# Marketing misgivings and Indian consumer—scope for competitive conduct

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*The recent spate of mergers and acquisitions has brought new issues like competitive conduct of the business houses into the limelight. The antitrust movement in India is of very recent origin. So, the consumer in India is more vulnerable to unethical market conduct like surrogate advertising, slotting allowance and non-competitive price behavior. Contrary to the early stage of development of antitrust issues in marketing in India, the developed economies have a well debated and structured legal system for right conduct of marketing companies. This paper highlights the effect of both Chicago school and Post Chicago school of thought on marketing and competitive conduct and suggests its implications for market adoption in India.*

Public policy intersects the field of consumer behavior when public policy makers believe that intervention in the process or outcome of marketing exchanges—between marketers and consumers will benefit the society as a whole. New social policies that affect the marketing growth are the out growth of market place abuses brought to the attention of policy makers through the media, consumer advocacy groups or by consumers themselves and an over all public recognition of the need for economic and social welfare.

## The schools of antitrust

Antitrust as a doctrine rests on the concept of market power. Market power is defined as the ability of a firm to profitably raise prices through reducing output. There are no economic interpretations of consumer welfare in Indian context. Mostly consumer welfare is conceived in terms of economic efficiency with laws on consumer protection largely interpreted through a concise economic thought. Wealth maximization is considered the dominant goal of antitrust, with antitrust enforcement striving to achieve the highest practical level of consumer welfare.

Antitrust analysis involves the application of economic theory to an understanding of market and firm behavior and the evaluation of potentially anti-competitive practices. The current debate in antitrust globally centers around the

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nature of economic theory best suited to inform antitrust analysis (Jacobs 1995). Two schools of thought dominate this debate. Key differences in substantive thought and methodology distinguish these two schools. These differences largely center on the workings and efficiency of the market mechanism and proper approach for antitrust enforcement.

On one hand is the Chicago school , which holds to the core belief that markets, by nature, tend toward efficiency and the market imperfections generally are transitory in nature and for the most part , self correcting (Posner 1979). Adopting such assumptions and working from a model of perfect competition originating in neoclassical price theory, much of competitively ambiguous conduct under the Chicago school is viewed as manifestations of efficient market behavior.

The implications of Chicago school for antitrust in Indian context is at once its rationalization and its clarity. Through defining behavior purely in terms of output( and price), enforcement authorities and the courts are viewed to be equipped with simple and objective tests for determining the effect of market place conduct on consumer welfare. Whereas expanded output and lower prices enhance consumer welfare, restraints on output and higher prices do not. An important offshoot of this simplification is the ability of the firms to predict more accurately what might be considered suspect conduct and to avoid such conduct in favor of activities leading to the enhancement of consumer welfare. The practices of mid-20th century consumer welfare are ample evidence of such kind of a movement in Indian markets which continued till liberalization in Indian marketing environment. During this time, what might be labeled as minimalist approach to antitrust underlined enforcement activities (Jacobs 1995).

In contrast to the Chicago school, the Post Chicago school believes that markets are largely imperfect and the market failures are not necessarily self correcting (Baker 1989; HovenKamp 1985). According to this view, firms can and do take advantage of these imperfections resulting in inefficient results. The resultant posture is the belief that antitrust enforcement must take a more active role through heightened scrutiny of a wider range of market place conduct to promote and ensure consumer welfare (Ross 1992).

Much of the Post Chicago thinking and challenge to the earlier school reflects progressive changes in the filed of economics itself and more particularly the field of industrial organization (Jacobs 1995). During the 1980s, focus within the industrial organization shifted from studies of industry structure, conduct and performance to focus on strategic behavior of firms within imperfectly competitive markets.

In contrast to the Chicago school's price theory based perspective, the post Chicago approach views market imperfections (particularly information asymmetry) as a pervasive and durable phenomenon that, rather than dissolving under the pressure of the market, tends to corrode its efficiencies over time (Kaplow 1985). Moreover, in contrast to a static view of firm behavior as held by Chicago school, under the post Chicago view strategizing firms accentuate, perpetuate and exploit market imperfections hampering competitive balance (Baker 1989).

