COMPETITION COMMISSION OF INDIA; A KEY PLAYER FOR CONSUMERS WELFARE

"Competition is not only the basis of protection to the consumer, but is the incentive to progress".

- **Herbert Hoover**

ABSTRACT

Consumer is the king in this free market era. Today, market is depended upon the consumers and consumers' choices are restricted by the supply of their demanded commodities. To win the trust and faith of consumers, sellers and producers use various ways, and sometimes they use illegitimate means to achieve the end. To maintain the fair competition in the market and to promote the welfare of consumers, government has enacted various legislations like Consumer Protection Act, 1986, Competition Act, 2002 and so on.

Competition Commission of India (CCI) was established in 2003 to achieve the objective of Competition Act, 2002. CCI has been playing a vital role in this area. It is not only saving the spirit of competition, but also promoting the welfare of consumers. But it is often said that the role of CCI is very limited in nature and it has no role towards the welfare of consumers.

In this piece of writing, researcher will discuss about the role of CCI towards the welfare of consumers. Despite having limited powers, it has been trying to protect the interests of consumers by regulating competitive practices in the market. And in the end, we will come to know that CCI is highly successful in this regard.

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1. INTRODUCTION

Today we are living in the world of globalization. Thus, competition is inevitable among the sellers and manufacturers in the market. Competition means a struggle or contention for superiority, and in the commercial world it means a striving for the customs and business of people in the market place[1]. And it can also be said that "*competition is a process of rivalry between firms… seeking to win customers' business over time*"[2].

Today, every seller and producer has been indulged in the race to earn profits. And the reward will ultimately be given by consumer, because at the end of the day it is the consumer who will choose the seller. And to win the trust of consumer, firms are now using illegitimate means like abuse of dominance, Cartel, misleading advertisements, bad faith litigation[3] and so on. Due to this, spirit of competition dies and customer, who is supposed to be the 'king' in this free market era, is facing lots of problems. To deal with such issues, our legislative body has been enacting various rules and regulations. For example Code of Civil Procedure, 1908, Indian Penal Code, 1860, Indian Contract Act, 1872, Consumer Protection Act, 1986, and Competition Act, 2002. Among the various rules, regulations and Statutes, it can be said that the Consumer Protection Act, 1986 and Competition Act, 2002 have profound impact on consumers.

Consumer Protection Act, 1986 was enacted for the welfare and protection of consumers and to solve various types of consumer disputes[4]. Whereas, government enacted the Monopolies and Restrictive Trade Practices Act, 1969 (herein after referred as "**MRTP Act, 1969**") to regulate the functioning of firms in the market. The Act was introduced to control unfair and restrictive trade practices and to achieve social justice. It owes its inspiration to Articles 38 and 39 of the

[1] Richard wish & David Bailey, *Competition Law* (Oxford University Press, New Delhi, 2008).
[2] *Ibid*
[3] *M/s Bulls Machines Pvt Ltd.* v. *M/s. JCB India Ltd. and M/s J.C. Bamford Excavators Ltd.*, Case No. 105 of 2013.
[4] Preamble of the Consumer Act, 1986 (Act 68 of 1986)

Constitution of India[5]. And later on, due to the lacunas in the Act, Competition Act, 2002 came up.

But, it is often misunderstood that Consumer welfare is not the priority of Competition law. The same assertion or the statement is wrong. And to prove that the aforementioned assertion is baseless and wrong, researcher, in this piece of writing, is going to discuss how Competition Commission of India (herein after referred to as "**CCI**") has been playing a key role for the welfare of consumer vis – a- vis the Consumer Redressal Forums.

2. CONSUMER PROTECTION ACT, 1986 & COMPETITION ACT, 2002.

The development in national and international trade forced the Indian government of adopt free market. A well organized sector of manufacturers and traders with better knowledge of markets has come into existence, thereby affecting the relationship between the traders and consumers making the principle of consumer sovereignty almost inapplicable[6].

And to provide protection and welfare to consumers, legislature has enacted the Consumer Protection Act, 1986. It seeks to promote and protect the rights of consumers such as right to be protected against marketing of harmful goods, right to be informed about the quality, potency and purity, right to be heard and right to consumer education and so on. These objects are sought to be protected by the Consumer Protection Councils.

