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Goals of Competition Law: The Consumer Interest Approach

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Abstract

Generally, the goals of competition law are understood as efficiency and consumer welfare. However, it has been challenged on multiple occasions to bring in „total welfare"; technological progress; „public interest" etc. As there are no pre-defined universal goals of competition laws, itis essential to trace the goals visioned by the Indian legislature for the Competition Act, 2002. This paper attempts to explore the goals through the discovery of the intention of the legislature and other contemporaneous events shaping the need for enacting competition law. Consumers' advantages were assumed to necessitate convergence of competition law and policy, antitrust laws, and interest of the public issues. Law and policy are not necessarily converging in the same way. They work together, yet there may well be discrepancies in their views of what constitutes the common benefit. This means that competition law is not designed to maximise overall economic development, but to maximise public surplus in fully competitive industries. At least two situations in which policy and law differ as far as how they define interests of the public develop as a result of the quiet of competitive markets on distributive or equity. As a first step, authorities turn to trade and industrial regulations to safeguard certain goods (retroviral medications for HIV), and also services (transportation), from being commodification on the basis of public access or availability. Second, gov'ts, at least in India, are protecting domestic industries given the potential of competition among systems and despite the fact that digital innovation in these markets weighs in favour of public interest in the starting to emerge situation of markets and the market for ideas. As government regulators try to get a grip on how to conduct competitive evaluations of new developing markets including platform markets and the market for ideas, the confluence of competition policy, law, and the national good has been put in the spotlight. Competition law and legislation should be re-evaluated for the public good.

Keywords: Consumer Interest, Public good, Consumer welfare, Legislative Intent, Competition Act, 2002

Introduction

The structure of enforcement institutions and processes to be adopted to ensure compliance with the law aims to realise the goals intended to be achieved. One pre-requisite for evaluating the enforcement is to identify the goals of the law. As Robert Bork stated, *"antitrust policy cannot be made rationale until we are able to give a firm answer to one question: what is the point of the law– what are its goals? Everything else follows from the answer we give…".*(Bork, 1993)Generally understood goals of competition law are efficiency and consumer welfare. (Bork, 1993; Monti, 2002; Hovenkemp, 2019). However, it has been challenged later to bring in

„total welfare" as a goal of competition law.Further, technological progress has also been introduced as a new goal of competition law (Brodley, 1987). This extension does not stop here, and further development is made in the European Union to consider „public interest" besides consumer welfare as a goal of competition law (Townley, 2011). Every jurisdiction has its specific set of goals to be achieved by implementing competition law as per its democratic setting. *For instance,* South Africa"s competition law identifies the challenge of apartheid in economic activity, and thus, equal participation and distribution of the resource is furthered as one of the goals.[i] China"s competition law incorporates the development of the *"Socialist Market Economy"* as one of the stated purposes.[ii] Similarly, apart from the competition goals (efficiency and consumer welfare), European competition law also recognises the „*integration goal*" for a single European market (Kirchner, 2007).

As there are no pre-defined universal goals of competition laws, it is essential to trace the goals visioned by the Indian legislature for the Competition Act, 2002 (hereinafter "the Act"). One method of understanding the legislative intent is to gather the same from the statute's language, (Singh, 2016) however, corroborating the same help of parliamentary debate[iii] and other contemporaneous events will also be considered.[iv] The object is to identify the "subjective legislative intent" for enacting competition law.

Legislative Intent

Competition as a process could have different conceptions depending on the country-specific objective. Countries have had the ability to devise methods and ways to advance the general welfare as well as guarantee the liberty of market participants that are suitable for its larger aims, which include both financial as well as non factors.In the late "90s, when India contemplated adopting competition law, the Raghavan Committee's recommendations (Raghavan Committee Report, 1999) formed the foundation for this decision. One important factor that led to considering setting up the competition law framework was the pursuit of globalisation and liberalisation, which started in 1991 and then establishing the WTO framework, to which India was a party (Anderson and Jenny, 2005). Because of the opening of Indian markets, the competition was two way–domestically and internationally.

