

## Consumer Protection and Competition Policy

### CONSUMER PROTECTION

11.1. Promotion of consumer welfare is the common goal of consumer protection and competition policy. At the root of both consumer protection and competition policy is the recognition of an unequal relationship between consumers and producers. Protection of consumers is accomplished by setting minimum quality specifications and safety standards for both goods and services and establishing mechanisms to redress their grievances. The objective of competition is met by ensuring that there are sufficient numbers of producers so that no producer can attain a position of dominance. If the nature of the industry is such that dominance in terms of market share cannot be avoided, it seeks to ensure that there is no abuse on account of this dominance. Competition policy also seeks to forestall other forms of market failure, such as formation of cartels, leading to collusive pricing, division of markets and joint decisions to reduce supply. Mergers and acquisitions also need to be regulated as they reduce competition.

### CONSUMER PROTECTION POLICY

11.2. The consumer movement in India is as old as trade and commerce. In Kautilya's *Arthashastra*, there are references to the concept of consumer protection against exploitation by the trade and retailer with respect to quality, short weight, measurement and adulteration of goods. Yet until the late 1970s, there was no systematic movement in the country for safeguarding the interest of consumers. But now it is widely acknowledged that the level of consumer awareness and protection is a true indicator of development of the country and progressiveness

of civil society. The main reason for this is the rapidly increasing variety of goods and services which modern technology has made available. In addition, the growing size and complexity of production and distribution systems, the high level of sophistication in marketing and selling practices and in advertising and other forms of promotion, mass marketing methods and consumers' increased mobility resulting in reduction of personal interaction between buyers and sellers, have contributed to the increased need for consumer protection.

11.3. Protection of consumer rights in modern times dates back to 1962. On 15 March 1962, the Consumer Bill of Rights was proclaimed by the United States President in a message to the Congress. The message proclaimed: (i) the right to choice, (ii) the right to information, (iii) the right to safety, and (iv) the right to be heard. Subsequently, the right to consumer education, the right to a healthy environment and the right to basic needs (food, clothing, and shelter) were added by Consumer International. In India, 24 December is celebrated as National Consumer Rights Day as the Consumer Protection Act, 1986 was enacted on that day. 15 March is observed as World Consumer Rights Day since 1983, when International Organization of Consumer Unions declared it so. In India, 15 March was also adopted as the National Consumers Day and has been observed since then. Another significant day in the history of world consumer movement is 9 April 1985, when the General Assembly of the United Nations adopted a set of guidelines for consumer protection and the Secretary General of the United Nations was authorized to persuade member

countries to adopt these guidelines through policy changes or law. These guidelines constituted a comprehensive policy framework outlining what governments need to do to promote consumer protection in the following areas: (i) physical safety, (ii) protection and promotion of consumer economic interests, (iii) standards for safety and quality of consumer goods and services, (iv) measures enabling consumers to obtain redressal, (v) measures relating to specific areas (food, water, and pharmaceuticals); and (vi) consumer education and information programme.

11.4. These guidelines provided an internationally recognized set of basic objectives, particularly for governments of developing countries, enabling them to identify the priorities and structure of their consumer protection policy and legislation. Subsequently, the guidelines were expanded to include 'sustainable consumption' which was an important subject in the changed social, political and economic scenario. The importance of 'sustainable consumption' is aptly highlighted in Mahatma Gandhi's words, 'the rich must live more simply so that the poor may simply live'. Sustainable development is crucially dependent on sustainable consumption. Article 21 of the Constitution requires the State, inter alia, to protect life, which must be construed as including the right to a healthy and safe environment. A healthy and safe environment is inalienably linked with sustainability and promotion of sustainable consumption.

11.5. The concern in the Indian Constitution for protection and promotion of an individual's rights, and for the dignity and welfare of the citizen makes it imperative to provide for the welfare of the individual as a consumer, a client and a customer. The rights under the Consumer Protection Act, 1986 flow from the rights enshrined in Articles 14 to 19 of the Constitution of India. The RTI, 2005 which has opened up governance processes of our country to the common public also has far-reaching implications for consumer protection.