Under the Chicago school, market power is largely inferred from market concentration and is measured through simple market share calculation while making allowance for entry conditions and other aspects of industry structure. Post Chicago school theorists adopt a more complicated view of market power beyond concentration and market share and, although requiring more empirical investigation, claim to provide a more accurate picture of the substance and dynamics of this important concept (Arthur 1994).

The competitive effects of vertical restraints also are viewed differently under the two schools. Vertical restraints characterize various forms of conduct on the part of one firm that attempts to restrict the independent business activity of another vertically related firm. Tying arrangements involving the sale or lease of one product or service s as well are an example of a vertical restraint. Under Chicago school, widespread skepticism exists as to the competitive harm generated through vertical restraints, viewing them instead as generally yielding productive competitive efficiencies (Bork 1993).

The invocation of an anticompetitively restrictive practice is theorized to be largely unprofitable given that a party whose actions would be restricted would insist on compensation for such limitations on its behavior. As a result, a general explanation for the occurrence of such restrictive practices under the Chicago school is that they are more efficient than alternative arrangements. Post Chicago explanations of for the occurrence of vertical restraints view them as more often privately profitable to the imposing firm and potentially socially inefficient (Brodely and Ma 1993).

Similar differences between the two schools also underlie thinking towards predatory pricing. Predatory pricing occurs when one firm prices below cost in an effort to drive a rival from the market or otherwise discipline its competitive conduct (Sullivan 1983). Chicago school doubts the occurrence of predatory pricing based on the logic that a predatory firm would be unable to recoup losses from its actions in a competitive market (Easterbrook 1981). The occurrence of price reductions results from rivalrous conduct yielding immediate benefits to consumers. Alternatively Post Chicago thinking adopts a more plausible belief of the possibility of recoupment and the log range anticompetitive effect of predatory pricing (Ordover and Saloner 1989).

Finally, in an attempt to understand oligopolistic behavior, the Chicago school adopts a largely static model of either perfect competition or monopoly. To the contrary, the Post Chicago School envisions a variety of dynamic models of strategic firm conduct to explain oligopolistic behavior (Jacobs 1995). These models are argued to yield a richer and more complex understanding of firm behavior and to suggest a greater scope for antitrust intervention.

In recent years, some have argued that both antitrust laws and consumer protection law would be well served by adopting the concept of choice as their ultimate goal. Specifically Lande (2001) stipulates that antitrust should assure a level of consumer choice sufficient that the consumer has the power to define his or her wants and the ability to satisfy these wants at competitive prices.

Leary (2001) argues that a key challenge for the development of choice based analysis in antitrust is that the available product variety from which buyers make choices can be defined on multiple levels. Moreover for many markets, differences across non price dimensions from the primary basis of variety and dominate consumer choice processes, yet traditional antitrust analysis relies on economic models which assume commodity like products. The field of marketing offers variations on the economic interpretations of the choice process that may broaden the historical lens on choice and variety in such situations. So, in Indian markets customers should have choice to make from the product categories and a significant development for the market growth can be instituting antitrust laws for saving the rights of Indian consumer.

Two vital areas of public policy that relate to marketing are consumer protection and antitrust. Consumer protection involves public policy and law directed towards protecting consumers from deceptive acts and other marketing practices, where as antitrust attempts to encourage competitive conduct and protect competition among market place rivals (Cohen 1995, Stern and Eovaldi 1985). As a general public policy goal, the law of antitrust endeavors is to promote consumer welfare through encouraging competitive conduct and protecting the process of competition (Sullivan 1983).

Advocates to the purely economic approach to antitrust contend that consumer welfare should be narrowly conceived of in explicitly economic terms as economic efficiency (Bork 1993). According to these advocates logical structure of the economic theory demands a rigor in understanding the antitrust behavior of the firm. Those advocating a more interpretive approach argue that a broadened definition of consumer welfare should be a part of the concept of economic efficiency like protection of small business, fairness in the competition and sales promotion offer etc. So antitrust should have a social and political orientation than a micro economic and legal orientation. This orientation in itself shall bring relevant issues related to the Indian context.