In this context, the Oligopolies as well as Restrictive Trade Practices Act, which was passed in 1969, is becoming obsolete as a result of advances in world law as well as economy, especially in the area of regulations governing competitiveness.A need was thus perceived to change the attention from preventing monopoly to encouraging competitiveness (Dhall, 2007). (Dhall, 2007). This appears to also be informed by present debate in the WTO Working Group just on Interaction between Trade in The region Policy (WTO, 1998) impacting economic growth and development. The underlying assumption that the Raghavan Committee assumed was– "*competition* is useful not just due to economic consideration but „*political"* and „*social"* goals as well." (Raghavan Committee Report, 1999). There is no clarity regarding the political content of competition law in India, unlike the Chinese Anti-Monopoly Law, which explicitly states the development of a "Socialist Market Economic".[v] The preamble of the Competition

Act, 2002 (*hereinafter* "the Act") also does not qualify the market's political nature; hence, we can state that India follows general economic development standards.

Further, there is no protection afforded to the government enterprise in the Act. This is clear from the text of the competition law, which does not distinguish between a government and a non-government enterprise, and both are equally dealt with under the competition law, except to an extent government if performing its sovereign functions.[vi] This competitive neutrality has also witnessed various government enterprises and public sector undertakings punished by the Competition Commission of India (*hereinafter* "CCI") for anti-competitive conduct.[vii] However, the social content of competition law is reflected in the statutory framework and different CCI orders wherein the commission has taken a robust approach against the anti-competitive practices in the sectors dealing with public health[viii] and affordable housing.[ix]

It would be appropriate to introduce the concept of "competition" at this stage. Various literature has described the word competition in multiple ways, making one understand the accurate definition of competition (Vickers, 1995). Competition, in general parlance, means to struggle for superiority. Superiority in the commercial world means gaining customers, sales, and market share. In defining "Competition", the Raghavan Committee adopted the World Bank‟s definition of competition which describes it as "*a situation in a market in which firms or sellers independently strive for the buyers" patronage to achieve a business objective, for example, profits, sales or market share.*" (World Bank, 1999).Further, in 93rd Standing Committee Report (Rajya Sabha, 2001)adopted a slightly different approach wherein they defined „competition‟ as:

> *"Competition is basically an economic rivalry amongst economic enterprises to control greater market power. The competition is a situation where the market remains open to potential new enterprises and that enterprises operate under the pressure of competition. In the sense of economic rivalry, competition is unstable and has a natural tendency to give way to a monopoly. Thus, competition kills competition."*

Both definitions use the common rivalry factor with a slight difference in methods of achieving business objectives. These objectives are to be achieved through *consumer patronage*. At the same time, the latter does not mention the means but revolves around *economic rivalry*, which can be contested with fair or unfair means. One reason for Standing Committee Report‟s approach could be that through competition law, the legislature aims to regulate the market participants by distinguishing between fair and unfair methods in markets affecting competition.

In economic theory, rivalry amongst different players in a market is worth promoting as it ensures competition (Neils et al, 2012). The roots of this present situation can be found in the ideological conflict between the two most significant economic and political schools of all times: "*Communism" and "Capitalism"*. While the former relied on the overarching authority of the state, exercised through the tool of planned economic development, the latter relied on a self-regulatory mechanism based on liberal thought that espoused individual liberties. (Whish, 2009).

As communism seemed to be in its last stages, the twentieth century saw free markets and economic freedom rising, which worked on competition mechanisms. In capitalism, the attempt is to reach an optimal point of production and consumption, but without letting the state tell this to markets. Optimality is decided through constant rivalry among the market players to be better than each other (Whish, 2009). It is submitted that understanding competition in terms of rivalry may not be optimal in all situations. A market with one firm can also be competitive if the entry and exit are free and costless (Kolasky, 2002). Increasing the number of rivals does not always increase the incentive to compete (Tor & Garcia, 2009). Further, rivalry as the basis of competition does not answer how much rivalry is right and how much is harmful? Thus, a definition based on rivalry primarily relates to the process of competition and not the outcome (Bishop & Walker, 2010).