11.6. The consumer protection policy creates an environment whereby the clients, customers, and consumers receive satisfaction from the delivery of goods and services needed by them. Good governance requires efficiency, effectiveness, ethics, equality, economy, transparency, accountability, empowerment, rationality, impartiality and participation of citizens. The concern of consumer protection is to ensure fair trade practices; quality of

goods and efficient services with information to the consumer with regard to quality, quantity, potency, composition and price for their choice of purchase. Thus, proper and effective implementation of consumer protection law promotes good governance.

11.7. Education is the most powerful tool for the progress of the country and is a social and political necessity. Education helps an individual—as a consumer—in making rational choices and protects him from trade and business-related exploitation. But more is needed for the effective functioning of the national market to create an increased level of awareness of consumer rights, and for this consumers have to be educated about rights and responsibilities through concerted publicity and awareness campaigns. In the awareness campaigns, special emphasis needs to be given to vulnerable groups such as women and children, students, farmers and rural families and the working class. The report of the study on the Consumer Protection Act commissioned by the Comptroller and Auditor General (C & AG) of India and conducted in July–August 2005, brought out that 66% of consumers were not aware of consumer rights and 82% were not even aware of the Consumer Protection Act. In rural areas, only 13% of the population had heard of the Consumer Protection Act.

11.8. Standards, which are the essential building block for quality, play a key role in consumer protection. Standards could be on technical requirements (specifications), standard terminology (glossary of terms), good practices (codes of practice) or test methods or management system standards. Developed countries generally rely on management system standards like ISO 9001 (Quality Management System), ISO 14001 (Environmental Management Systems) and hazard analysis and critical control points (HACCP) as an indicator of the ability of an organization to meet quality needs and address environmental concerns. These standards are set generally by governmental or inter-governmental bodies but there are some private initiatives as well, which are widely used such as OHSAS 18000 (Occupational Health and Safety), SA 8000 (Social Accountability) and WRAP (Worldwide Responsible Apparel Production).

11.9. Setting standards is not enough for assuring the consumer of quality. For this, governments need to establish the full quality infrastructure, embracing standardization,

conformity assessment and enforcement. The constituents of quality infrastructure are :

- Standardization
- Standard development
- Standard information
- Metrology
- Quality assurance/conformity assessment
- Testing
- Inspection
- Product certification
- Management Systems Certification (ISO 9000/14000/22000/27001/ OHSMS, etc.)
- Regulation and enforcement
- Accreditation

### CONSUMER PROTECTION IN INDIA

11.10. The Consumer Protection Act was enacted in 1986 based on United Nations guidelines with the objective of providing better protection of consumers' interests. The Act provides for effective safeguards to consumers against various types of exploitations and unfair dealings, relying on mainly compensatory rather than a punitive or preventive approach. The Act applies to all goods and services unless specifically exempted, and covers the private, public, and cooperative sectors and provides for speedy and inexpensive adjudication. The rights provided under the Act are:

- The right to be protected against marketing of goods and services which are hazardous to life and property
- The right to be informed about the quality, quantity, potency, purity, standard and price of goods and services, as the case may be, to protect the consumer against unfair trade practices
- The right to be assured of access to a variety of goods and services at competitive prices
- The right to be heard and assured that consumer interest will receive due consideration at appropriate fora
- The right to seek redressal against unfair or restrictive trade practices or unscrupulous exploitation of consumers
- The right to consumer education

11.11. Under the Consumer Protection Act, 1986 a three-tier, simple, quasi-judicial machinery has been established at the national, State, and district levels for hearing cases raised by consumers. The Act had been amended in 1991

and again in 1993. A comprehensive amendment was last made in 2002 for making the Act effective, functional and purposeful. The amended Act, inter alia, provides for the attachment and subsequent sale of the property of a person not complying with an order.