## The Indian scenario

The government usually employs three types of intervention in Indian context i.e. regulation, consumer education and the provision of incentives to encourage desired behavior. Through regulations, policy makers attempt to prohibit certain types of marketing practices like sale of unsafe products. Regulations also influence the nature of certain practices. Through consumer education, government may cultivate desired consumer behavior. Government also encourages certain types of consumption behavior which will be in the public interest by giving incentives such as tax deductions for charitable institutions.

Marketing abuses have become a matter of concern to the policy makers at every level of the government. Some theorists complain that knowledge of consumer behavior enables the marketers to exploit the consumers in a more professional way. The common instance is the misleading advertisements in various channels about products and services. The advertisements of non banking financial institutions are of greater concern to the federal government India. Many non banking financial institutions without the permission of the reserve bank start collecting deposits from the small investor public, mostly in rural and small towns in India and then run away with the hard fought money of the investor.

The amount of legislation, though inadequate but can not bring a reformation in the Indian non banking sector due to ignorance of the people in general and small investors in specific. This is an exploitation of vulnerable and naïve customers by the practice of misleading advertising in various media available in India.

So the policy makers have recognized that it is the government's responsibility to promote and protect the public interest and to provide for the general welfare. Of late, the legislators have enhanced the number of consumer oriented legislations in response to public outcries about dishonest and unethical business practices. Many independent regulatory agencies also have been established to police specific industries. To frame rules and regulations designed to prevent or eliminate abuses and to enforce industry compliance with such rules and regulations.

Apart from the protective legislation and regulation consumers need information and education to enable them to make wise buying decision. Government policy makers and consumers advocates have increasingly recognized that they can not protect consumers against every possible marketing abuse and the best defense for the consumer is the product knowledge.

Many government and non government agencies offer consumer education programs and disseminate consumer information. Some of the large corporate houses are engaged in providing information to consumers believing that educated consumers make better consumers. Educational material distributed by companies increase their direct contents with customers. One proposal in Indian academia is to develop computerized data banks containing product information and general educational information. The arrival of Internet has increased the scope of disseminating consumer information but only to a limited class of people as the rate of PC penetration is very low and the rate of internet penetration is abysmally lower than many advanced countries. It is also recommended by consumer advocates that consumer education programs should be made mandatory in the school system itself.

Consumption is the most pervasive human activity which is dependent on public policy maker's support in a country like India. Faster degree of growth of consumerism in India had an impact on legislative attempts to enhance consumer rights. Historically legislation in India is oriented towards protecting competition and competitors rather than consumers e.g. The Monopoly Restrictive Trade Practice Act was to protect the competitors from the market dominated behavior of larger players and also for a better level playing field for small manufacturers. The emphasis on consumer legislation was a result of heightened awareness by the legislators of the wide spread concern over consumer interest and environmental issues.

Consumer interested legislation include Consumer protection Act, Prevention of Food Adulteration Act, Standards of Weights and Measures Act, Prevention of Air and Water Pollution Legislation, Drugs and Cosmetics Act, Foreign Exchange management Act. These few examples of legislation indicate the thrust of consumerism in legislative circles. Advocates of such legislation feel that consumer rights can be best protected through government regulation of business practice which is not true at the ground level. With Indian economy opening up it is extremely difficult on the part of the government to have legislation to regulate the conduct of business in a virtual world. On the other side there is an increased cost resulting from regulations as reflected in the commodity prices particularly medicine in India.

As government officials have to weigh the cost and benefit of enacting and enforcing consumer protection legislations, the global Market is under going a complex change due to rapid technological innovation and diffusion of virtual behavior of business. For such reasons and as consumer legislation in India is rarely based on empirical consumer research findings, the effectiveness of consumer legislation in safeguarding consumer rights has proved to be somewhat uneven.

The corporations in India have slowly realized this phenomenon of consumer concern and tried to develop self regulatory measures for a better face of their business. Organizations are involved in social audit. The social auditors work with a proposition that marketing is the most visible activity in any organization, so it must assume responsibility for developing useful and socially relevant products, fair pricing for products and services and promotion in an accurate manner. Social responsibility and profit often complement each other. Some of the most profitable companies like Infosys, Wipro, TATA and Reliance are believed to be most socially responsive corporations.