The outcome is delivered by competition in the market and not the process. Indian legislature, while introducing competition law, believed that "consumer interest" is the prime aim of the competition. Thus, the law should be with an approach that can deliver consumer welfare by eliminating the distortions from the market hampering the competition. This approach is reflected in the statement of *MrArunJaitley* in the debate on the motion of passing the competition bill wherein, in his clarification at introducing the Competition Bill, 2001, expressed that "*... the Bill seeks to check practices which may come about as aberrations in the market economy. Therefore, the Bill is intended to protect the consumer interest.*"[x] Further, *Mr B.B. Ramaiah"s* statement while supporting the motion on the passing of the Competition Bill highlighted that:

> *"The Competition Bill is mainly useful for the consumer. The consumer is the boss of any company, whether it is in the manufacturing sector or any other sector… But consumers require a lot of support against jacking up prices by companies by various methods, like forming cartels or by various other ways of a forming group of companies for dictating prices and escalating the prices… If the prices are too high, it will serve only a few sections of the people. The Competition Bill will serve its purpose today, with increasing utilisation and requirements of the common men, because of the various levels of prices maintained by them and because of the increasing competition."*[xi]

Keeping this in view, the newly enacted Act, in its long title, states that one duty of a competition authority is to "*protect the interest of the consumers.*"[xii] As per legislative intent, "interest of consumer" is the only stated goal of competition law to be achieved by creating competitive markets. When compared to markets where there is no competition, those who are competitive provide a better level of consumer welfare both in the short and long - run run. (Bishop & Walker, 2010).Consequently, regulator intervention is appropriate in the case of a danger to the efficiency of markets. Additionally, India's Prepared Submission to WTO's Workgroup on Interaction among Trade and Competition Policy reveals this intention of the legislature:

"India"s contribution was in line with to develop adequate legislative and policy framework to protect consumers from anti-competitive practices that raise prices and reduce output. The consumer needs and deserves legal protection against certain trade practices, business methods and unscrupulous forces." (WTO, 1998)

It is not just the Indian Competition law that keeps the focus on the consumer; rather, most jurisdictions adopting competition law have taken a similar approach. Table 1 gives a glimpse of the usage of the word "consumer" in the statutory scheme of the select Asian jurisdiction, understanding that „consumer" is one of the common elements in the system of competition law across major Asian jurisdictions. Singapore"s Competition Act, 2004, though, initially does not mention the word consumer in the statute, however, post the 2016 amendment, consumer and consumer rights find a special place.[xiii] The consumer vis-à-vis competition, which was much debated in European and American literature, has a clear legislative prescription in the Asian jurisdictions. This could be because most Asian countries adopted competition laws post-2000 (except the Japanese Anti-Monopoly Act, 1947). Accordingly, these jurisdictions have made their learning from the West and, accordingly, for clear legislative intent, identified „consumer interest" as the objective of their competition laws. **Table 1: Comparison of the usage of the word "Consumer" in select Asian jurisdiction's Competition Law**

Jurisdiction	Title of Competition Law		Context
China	Anti-monopoly Law of the People's Republic of China, 2008	Article 1	"… safeguard the interest of *consumers* and the interest of society as a whole..."
Singapore	Competition Act, 2004 *(no mention of the word "consumer" before 2018)*	Section 6	"… to promote fair trading practices among suppliers and *consumers* and enable *consumers* to make informed purchasing decisions in Singapore."
Japan	Anti-Monopoly Act, 1947	Article 1	"… secure the interests of general *consumers* by prohibiting private monopolisation, unreasonable restraint of trade and unfair trade practices."
Korea	Monopoly Regulation and Fair-Trade Act, 2010	Preamble / Long Title	"… to protect *consumer*…."
Indonesia	Law Concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, 1999	Preamble / Long Title	"… development in the field of the economy must be directed towards the achievement of the *people"s welfare."* In Elucidation to the Law - "... protect the public interest and *consumers.*"
Malaysia	Competition Act, 2010	Preamble / Long Title	"… wider choice to *consumers*…."
India	Competition Act, 2002	Preamble /Long Title	"to protect the interests of *consumers*…."