On the other hand, to maintain the spirit of competition in the competitive market and to promote the welfare of consumer, Indian legislature passed the MRTP, Act in 1969 based upon the

[5] Abir Roy and Jayant Kumar, *Competition Law in India* (Eastern Law House, New Delhi, 2008)
[6] Supra note 04.

recommendations of the Monopolies Inquiry Committee[7]. The MRTP Act, 1969 aimed at preventing (i) economic power concentration in a few hands (ii) curbing monopolistic behavior and (iii) prohibition of monopolistic, unfair or restrictive traded practices[8]. But due to various lacunas in this Act, government established the High Level Committee on Competition Policy and Law (herein after referred to as "**Raghavan Committee**") in 1999[9]. Raghavan Committee submitted its report in May 2000[10]. And later on, in 2002, based upon the recommendations of the Raghavan Committee, Competition Act was enacted. The main objectives of the Competition Act, 2002 are to prevent anti – competitive practices, to promote and sustain fair competition in the market and to protect the interests of consumers[11].

2.1. Common Goal; Consumer Welfare

Consumer's choice is restricted by the producer's decision[12]. Ultimately the process of competition itself is intended to deliver benefits to consumers. Competition is now universally acknowledged as the best means of ensuring that consumers will get better services and they will be protected against the mal practices of sellers. By protecting the competitive process therefore, competition protection provisions indirectly promote consumer welfare. Competition leads to reduce prices and to enhancement of more choices, which benefits the consumer[13].

Not only in India, but in various parts of the world, Competition Law also aimed at welfare of consumers. In recent years, many competition authorities have stressed the central importance of

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[7] Vinod Dhall, *Competition Law Today; Concepts, Issues, and the Law in Practice* (Oxford University Press, New Delhi, 2007)

[8] Jaivir Singh, "Monopolistic Trade Practices and Concentration of Wealth : Some conceptual problems in MRTP Act" 35 *ELW* 4437 (2000).

[9] Order No. 1/9/99 – CL _V of 25th October 1999.

[10] Supra note 05.

[11] Preamble of the Competition Act, 2002 (Act 12 of 2003)

[12] Supra note 01.

[13] Irina Haracoglou, "Competition Law, Consumer Policy and the Retail Sector: the systems' relation and the effects of strengthened consumer policy on competition law" 3 *CLR* 100 (2007)

consumer welfare while applying competition law[14]. EU law has recognized that consumers can be directly or indirectly harmed by action that harms the competitive structure of the market[15], and it continues to do so[16].

Consumer welfare is the common goal of both the aforementioned legislations. Consumer Protection Act, 1986 was enacted mainly to protect the interests of consumers and to solve their disputes[17]. Whereas, Competition Act, 2002 was enacted to promote the fair competition in the market and also to protect the interests of consumers[18]. Consumer welfare is the priority of the Consumer Protection Act, 1986. Whereas, consume welfare is one of the objectives of the Competition Act, 2002. In addition to this, it is submitted that the Consumer Protection Act, 1986 works to solve the issues and disputes of consumers, whereas competition law works towards the better exploitation of resources and fair competition, so that consumers will be protected against malpractices and anti competitive practices.

The Raghavan Committee desired the focus of the new law to be on preventing anti – competitive practices that reduce 'consumer welfare'[19]. The Planning Commission also stated that promotion of consumer welfare is the common goal of consumer protection and competition policy. At the root of both is the recognition of an unequal relationship between consumers and producers[20].

To protect the welfare of consumers at large, Competition Act, 2002 has adopted a wider definition of 'Consumer'[21] than Consumer Protection Act, 1986[22]. The Preamble of the

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[14] Supra note 01
[15] *Europemballage and Continental Can* v. *Commission* [1973] ECR 215.
[16] *G.S.K.S* v. *Commission* [2009] ECR I- 9291
[17] Rattanlal and Dhirajlal, *The Law of Torts* (Lexis Nexis, New Delhi, 26th edn., 2013)
[18] *Ibid*
[19] Supra note 07.
[20] Planning Commission of India, Report of Eleventh Five Year Plan: Inclusive Growth, (2007-12)
[21] Supra note 11, Section 2 (f)
[22] Supra note 04, Section 2 (1) (d).