This responsive behavior is based on the personal value and philosophies of Individuals building these corporations and the rest following them with a conviction. It is observed from the majority of corporation's decision making in India that morality of a particular decision stems from the relative standards they set for themselves (This can be coined as situational ethics or speculative philosophy) in which the correctness of an action depends on the specific circumstances involved.

Organizations like Tatas are governed by the philosophy of absolute standards (also known as moral idealism and revelations) in which the correctness of an action is judged against a set of permanent, universal rules of moral ideals which are to be applied whatever the circumstances are. A growing number of Indian organizations are charting their in house public policy programs to guide their employees and in many cases they are based over established industry standards.

## The future of antitrust movement

From the literature survey one can conclude that each school claims a more accurate vision of the market place and a more effective enforcement policy and each promotes a vision as the linchpin of competition law. Chicago's streamlined methodology rests on an optimistic vision of the market and a pessimistic view of the judiciary's ability to cope with complex economic data. Post Chicago sees competition as more fragile, market imperfections as more descriptive and judicial process as more capable all of which, in its opinion warrant a more probing enforcement policy.

Recent trends suggest that antitrust association with economic thought is progressively tilting in favor of post Chicago school. As reflected in a series of influential decisions in Supreme Court of US and India, the court appears to favor the newer thinking of the post Chicago school. Extending from price theoretic interpretations of competitive behavior, the Chicago school stands in favor of narrow proposition that antitrust goals of enhancing consumer welfare should be defined exclusively by economic efficiency and in particular by productive and allocative efficiency. Firms achieve higher levels of efficiency by building efficient plans, developing cost saving procedures, using employees more effectively and other measures.

Allocative efficiency refers to the welfare of the society as a whole and is defined as the ratios of a firms output to its inputs. Post Chicago school theorist, informed by more dynamic conception of competition favor expansion of the operationalization of consumer welfare to include beyond productive and allocative efficiency, dynamic efficiency or gains to consumer welfare extending from improvements to existing market conditions as precipitated through innovation. Maximization of consumer wealth, protection of small business larger competitors, protection of easy entry in to business, concern about large accumulation of economic or political power, prevention of the impersonality or facelessness of giant corporations and encouragement of morality or fairness in business practices should also be included in the domain of antitrust for a country like India.

A marketing oriented view of consumer welfare both complements and extends views held by Chicago and post Chicago school of antitrust economics. Marketing shares the perspectives that consumer welfare is enhanced by healthy competition and not through arbitrarily preserving weak competitors for their own sake. Marketing views the benefits of competition to extend beyond those captured through simple metrics of price and output. Marketing extends the post Chicago perspective through consideration of additional non price benefits.

Finding that non price competition often is the most vibrant aspect of many markets; marketers argue that markets containing both price and non price competitors' best serve the welfare of consumers (Guiltinan and Gundlach 1996). Much of marketing thought is directed at understanding the nature of benefits to be derived by consumers through such non price competition and how marketers might provide such benefits. For antitrust, more fully understanding the nature and consequences of non price competition could enhance its grasp of the nature and welfare implications of competitive exchange. Marketing also concerns itself with the broader consequences of competitive exchange including societal implications and moral issues. The societal marketing concept holds that a firms task is to engage in marketing exchanges in a way that preserves or enhances consumers and society's well being (Kotler 2000).

Antitrust movement in Indian context is taking a center stage due to entry of large number of multinational firms and subsequent result of market consolidation. The available measures for consumer welfare in the form of legislation and consumer movement are not sufficient enough to provide a safeguard to the Indian consumer. The quantity of legislation and the speed of redress of consumer complain are indicators of the fact that consumers are still ill treated and they need further protection against emerging strong players in the market. The level of literacy and awareness of consumers about a decent game play of the business also makes it urgent to address the issue of antitrust in Indian context. To add to that Indian business schools and research institutions have failed to start a movement to serve as a watchdog for protecting the consumer. Though the competitive conduct by Indian firms has not come under serious observation but developments like recent kickbacks by Xerox in Indian market and the concept of entertainment expenses in the books of accounts of the business are indicators that the judiciary as well as consumer welfare organizations should gear up to protect the consumer in Indian market. ✠

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