Taiwan	Fair Trade Act, 2015	Preamble / Long Title	"… protecting*consumer's* interest."

The other important aspect of the long title of the Act is that it prescribes one of the different functions of competition authority as *"…to prevent practices having an adverse effect on competition…"*. To understand the adverse effect on competition, one might first have to inquire what "competition" means. Mainly to discover the adverse effect on competition in one market, it must be compared with other markets without such an effect on competition to demonstrate that the effects are adverse. Thus, if we have laid down the counterfactual features of a competitive market, any disturbance may amount to adverse effects. This counterfactual position can be established through the Economic Content of competition, which is transformed by the legislature into the statutory scheme of the Competition Act.

Thus, under the scheme of the Act, conduct is proscribed, which has adverse effects on competition. CCI enforces the law against this conduct, classified under the Act as „anti-competitive agreement"[xiv] and „abuse of dominant power".[xv] Section 3 of the Act declares void all such agreements, understandings, or arrangements that have an appreciable adverse effect on competition and are called "Anti-competitive agreements". In the *Excel Crop Care Limited case*,[xvi] Supreme Court Observed that -

> *"The Act, which prohibits anti-competitive agreements, has a laudable purpose behind it. It is to ensure that there is a healthy competition in the market, as it brings about various benefits for the public at large as well as economy of the nation. In fact, the ultimate goal of competition policy (or for that matter, even the consumer policies) is to enhance consumer well-being."*[xvii]

The Court was clear in recognising the legislative will and the aim of the competition law. The Court was also cognizant that this goal would be achieved through the process of competition. Court also pointed out that the purpose of the competition policy is to set the "rules of the game", which promote competition itself rather than competitors.[xviii]

An "effect-based" analysis of the Anti-competitive agreement is required to protect the competitive process. An illustrative list of positive[xix] and negative[xx] factors is provided under Section 19 (3) of the Act. Positive factors establish the pro-competitive effect, while negative factors establish anti-competitiveness. An agreement which generates barriers (a negative aspect) may, for example, result in advances in promotion of products or delivery (positive factor). As a result, an appropriate balance between the positive and negative criteria listed in Section 19 (3) of the Act must be drawn when analysing the noticeable adverse impact on competition.Section 3 further classifies the anti-competitive agreement into two categories (i) Horizontal Agreement;[xxi] and (ii) Vertical Agreement.[xxii] With the horizontal agreement, the legislative scheme mandates CCI to presume the existence of an „adverse effect" if the object of the agreement is covered under Section 3 (3) of the Act, *i.e.* fixing prices, restricting or limiting

supplies, allocating geographical markets, and bid-rigging.[xxiii] This presumption is rebuttable, and the respondent would have to show the non-existence of negative factors and/or existence of positive factors which outweigh the negative factors.

On the other hand, vertically contracts such as tie-in agreements, exclusive supply arrangements, exclusive distribution deals, refusal to deal, and resale price stability are not subject to this presumption. These kinds of agreements are not regarded to be horizontal contracts...[xxiv] With this scheme of provisions, the legislature has clarified that those agreements among the market players capable of pushing the markets away from competitive equilibrium and affecting consumers are treatedas anti-competitive. The role of presumption depends on the proximity the conduct has with the "perfect competition" scenario. Conducts looking tilted towards "perfect competition" are based on the "*rule of reason*"approach, but the distant ones are "*per se*" presumed to be anti- competitive (Raghavan Committee Report, 1999). It will be appropriate to highlight here that thepresumption is only related to "effects". CCI must establish an agreement with relevant communicative, circumstantial, and economic evidence to arrive at this part.