11.12. Although implementation of the Consumer Protection Act can be viewed as a success, there are still serious shortfalls in achieving consumer welfare because of the deficiencies in quality infrastructure in the country. First, there is a regulatory deficit in many products and services which impact on the health, safety and environment of the consumers and mandatory standards have not been prescribed for such products as electrical and electronic goods, IT and telecom equipment, industrial and fire safety equipment and toys. There is a multiplicity of regulatory/standardization/conformity assessment bodies and proliferation of certification and inspection bodies. At present, the Quality Council of India (QCI) is the main accreditation body for conformity assessment bodies taking up product or system certification or for inspection bodies, and the National Accreditation Board for Laboratories performs the same function for laboratories. However, there is no compulsion on the conformity assessment bodies, inspection bodies or laboratories to obtain accreditation, thus creating a lack of certainty about the existence of quality products, systems, inspections and laboratories. Laboratory infrastructure is weak in terms of international norms. Quality professionals lack the skills to guide quality improvement efforts in industry. There is apathy among businesses towards standardization in general, and lack of awareness among them about the impact of standards on quality, competitiveness, and profitability. There is absence of consumer demand for quality goods and services primarily because of lack of awareness among them regarding quality issues. In short, there is absence of a quality culture in the country. At a time when tariff barriers are falling worldwide as a result of multilateral trade negotiations and in the context of Foreign Trade Agreements (FTAs), and technical barriers to trade have become more significant as determinants of trade flows, urgent action has become necessary to correct the situation in the country as described above. If the quality of Indian products and their conformity with international standards is to be accomplished by Indian producers, the impulse must be generated from within the country. Nothing can have a more powerful

impact on the producers than the demand for quality products by quality-conscious domestic consumers.

## STRATEGY FOR THE ELEVENTH FIVE YEAR PLAN

### Establishment of National Quality and Standardization Authority

11.13. As of today, the Bureau of Indian Standards (BIS), set up under the BIS Act, 1986 functions as the National Standards Body. Apart from the BIS, there are other organizations which are formulating specifications for their own internal use. In some areas, regulators are also prescribing the standards to be observed by the industry concerned. There is need to have a mechanism for the declaration of a harmonized Indian standard in different areas. For this purpose, the establishment of a National Quality and Standardization Authority through appropriate legal framework to ensure uniformity of approach for setting of standards and ensuring regulation of conformity assessment, is necessary. The framework should provide for setting voluntary standards in all areas of economic and social activities, and mandatory regulations in areas that impact on health, safety, and the environment. A national system of conformity assessment and compliance should be established to bring in complete synergy in standardization, conformity assessment and enforcement. In sectors critical to health and safety like food or drugs, infrastructure upgradation should be supported for MSE sectors to attain national/international standards/regulations like GMP/Good Hygienic Practice (GHP)/HACCP. A National Regulatory System Database should be developed. More specifically, the following are the measures that need to be undertaken:

#### (I) STRENGTHENING REGULATION

11.14. Some of the priority elements that should be considered by the concerned ministries or their agencies (Regulatory Bodies) for strengthening the regulation are:

- Mandatory standards for products which impact on health and safety of the consumer and on the environment such as electrical appliances, electronic, IT and telecom products, medical devices, industrial safety and fire safety equipment, helmets, plastic and other material used for food packaging.
- GHP/GMP/HACCP being made mandatory as a rule under the PFA Rules/ Integrated Food Law for the food industry and for hotels and restaurants.

- Mandatory national standards for compliance by all water agencies—rural or urban.
- Introduction of law for product liability provisions including punitive damages as a deterrent for sub-standard goods.
- Laying down residue limits for contaminants for raw materials as well as food products.
- Mandatory compliance with Good Agricultural Practices or Good Animal Husbandry Practices (GAHP) by commercial farms.

#### (II) EXTENDING VOLUNTARY STANDARDS INTO THE SERVICES SECTOR

11.15. For consumer protection, voluntary standards should be extended to the area of services, in particular, medical and hospital services, financing and investor services provided by non-banking financial companies, real estate services, e-commerce, and so on.

#### (III) NATIONAL STANDARDS SYSTEM

11.16. The Bureau of Indian Standards (BIS) may be made the national standards body and repository of all voluntary national standards. Wherever voluntary standards are being formulated by other standards development organizations which are recognized as national (like Indian Roads Congress or Agmark), these may be published as national standards by BIS while these bodies continue to make these standards.