Competition Act, 2002 and various other Sections like 18 and 19 specifically stipulate the about the consumer welfare. Moreover, both the laws are in addition to each other and not in derogation to each other[23]. In the case of *Competition Commission of India* v. *Steel Authority of India Ltd. and Anr.*[24], Hon'ble Supreme Court held that the one of the important objectives of the competition law is to promote economic efficiencies to promote the consumer welfare.

From the above discussion, it can be concluded that both the aforementioned Statues work towards the welfare of consumers. However, ways could be different, but aim is the betterment of consumers. Now, in the coming part of this piece of writing, we will discuss the role of CCI towards the protection of consumer welfare.

3. ROLE OF CCI

CCI was established on 14th October 2003[25]. The aims of CCI are to eliminate practices having adverse effect on competition, promote and sustain competition, protect the interests of consumers[26] and competition advocacy. Moreover, CCI organized various conferences and seminars to promote the awareness among various sections of the society. A Competition Forum has been set up as a platform for inviting experts on competition law and other related matters to discuss on the serious issues of competition law. Moreover, Draft Curriculum on competition law has been sent by the CCI to over 140 universities to be incorporated in their curriculum[27].

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[23] Section 3 of the Consumer Protection Act, 1986 (Act 68 of 1986). and Section 62 of the Competition Act, 2002 (Act 12 of 2003).
[24] (2010) 10 SCC 744.
[25] Supra note 07
[26] Supra note 11, Section 18.
[27] Supra Note 07.

A summary of advocacy initiatives taken by CCI during 2010 to 2012 has been given below in a tabular form[28].

Year	Consumers	Industry	Students	Professionals	Others	Total
2010- 11	2	13	4	6	21	46
2011- 12	3	13	15	12	19	62
2012- 13	2	11	24	8	14	59

Apart from the aforementioned statutory duties, CCI protected the interests of consumers in various cases which involve abuse of dominance, bad faith litigation, anti – competitive practices and so on.

3.1.<u>Cases at glance</u>

Here below, researcher has given a brief outline of various landmark cases which were decided by CCI.

3.1.1. Belaire Owner's Association **v.** ***DLF Limited & Ors*[29].**

DLF has decided to establish a group housing complex called The Balaire which has five multi storied residential buildings in DLF City Gorgon. Complainant filed a complaint saying that DLF impose "highly arbitrary, unfair, and unreasonable condition" on the informant and abusing its dominance.

CCI, after scrutinizing all the facts, came to a conclusion that there is a prima facie case and ordered Director General (herein after referred to as "**DG**") to go ahead with his investigation.

[28] Competition Commission of India, Annual Report, 2012 -13.
[29] Case No. 19 of 2010.

DG in his report stated that DLF has abused its dominant position. Subsequently, CCI held that DLF has abused its dominance. Hence, CCI imposed a fine of Rs. 630 Crores on DLF. Later on, DLF has challenged the same before the COMPAT and Supreme Court of India. And both the institutions upheld the order of CCI.

3.1.2. *MCX Stock Exchange Ltd.* v. *National Stock Exchange of India Ltd*[30].

This case deals with the abuse of dominance position in the stock exchange market. The National Stock Exchange of India Ltd. (herein after referred to as "**NSE**") was alleged to be in violation of the Competition Act, 2002 on account of abuse of its dominance by creating barriers of the potential entrants from entering into the market and eliminating competition and thus affecting the interests of consumers. Therefore, CCI imposed a fine of Rs. 55.5 Crores on NSE for abuse of its dominant position.

3.1.3. *M/s. Santuka Associates Pvt. Ltd. v. All India Organization of Chemists and Druggist and Ors.*[31]

Informant has alleged that the Respondent has abused its dominant position by limiting and restricting the supply of drugs and pharmaceuticals. Subsequently, after the investigation of DG, it was held by the CCI that the Respondent has abused its dominance and imposed a fine of about Rs. 48 lacs on the Respondent.