For „abuse of dominant power" and the consequent effect on the consumer, the legislature has devised a "form-based" approach. It is not necessary to analyse the impact of the conduct on the competition, consumers, or the market.[xxv] The legislative scheme of Section 4 of the Act, requires two elements (i) dominance of enterprise in the relevant market;[xxvi] and (ii) such a dominant enterprise must be engaged in conduct which qualified as abuse under Section 4(2) of the Act.[xxvii] The dominance of an enterprise has to be assessed in the „relevant market" based on the relevant product market and relevant geographic market.[xxviii] Further, there is no specified threshold or an arithmetical figure on market share, establishing dominance. An illustrative list of factors is provided under Section 19 (4) of the Act for analysing dominance (Raghavan Committee Report, 1999). Only after an enterprise"s dominance is established can analysis of "abuses" like exploitative and exclusionary conduct be undertaken. The language of the provision suggests that an analysis of the abuse of dominance is "form-based". However, a particular part of the provision also demands „effects" analysis. For instance, the abuse of imposing unfair or discriminatory conditions for the purchase or in price[xxix] may be justified if the same is adopted to „*meet the competition."*[xxx]Thus allowing pro-competitive discrimination, which will require analysis of the "effects".[xxxi] Further, if we look back to the Raghavan Committee Report, it was highlighted that–

> *"Key questions for adjudication on abuse of dominance could include; (i) How will the practice harm competition? (ii) Will it deter or prevent entry? (iii) Will it reduce incentives of the firm and its rivals to compete aggressively? (iv) Will it provide the dominant firm with an additional capacity to raise prices? (v) Will it prevent investments in research and innovation? (vi) Do consumers benefit from lower prices and/or greater product and service availability?"* (Raghavan Committee Report, 1999)

These questions highlighted by the committee show that Section 4 analysis should be an effect-based analysis. An effect-based approach in Section 4 could have brought the analysis of consumer harm in its perspective, which would have provided a consistent approach to determine the abuse. In Fastway Transmission Case, there was an opportunity for the Supreme Court to recognise the effect-based analysis of Section 4. However, though SC accepted the argument of "legitimate justification", instead of construing it as a defence against the abuse, the Court considered it a mitigating factor and waived the full penalty. Nevertheless, the decisional practice of CCI shows the effect analysis in most cases whenever required. Keeping this in consideration, the CLRC has also refused to recommend any change in the statutory framework of the Act (MCA, 2020). The decisional practice is a relevant aspect of interpreting statutes. CCI"s practice of making and effect analysis will guide future cases whenever interpretation of Section 4 of the Act arises. This „decisional practice" is based on the doctrine of *contemporanea exposition,* which allows reliance on the practices understood and implemented for a long time. This approach is supported by law and should be accepted as part of the interpretative process.[xxxii]

Consumer Interest in Competition Act, 2002

Through the legislative intent above, we can see that „consumer" is central to competition law. Initially, when the Sherman Act, 1890 (US) was enacted, the mindset of the legislature was claimed to be filled with economic efficiency (Bork, 1995). However, subsequent scholars refuted these claims, who believed that US antitrust law aims to avoid wealth transfer from consumers to producers or protect small businesses (Lande, 1982; Hovenkemp, 1988; Hazlett, 1992). This study shows that, in India, though the word consumer welfare (interest) is predominantly understood as the ultimate legislative goal of the competition law, the meaning of „consumer" may require some explanation to identify the beneficiaries as per legislative intent.