#### (IV) POLICY ON CONFORMITY ASSESSMENT

11.17. The policy should be laid down for the government recognizing only one National Accreditation Body for conformity assessment for each area of activity. All conformity assessment bodies should be required to obtain accreditation either from national or international accreditation bodies within a reasonable period. As a general rule, functions of regulation, standardization and conformity assessment should be performed separately. Similarly, there is need to enlarge consumer choice in the matter of certification. Appropriate mechanism would need to be evolved for this purpose.

### Setting up of National Consumer Protection Authority

11.18. There is need to deal effectively with deceptive practices, including misleading advertisements. Besides, there would be a gap in legislation to be caused by the proposed winding up of the Monopolies and Restrictive

Trade Practice Commission (MRTPC) with respect to unfair trade practices. The gap can be filled in by establishing a National Consumer Protection Authority through enactment of a National Consumer Protection Authority Act.

### Enhancing Consumer Awareness

11.19. There is necessity for continuing consumer awareness campaigns on a large scale to sensitize the population on basic aspects such as Maximum Retail Price (MRP), Gold Hall Marking, Indian Standard Institute (ISI) mark on products, and expiry dates. As and when voluntary standards are extended into the services sector or regulations are imposed for mandatory compliance with standards for reasons of health, safety or environment, the content of awareness campaigns would need to be expanded.

### COMPETITION POLICY

11.20. The Approach Paper to the Eleventh Five Year Plan recognized the need for creating a competitive environment to stimulate private investment. It emphasized the need for increased reliance on competitive markets subject to appropriate, transparent and effective regulations. A major objective of the Eleventh Plan is to recommend policies that spur private sector investment while ensuring fair competition by guarding against restrictive business practices.

11.21. A review of cross-country literature suggests that there is a positive association between GDP growth and competition. Empirical studies have suggested that competition enhances productivity at industry level, generates more employment and lowers consumer prices. A pro-competitive policy environment has been found to be positively associated with long-term growth. Competition-enhancing policies have pervasive and long-lasting effects on economic performance by affecting economic actors' incentive structure, by encouraging their innovative activities and by selecting more efficient ones from less efficient ones over time. The positive effects of competition are well illustrated by the recent experiences in India in several sectors such as telecommunications, automobiles, newspapers and consumer electronics, where there has been a fall in real prices/tariffs and marked improvement in the quality of goods/services. This experience demonstrates the benefits of ensuring competition in other sectors of the economy.

11.22. The reforms initiated since 1991 recognized the need for removing fetters on trade and industry with the view to unleash the competitive energies. The Industrial Policy Statement of 1991 emphasized the attainment of technological dynamism and international competitiveness. It noted that Indian industry could scarcely be competitive with the rest of the world if it had to operate within an over-regulated environment. To enhance competition in the domestic markets and to generate/promote a culture of competition in the country is part of this broader agenda on reforms. The economic reforms undertaken by the government have been generally on a sector by sector basis and the progress across sectors has not been uniform. While some sectors have successfully imbibed a strong competition culture, relatively weak competitive pressure exists in a number of sectors, such as electricity, in India. There are several policies and laws that can have significant bearing on competition. These should be made competition-friendly as far as possible.

11.23. To strengthen the forces of competition in the market, both competition law and competition policy are required. The two complement each other. The competition law prohibits and penalizes anti-competitive practices by enterprises functioning in the market; that is, it addresses market failures. Sector regulatory laws mimic competition in the areas of natural monopolies. Other regulatory laws, such as those for intellectual property or anti-dumping or even capital markets, too have an important interface with competition. The aim of the competition policy is to create a framework of policies and regulations that will inform other policies to facilitate competitive outcomes in the market. Competition policy is a critical component of any overall economic policy framework. Competition policy is intended to promote efficiency and to maximize consumer/social welfare. It also promotes creation of a business environment, which improves static and dynamic efficiencies, leads to efficient resource allocation and consumer welfare, and in which abuse of market power is prevented/curbed. It also promotes good governance by restricting rent seeking practices of economic actors.