3.1.4. *Cartelization by Cement Companies*[32]

[30] Case No. 13 of 2009
[31] Case No. 20 of 2011
[32] Supra note 30

The case deals with the cartelization by below mentioned cement companies. CCI through suo – moto action has imposed a penalty of 50% on net profit for 2009 -10 and 2010 -11 via its order dated 20th June 2012.

Companies which needed to pay the fine are:

Cement Manufacturers' Association, Associated Cement Co. Ltd., Gujrat Ambuja Cement Ltd., Grasim Cement, Ultratech Cement Ltd., Jaypee Cement, The India Cements Ltd., J.K. Cements, Centuries Textiles and Industries Ltd., Madras Cement Ltd., Binani Cement Ltd., and Lafrage India Pvt. Ltd.

3.1.5. *M/s Bulls Machines Pvt Ltd.* v. *M/s. JCB India Ltd. and M/s J.C. Bamford Excavators Ltd.*[33]

It is the case where informant alleged that the Respondent has abused its dominance by bad faith litigation. After examining the information, CCI found that there is a prima facie case of abuse of dominant position. And thus, CCI directed the DG to investigate into this matter.

The case is pending before the Delhi High Court and several questions upon the jurisdiction of CCI were also raised before the Delhi High Court.

Apart from the aforementioned cases there are hundreds of cases which should be mentioned over here. But to make it a comprehensive but precise piece of writing, researcher has discussed only aforementioned cases. And through these cases, it is clear that CCI has been playing an important role towards the protection and promotion of consumer welfare.

3.2. Limitations

[33] Case No. 105 of 2013.

No one is perfect and the same is applicable to CCI too. It is observed that there are some limitations or drawbacks of CCI which tether it to achieve the noble goal of consumer welfare. CCI entertains only those cases which involve Competition issue. If a case is very serious in relation to the grievance of a consumer, but doesn't include any competition issue, the case will be set aside by the CCI. And the same is happened in bulk of cases[34]. It implies that majority number of consumers' cases cannot be entertained by CCI. Thus, it makes the jurisdiction of CCi very limited in nature.

4. CONCLUSION

Needless to say that today consumer is the king of competitive market. And seller needs to win the trust and faith of consumer to reap profits. To achieve the same he sometimes indulged in malpractices and to control the same and for the betterment of consumer, Indian government has enacted various legislations like Consumer Protection Act, 1986 and Competition Act, 2002.

Both the Acts have one commonality and i.e. welfare of consumers. Consumer Protection Act, 1986 deals with the disputes of consumers and it works towards the protection of the rights of consumers. Whereas, Competition Act, 2002, *inter alia*, deals with the protection of consumers' interests. To achieve this very objective, CCI was established in 2003.

CCI has been using strict measures to protect the interests of consumers. Heavy fine, orders against anti competitive practices, suo moto action against the defaulters are some of the highlighted measures of CCI which it takes for the betterment of consumers. But on the other, it has some limitations, like it doesn't entertain those cases which are not having any issue of competition.

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[34] *Subhash Yadav* v. *Force Motor Ltd. & Ors.,* Case N0. 32 of 2012; *Sanjeev Pandey* v. *Mahendra and Mahenra & Ors.,* Case No. 17 of 2012; *Smt. Geeta Chatterjee* v. *M/s Bongaon Gas Service,* Case no. 192 of 2008.

But in the opinion of the researcher, CCI has been doing the right thing by not entertaining such issues, because if it starts hearing such type of issues, then flood of litigation will come to its door. And its speedy justice system will be hampered. In addition to this, it is submitted that there are various Consumer Redressal Forums in India at various levels which are meant for each and every type of consumers' cases. So there is no need of CCI to hear such cases. What CCI can do, in such cases, is to advise the informant to file the case before the concerned Authority.

In the last part of this piece of writing, researcher would like to conclude this paper by focusing on the assertion that CCI has been doing very well. It has not been just protecting the interests of consumers but it has been doing lots of things to create awareness among the various sections of society. The need of the hour is to go with the same speed. And the establishment of its branch offices at various places of India will be an appreciable act.