The word „Consumer" is defined differently in the two related legal regimes, *i.e.*, the Consumer Protection Act, 2019 (*hereinafter* "CPA") and Competition Act, 2002. Former defines the „*consumer*" based on *end-use* (*hereinafter* "End-user").[xxxiii] „Consumer" as per the said definition can be of *"goods or services for consideration wholly or partly paid and person using such goods or services with the permission of consumer at first instance."*[xxxiv] This definition of „consumer" excludes *"person availing goods or services for the commercial purpose,"*[xxxv] but the same is included in Competition Law.[xxxvi] Thus, besides end-user, the Act also includes "commercial consumer" by defining consumer as - "…a purchaser of goods or service is availed for *resale, hire of for any commercial purpose* or personal purpose…".[xxxvii] (*hereinafter*"commercial consumer").

Only in a market wherein people exchange money for goods or services can worries about competitiveness emerge. The final deal marks the conclusion of the supply chain for any product or service, that occurs when end consumers make use of the access is available by commodities or services. Besides, the intermediate commercial consumer buys and produces other products or services and becomes part of the specific production chain.[xxxviii]This difference between end-user

and commercial consumer is fundamental, as the definition under CPA is more tilted towards „Business to Consumer" transactions. In contrast, the word „consumer" in the Act expands it further to „Business to Business" transactions besides „Business to Consumer" transactions.

Further, the „consumer" definition in the Act does not explicitly include the Government/Department of the Government.[xxxix] The absence of the same has caused no enforcement gap, as the decisional practice of CCI considers the government also as a „consumer" under Act.[xl] In the *Travel Agents Association of India Case,*[xli] Appellate Tribunal observed that the

> "*Government has to secure the services, it becomes a consumer receiving those services with a choice to select the entity to provide those services. Merely because it is a Government, there is nothing in law from prohibiting it to be a consumer. Government like any other person must have choice to choose the travel agencies with which it has to do the business.*"[xlii]

However, for clarity"s sake, it is recommended by CLRC to amend the language of Section 2 (f) of the Act and expressly include the „department of government" in the definition of consumer (MCA, 2020).

The definition of a consumer under the Act is more comprehensive than CPA. This comprehensiveness is also required, keeping in view the object of the two statutes - the former deals with the "consumer welfare" in general. At the same time, the latter is more focused on individual consumer remedies arising because of a deficiency in goods and services. The statutory language of the Act also supports consumers by eliminating the applicability of proscribed conduct through various provisions. For instance, in the *PandroleRahee Technologies Case,*[xliii] examining the applicability of Section 3 of the Act on the buyer, CCI held that the scope of Section 3 (3) of the Act depends on the agreement between the person involved in similar or identical „*trade"* and the definition of trade as per Section 2 (x) of the Act rules out the activity of purchasing by a consumer as being „*trade".* Further, for Section 3 (4) of the Act, the applicability is also ruled out since the consumer cannot be called a part of the production chain. Similarly, the definition of „cartel" in Section 2 (c) of the Act does not include consumer or buyer cartel (MCA 2020), showing the legislature's intention as the consumer beneficiary of this law and not being subject to the law.

Conclusion

In the opinion of the Supreme Court of India, "*the motivation of each participant in a free-market economy is to maximise self-interest, but the result is favourable to society…*"[xliv] This articulation is similar to American jurisprudence expressly referring to the Sherman Act, outlining clear terms that concentration and market power are not per se undesirable but become so considering their potential for abuse. Further, the Court was clear that competition law is aimed to achieve economic efficiency for "*consumer preferences"*. The traditional view in the US was also focused on monopoly and abuse of monopoly power, while today, efficiency has

become the touchstone of deciding the competitiveness of the market and consumer welfare.[xlv]Ultimately, „consumer" is at the fulcrum of the competition law, and all actions of the government and regulator are towards consumer welfare.

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[i] Preamble, Competition Act, 1998 (South Africa).

[ii] Article 1, Anti-Monopoly Act, 2008 (China)

[iii]*See,*Narsimha Rao v. State, (1998) 4 SCC 626 - The court observed that "…according to the earlier decisions of the court, the statement of a minister who had moved the Bill can be looked at to ascertain the mischief sought to be remedied and object and purpose for which the legislation is enacted, but it is not taken into account for interpreting the provisions of the enactment."

