the Competition Commission of India (CCI) can inquire into any contravention of S. 3 and S. 4 of the Act which prohibit any enterprise, a person or any association of them from entering into any anti-competitive agreements and prohibits abuse of dominant position by an enterprise or group respectively. CCI can do so on its own motion or on receipt of any information from any person, consumer or any consumer or trade association. The Commission can also proceed for inquiry on its own knowledge or information received by it into a combination that has arisen to know whether it has caused or is

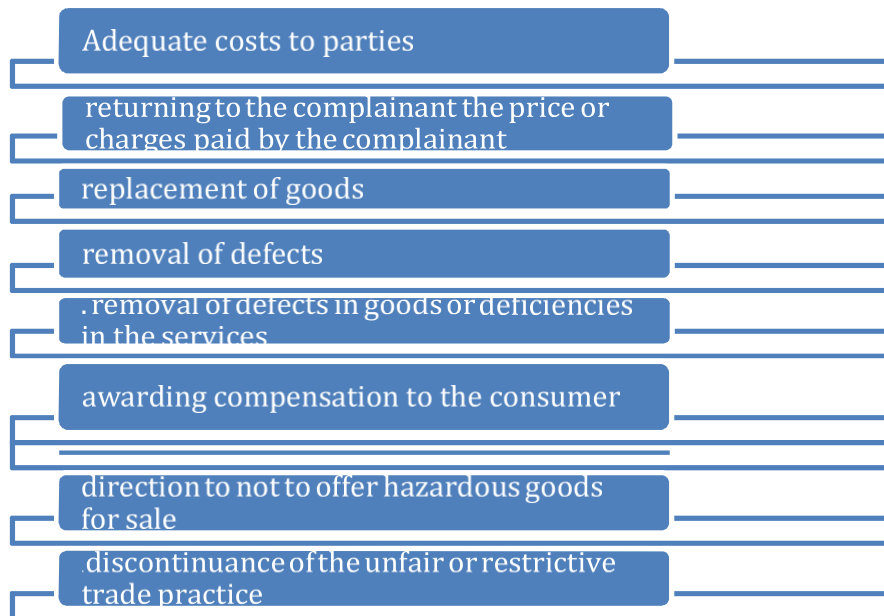


likely to cause appreciable adverse effect on combination. Any statutory authority can also *suo motu* make a reference to CCI in any case pending before it having a bearing on competition in markets.

### **Reliefs for consumers:**

The Consumer Protection Act deals directly with the consumers. Therefore, it provides reliefs directly in the hands of the consumers. Consumers have to file their complaints either to District Forum, State Commission or the National Commission according to their jurisdiction which may be area wise or monetary value of goods or services involved in the transaction. All three redressal agencies under the Act have original as well as appellate jurisdiction. Appeal from the National Commission lies in the Supreme Court of India. Under the Consumer Protection Act, 1986, the following reliefs are available to the consumers:

- a) removal of defects when the goods in questions are sent to appropriate laboratory and it points out the defects.
- b) replacement of goods with new goods of similar description free from any defect.
- c) returning to the complainant the price or charges paid by the complainant.
- d) awarding compensation to the consumer for any loss or injury suffered by him due to negligence of opposite party.
- e) removal of defects in goods or deficiencies in the services.
- f) discontinuance of the unfair or restrictive trade practice or no repetition of them.
- g) direction to not to offer hazardous goods for sale; withdrawal of hazardous goods from being offered for sale; to cease manufacturing of hazardous goods or to desist from offering services which are hazardous in nature; to pay such sum where loss or injury has been suffered by a large number of consumers; issue of corrective advertisement to neutralize effect of misleading advertisement.
- h) adequate costs to parties.



The Competition Commission of India has the duty to eliminate practices having adverse effect on competition, promote and sustain competition, protect the consumers' interests and ensure freedom of trade carried on by other participants in markets in India. The Commission does not directly provide any relief to consumers. It takes care of competition in the market. Any consumer who suffers on the hands on enterprise who is indulging into anti-competitive agreement or is abusive of dominant positions, he may inform the Commission. The Commission may, if it finds that prima facie case of abuse or dominance exists, it may proceed for enquiry. Under section 19 of the Competition Act, the Commission can inquire into agreements and abuse of dominant position for the purposes of prohibiting any person or enterprise from indulging into anti-competitive activities. For determining whether an agreement has an appreciable adverse effect on competition or not, the Commission may take into account the following factors:

- 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.

For determining, abuse of dominant position by an enterprise, the Commission may take into account the following factors:

- a) market share of the enterprise;
- b) size and resources of the enterprise;
- c) size and importance of the competitors;
- d) economic power of the enterprise including commercial advantages over competitors;
- e) vertical integration of the enterprises or sale or service network of such enterprises;
- f) dependence of consumers on the enterprise;
- g) monopoly or dominant position whether acquired as a result of any statute or by virtue of being a Government company or a public sector undertaking or otherwise;
- h) entry barriers including barriers such as regulatory barriers, financial risk, high capital cost of entry, marketing entry barriers, technical entry barriers, economies of scale, high cost of substitutable goods or service for consumers;
- i) countervailing buying power;
- j) market structure and size of market;
- k) social obligations and social costs;
- l) relative advantage, by way of the contribution to the economic development, by the enterprise enjoying a dominant position having or likely to have an appreciable adverse effect on competition;
- m) any other factor which the Commission may consider relevant for the inquiry.

If after inquiry the Commission finds a contravention and anti-competitive agreement or abuse of dominant position, it may order for:

- a) discontinuance of such agreement or abuse; prohibition on repetition of such agreement or position.
- b) imposition of penalty.
- c) modification of agreements.
- d) payment of costs.
- e) division of enterprise enjoying dominant position

Similarly in case of combinations, the Commission may either approve, reject to propose modifications to the proposed combinations in order to remove its likelihood of appreciable adverse effect on competition.

**Summary:** An attempt was made in the module to make students appreciate whether both the Consumer Protection Act and Competition Act complement each other in protecting consumer interests. The module throws light on the perspectives of Competition and Consumer Acts on consumer welfare. The module discussed the term 'consumer' under the Competition and Consumer Acts and also highlighted different reliefs which are available for consumers under the Acts. Different opinions on whether consumer protection is a common goal of both the Competition and Consumer Acts have been discussed.