11.24. During the Tenth Plan period, the Competition Act, 2002 was enacted. The Act established the CCI to eliminate practices having adverse effect on competition, promote and sustain competition in markets, protect the interest of consumers and ensure freedom of trade



carried on by other participants, in markets in India. The Competition (Amendment) Act, 2007 passed by the Parliament in September 2007 has incorporated some changes in the Competition Act, 2002 including the establishment of a Competition Appellate Tribunal to hear appeals from the orders of the CCI. Until recently, as the substantive provisions were not notified, CCI was engaged, inter alia, in promotion of competition advocacy and creating awareness about competition issues. This activity will continue, even after the operationalization of the Competition Commission, which should happen soon.

11.25. During the mid-term appraisal of the Tenth Plan, it was recognized that there is an urgent need for articulating a National Competition Policy (NCP) in India, which should fully reflect the national resolve to accelerate economic growth, improve both the quality of life of the people of the country, national image and self-esteem. It further noted that NCP would bring about a competition culture amongst economic entities to maximize economic efficiency, protect consumer interests and improve international competitiveness.

11.26. The Planning Commission, in the context of the formulation of the Eleventh Plan, constituted a Working Group on Competition Policy with wide representation of professionals from government and non-government organizations. As suggested by the Working Group, there is a need for the government to adopt a broad-based, overarching and comprehensive NCP to promote coherence in the reforms process, to establish uniform competition principles across different sectors and to harmonize all other policies keeping in view the competition dimensions.

11.27. The broad objectives of the NCP should be: (i) to preserve the competitive process and to encourage competition in the domestic market so as to optimize efficiency, (ii) promote innovation and maximize consumer welfare, (iii) to promote, build and sustain strong competition culture within the country; (iv) to achieve harmonization in policies, laws and procedures regarding competition dimensions at all levels of governance, (v) to ensure competition in regulated sectors and to establish an institutional mechanism for synergized relationship between the Competition Commission and sectoral Regulators, and (vi) to strive for a single national market.

11.28. The NCP should be based on the following principles: (i) there should be effective control on anti-competitive conduct which undermines competition in markets in India; (ii) there should be competitive neutrality or a level playing field among all players, whether these be private enterprises, PSEs or government departments engaged in non-sovereign commercial activity; (iii) the procedures should be rule bound, transparent, fair and non-discriminatory; (iv) there should be institutional separation between policy making, operations and regulation; (v) where a separate regulatory arrangement is set up, it should be consistent with the principles of competition; (vi) third party access to essential facilities on fair terms should be available; (vii) any deviation from the principles of competition should be only to meet desirable social, environmental, developmental or other national objectives which are clearly defined, transparent, non-discriminatory, rule based and having the least competition restricting effect. The above principles of competition should be applicable across all sectors of the economy and be incorporated in policies, which govern them.

11.29. Several existing policies, statutes and regulations of the Central Government restrict or undermine competition. A review of such policies, statutes and regulations from the competition perspective (this is referred to as 'regulatory impact assessment' in several countries) may be undertaken with a view to remove or minimize their competition restricting effects. Proposed policies, statutes, regulations that impact competition should also include a competition impact assessment through an internal mechanism which should form one of the inputs in any decision-making process in this regard. Regulatory impact analysis should be a pre-condition for introducing regulatory changes in any sector. Any disinvestment or privatization attempt should take into account the competition dimension. In a globalizing economy, incorporation of competition clauses in trade agreements will go a long way to check anti-competitive behaviour and potential anti-competitive cross-border transactions/mergers having an adverse effect in India.

11.30. The initiatives at the State Government level would require undertaking pro-competition reforms, keeping in mind the principles of NCP. There are many economic areas of State policies and regulations that impact or

inhibit competition in the market. These restrictions also tend to fragment the national market and undermine the freedom of economic actors. The State Governments should be encouraged to undertake a review of existing policies, laws or regulations from the competition perspective and also undertake a competition impact assessment of proposed policy, law and regulations before these are finalized; while seeking expert assistance of CCI and other expert agencies. Similarly, the statutes, laws and procedures which govern the sub-State authorities need to be reviewed so as to align them with the principles of NCP. All State Governments have, at the instance of CCI, established Nodal Points within their administrations to deal with the subject of competition; the State Governments are encouraged to give these Nodal Points an effective role in this regard.