[iv]HariprasadShivshankar Shukla v. AD Divelkar, AIR 1957 SC 121 – Per Justice S K Das "We are not limited to the lifeless words of the statute and formalistic canons of construction in our search for the intent of Congress (Parliament in our case) and courts in construing a statute, may with propriety refer to the history of the times when it was passed."

[v] Article 1, Anti-Monopoly Act, 2008 (China).

[vi] §2(h) Competition Act, 2002 (Enterprise)

[vii] Indian Exhibition Industry Association v. Indian Trade Promotion Organisation and Ors., Case No. 74 of 2012 (CCI) [Decided on 03.04.2014] – "Respondent was wholly owned and was under the administrative control of Government of India. CCI penalised the respondent with 2% of their average turnover/income for abusing its dominant position"; In Re:Cartelisation in Insurance Service Provider for RashtriyaSwasthyaBimaYojna, Case No. 02/2014 (CCI) [Decided on 10.07.2015]: "Government of India"s owned four insurance companies were penalised for rigging bid invited by State of Kerala. CCI Penalised each insurance company with 2% of their average turnover."

[viii]*See,* Bio-Med Private Limited v. Union of India and ors., Case No. 26/2013 (CCI) [Decided on 04.06.2015]

[ix]*See,* Satyendra Singh v. Ghaziabad Development Authority (GDA), Case No. 86/2016 (CCI) [Decided on 28.02.2018]

[x] 13th Lok Sabha, Statement of Mr. Arun Jaitley, 06.08.2001 (Session 7); *See also,* American Natural Soda Ash Corporation v. Alkali Manufacturers Association of India, (1998) 3 CompLJ 152 - Court interprets public interests and interests of any class of traders in a manner that makes it similar to consumer welfare and prevention of exclusionary abuse against small producers.

[xi] 13th Lok Sabha, Statement of Mr. B.B. Ramaihah, 16.12.2002 (Session 11).

[xii]*See also,* §18 of the Competition Act, 2002; *See also,*M/s. Transparent Energy Systems Pvt. Ltd.v. TECPRO Systems Ltd., Case No. 09 of 2013 (CCI).

[xiii] In 2018 Singapore restructured its "Competition Commission of Singapore" as "Competition and Consumer Commission of Singapore" conferring wider powers for protection of consumer as well. *See,* SushmaJobanputra and Prudence Smith, "*Singapore Commission Porposes Amendments toCompetition Act"*, MONDAQ (April 24, 2018) *available at*<https://www.mondaq.com/antitrust-eu-competition-/694784/singapore-commission-proposes-amendments-to-competition-act> accessed on July 12, 2019.

[xiv] §3 read with §19 of the Competition Act, 2002.

[xv] §4 read with §19 of the Competition Act, 2002.

[xvi]Excel Crop Care Ltd. v. Competition Commission of India and Ors, (2017) 8 SCC 47

[xvii]*Ibid.* at ¶21.

[xviii]*Ibid.*

[xix] §19(3) of the Competition Act, 2002.

[xx] §19(3) of the Competition Act, 2002.

[xxi] §3(3) of the Competition Act, 2002.

[xxii] §3(4) of the Competition Act, 2002.

[xxiii] Rajasthan Cylinders and Containers Limited v. Union of India and Ors., MANU/SC/1108/2018 ¶ 73– "the agreements of nature mentioned in Sub-section (3) are presumed to have an appreciable effect and, therefore, no further exercise is needed by the CCI once a finding has arrived at that a particular agreement fell in any of the aforesaid four categories."; *See also,* Competition Commission of India v. Coordination Committee of Artist and Ors., MANU/SC/0262/2017 ¶8.

[xxiv] §3(4) of the Competition Act, 2002.
[xxv]*See*, MCX Stock Exchange Ltd. v. National Stock Exchange, Case No. 13/2009 (CCI) [Decided on 23.06.2011]
[xxvi] §4 Explanation (a) read with Section 19(4) of the Competition Act, 2002.
[xxvii] §4(2) of the Competition Act, 2002.
[xxviii]*See*, §2(r), (s) and (t) read with §19(5), (6) and (7) of the Competition Act, 2002.
[xxix] §4(2)(a)(i) and (ii) of the Competition Act, 2002.
[xxx] Explanation to §4(2)(a)(i) and (ii) of the Competition Act, 2002; *See also,* Schott Glass India Pvt. Ltd. v. Competition Commission of India and Ors, Appeal No. 91 and 92/2012 (COMPAT) [Decided on 02.04.2014] ¶ 58.
[xxxi] Dhanraj Pillay v. Hockey India, Case No. 73/2011 (CCI) [Decided on 31.05.2013].
[xxxii]*See*, Vinay Tyagi v. Irshad Ali,(2013) 5 SCC 762.
[xxxiii] §2(7) of the Consumer Protection Act, 2019.
[xxxiv]*Id.; "*Over the period of time, the definition has been liberally interpreted to include various kinds of consumer within the ambit of Consumer Protection Act, 1986. Eg; Spring Meadows Hospital v. Harjot Ahluwalia, AIR 1998 SC 1801 (A parent who brings his child to the hospital is a consumer. Also, the child himself, who is beneficiary of the service, is a consumer); Usha Rectifier Corpn. (India) Ltd. v. Anmol Malhotra, [1992] 2 CPR 81 (Delhi CDRC) (Debenture holder is a consumer); Div. Manager, LIC v. Uma Devi, (1991) 3 Comp LJ 171 (NCDRC) (A nominee of the insurance policy is a consumer.); NagrikParishad v. GarhwalJalSansthan, 1998 AIR SCW 3944 (A person obtaining water from a Government Agency and pay in water bills for the water consumed is a consumer) etc."
[xxxv]Harsolia Motors v. National Insurance Co. Ltd. , 2005 CTJ 141 (CP) (NCDRC) – "Commercial purpose is interpreted as goods purchased or services hired to be used in any activity directly intended to generate profit"
[xxxvi] §2(f) of the Competition Act, 2002.
[xxxvii] For Example: Travels Agents Association of India v. Balmer Lawrie & Co., Appeal No. 21/2010 (COMPAT) Government as consumer; Arshiya Rail Infrastructure Limited v. Ministry of Railways, Case No. 64/2010 (CCI): Private train operator was considered as a consumer along with the end consumers. Etc.
[xxxviii]M/s. PandroleRahee Technologies Pvt. Ltd. v. Delhi Metro Rail Corporation Ltd., Case No. 03/2010 (CCI)
[xxxix]*Cf.* Section 2(h) of the Competition Act, 2002. (Enterprise).
[xl] Foundation of Common Cause v. PES Installations Pvt. Ltd. and Ors, Case No. 43/2010 (CCI) [Decided on 16.04.2012] ¶6.58 – The Commission observes that the process of bid-rigging by the bidders have caused harm to Government who were in fact the procuring entities and therefore the consumers within the meaning of Section 2(f) of the Act.
[xli]Travel Agents Association of India v. Balmer Lawrie & Co. and others, Appeal No. 21/2010 (COMPAT) [Decided On: 26.09.2012]
[xlii]*Ibid at* ¶11.
[xliii]M/s. PandroleRahee Technologies Pvt. Ltd. v. Delhi Metro Rail Corporation Ltd., Case No. 03/2010 (CCI).
[xliv] Per Swatantar Kumar J., Competition Commission of India v. Steel Authority of India Limited, (2010) 10 SCC 744.
[xlv] United States v. Topco Associates, [1972] 405 US 596 at pp 610 - "objective of competition law remedies the inefficiency that arises due to imperfections in the market and preserve competition and consumer welfare."

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