11.31. Given the wide canvas of NCP, a suggestion has been made by the Working Group on Competition Policy for setting up an institutional arrangement for monitoring the progress of the implementation of the policy. A small and compact Competition Policy Council of about 25 members could be set up which would be advisory, non-statutory and autonomous in its functioning and be headed by an eminent non-official person and comprising key officials from economic Ministries/Departments, and non-officials from media, academia and civil society. The task of the Competition Policy Council would be to review the progress in the implementation of NCP such as reviews of policies, regulations and practices, and the competition impact assessment of new laws, regulations and policies.

11.32. An incentive scheme could be instituted by the government under which financial grants may be given to State Governments linked to the progress in aligning their policies and laws with the principles of NCP. The grants could be released based on the progress made by the various State Governments on the recommendations received from the Competition Policy Council.

11.33. The interface between the Competition Commission vis-à-vis sectoral regulators is critical. The basic premise to be recognized is that sectoral regulators have domain expertise in their relevant sectors. The Competition Commission, established under the Competition Act, 2002 on the other hand, has been constituted with a broad mandate to deal with competition for which certain

very specific parameters are laid down under the Act. A formal mechanism for coordination between the Competition Commission and the sectoral regulators is, therefore, of key importance. Coordination between sectoral regulators and Competition Commission should be made mandatory through suitable provisions in the Competition Act, 2002 and sectoral laws.

11.34. Regulation may be justified or warranted in sectors which have natural monopolies or network industries; more so where a universal service obligation exists. However, regulation may not be required where these features do not prevail. Such sectors should ideally be left to the forces of competition. Even in sectors where regulation is required, it should be competition based or competition driven. One of the objectives of the regulation should be to create a competitive market in so far as this is feasible. As competition in the regulated sectors expands, the regulation should ideally become lighter and ultimately economic regulation may not be necessary. Therefore, a sunset clause based on considered timelines appropriate to the regulated sector may be considered in all economic regulatory laws so as to leave the industry to market forces once effective competition is achieved. Any anticompetitive conduct can always be addressed by the Competition Act, 2002.

11.35. Successful implementation of competition policy and law largely depends upon its acceptance by the people. Competition advocacy buttressed by good enforcement plays a vital role in securing the willingness and acceptability of a competition policy and law. Competition advocacy can also be looked at as law enforcement without intervention. An important tool of advocacy is the ability of many competition authorities to give an opinion on proposed legislation and public policy on their own, so that the law makers and policy makers consider the competition dimension and give reasons for deviating from them for the benefit of the public. The assistance of CCI and other expert bodies could be utilized for conducting studies in this regard.

11.36. The concept and the role of competition are relatively new to the Indian business community. There is, therefore, a pressing need to increase the level of awareness about the benefits of competition and the contribution of the competition law in this respect among the public, more particularly among the business

community. The Commission has been given, under the Act, the mandate to generate public awareness; its efforts in this area may be further strengthened. The Commission should formulate, publish and post in the public domain, guidelines covering various dimensions related to competition law for enhancing public awareness. Such guidelines will help enterprises by bringing greater clarity about the provisions of the competition law and the manner of its enforcement. The Commission should also engage in Compliance Education for business.

11.37. There is strong commonality between competition policy and law on the one hand and consumer protection policy and law on the other. An effective competition policy lowers entry and exit barriers and makes the environment conducive to promoting entrepreneurship, which also provides space for the growth of small and medium

enterprises and consequent employment expansion. Competition law concentrates in maintaining the process of competition between enterprises and tries to remedy behavioural or structural problems in order to re-establish effective competition in the market. The consequence of this is higher economic efficiency, greater innovation and enhancement of consumer welfare. Thereby the consumer experiences wider choices and greater availability of goods at affordable prices. On the other hand, the consumer protection policy and law are primarily concerned with the nature of consumer transactions, trying to improve market conditions for effective exercises of consumer choice. Thus, the two disciplines focus on different market failures and offer different remedies, but are both aimed at maintaining well functioning, competitive markets that promote consumer welfare. The two disciplines are mutually re-enforcing.