

Ethics in Marketing and Consumer Protection

Learning Objectives

- ◆ To know the ethical dilemmas in marketing
- ◆ To understand the reasons for marketing ethical behaviour
- ◆ To learn the initiatives taken in India towards promoting healthy competition
- ◆ To know the distinction between protecting consumers interest and public interest
- ◆ To know the initiatives taken by the United Nations towards Consumers Welfare

Next to doing the right thing, the most important thing is to let people know you are doing the right thing.

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11.1 Ethics and Marketing

The task of marketers is to influence the behaviour of customers. To accomplish this goal, marketers have a variety of tools at their disposal. Broadly speaking, these tools include the design of a product, the price at which it is offered, the message used to describe it, and the place in which it is made available.

Ethics are standards of moral conduct. To act in an ethical fashion is to conform to an accepted standard of moral behavior. Undoubtedly, virtually all people prefer to act ethically. It is easy to be ethical when no hardship is involved – when a person is winning and life is going well. The test comes when things are not going well – when pressures build. These pressures arise in all walks of life, and marketing is no exception.

Marketing executives face the challenge of balancing their own best interests in the form of recognition, pay, and promotion, with the best interests of consumers, their organizations, and society into a workable guide for their daily activities. In any situation they must be able to distinguish what is ethical from what is unethical and act accordingly, regardless of the possible consequences.

11.2 Ethical Guidelines

Many organizations have formed codes of ethics that identify specific acts (bribery, accepting gifts) as unethical and describe the standards employees are expected to live up to. Over 90 per cent of the Fortune 1,000 companies have ethics codes, as do many smaller businesses. These guidelines lessen the chance that an employee will knowingly or unknowingly violate a company's standards. In addition, ethics codes strengthen a company's hand in dealing with customers or prospects that encourage unethical behavior. For young or inexperienced executives, these codes can be valuable guides, helping them to resist pressure to compromise personal ethics in order to move up in the firm.

However, every decision cannot be taken out of the hands of the manager. Furthermore, determining what is right and what is wrong can be extremely difficult. It is not realistic for an organization to construct a two-column list of all possible practices, one headed "ethical" and the other "unethical." Rather, a marketer must be able to evaluate a situation and formulate a response.

11.3 Behaving Ethically In Marketing

Marketing executives should practice ethical behavior because it is morally correct. While this is a simple and beautiful concept, it is not sufficient motivation for everyone. So let's consider four pragmatic reasons for ethical behavior:

- ◆ **To reverse declining public confidence in marketing.** Periodically we hear about misleading package labels, false claims in ads, phony list prices, and infringements of well established trademarks. Though such practices are limited to only a small proportion of all marketing, the reputations of all marketers are damaged. To reverse this situation, business leaders must demonstrate convincingly that they are aware of their ethical responsibility and will fulfill it. Companies must set high ethical standards and enforce them. Moreover, it is in management's interest to be concerned with the well-being of consumers, since they are the lifeblood of a business.
- ◆ **To avoid increases in government regulation.** Our economic freedoms sometimes have a high price, just as our political freedoms, do. Business apathy, resistance, or token responses to unethical behavior simply increase the probability of more government regulation. Indeed, most of the governmental limitations on marketing are the result of management's failure to live up to its ethical responsibilities at one time or other. Moreover, once some form of government control has been introduced, it is rarely removed.
- ◆ **To regain the power granted by society.** Marketing executives wield a great deal of social power as they influence markets and speak out on economic issues. However, there is responsibility tied to that power. If marketers do not use their power in a socially acceptable manner, that power will be lost in the long run.
- ◆ **To protect the image of the organization.** Buyers often form an impression of an entire organization based on their contact with one person. More often than not, that person represents the marketing function. You may base your opinion of a retail store on the behavior

of a single sales clerk. As Procter & Gamble put it in an annual report: "When a Procter & Gamble sales person walks into a customer's place of business that sales person not only represents Procter & Gamble, but in a very real sense, that person is Procter & Gamble."

11.4 Healthy Competition And Protecting Consumer's Interest

Competition – Challenges and Changes : Globalisation and progressive liberalization of trade during the last decade opened a widening atmosphere giving rise to certain inevitable tasks and challenges for every country around the globe. It therefore became imperative for many countries to have a new line of rethinking on the existing pattern of policies on trade, customs and usages. The World Trade Organisation's (WTO) treaties and agreements, their implications on trade and commerce have already compelled many countries to review their competitiveness of trade and economic policies not only within their economy but across the frontiers of other countries also. In India, in the recent years, the corporate and economic reforms and policies had pervasive effects on the structure of domestic trade and competition. The law which was originally enacted to deal with market and competition (i.e., the Monopolies and Restrictive Trade Practices Act, 1969) addressed the problems concerning Monopolistic, Restrictive and Unfair Trade Practices only. There was no genesis to a comprehensive competition policy since then. Given the fact that the structure of world economy and trade has taken rapid strides and undergone vast changes, India has been taking adequate steps for integrating itself with the new changes and challenges thereby market functioning, positioning becomes effective and competitive. In this regard, Government constituted a High Level Committee on Competition Policy and Law on 15.10.1999 under the Chairmanship of Mr. S.V.S. Raghavan, to recommend a legislative framework relating to Competition Law including mergers and demergers. The Committee submitted its report on 22nd May 2000. The Government, after considering the report and suggestions from various organizations, institutions and general public, introduced the Competition Bill in the Parliament. This Bill became an Act after receiving assent from the President on 13th January 2003 and a few sections of the Act have already come into force by virtue of two separate Government notifications [i.e., S.O.340 (E) dated 31st March, 2003 and S.O.715 (E) dated 19th June, 2003]. This Act extends to the whole of India except the State of Jammu and Kashmir.

What is Competition?

A broad definition of Competition is "a situation in a market in which firms or sellers independently strike for the buyers' patronage in order to achieve a particular business objective, for *example* profit, sales or market share" (World Bank, 1999). A pre-requisite for a good competition is trade, trade is the unrestricted liberty of every man to buy, sell and barter, when, where and how, of whom and to whom he pleases. For a free market to be in existence the handicap is that for a given distribution of income of those who can pay the highest price will most be able to purchase the goods regardless their relative needs. However, the real culprit is income distribution system and not the competitive system. In an unregulated free market, in certain circumstances it could be of greater benefit to the owner to withhold goods from market in order to extract a higher price. Despite the efforts to regulate prices which have been unsuccessful, the caution in a free market as compared to the problems in an unregulated market can be overcome by posturing

11.4 Business Law, Ethics and Communication

competition by which the ultimate *raison de' etre* of competition, namely the, interest of the consumer can be protected.

Competition Policy and Law: The Competition Policy is regarded as genus, of which, the Competition Law is specie. Competition Law provides necessary powers to the commission to enforce and implement the Competition Policy. The central economic goal of the Competition Policy is the preservation and promotion of the competitive process. It is a symbolic process, which encourages efficiency in the production and allocation of goods and services over a period of time through its effects on innovation and adjustment to technological change. In conditions of effective competition, competitors will be having equal opportunities to compete for their own economic interest and therefore the quality of their outputs and resource deployment will be given top priority in order to sustain and succeed in the market by meeting consumers' demand at the lowest possible cost.

Competition Laws in UK and US : There are three major federal anti-trust laws in United States namely the Sherman Anti-trust Act, the Clayton Act and the Federal Trade Commission Act.

The Sherman Act passed in 1890 was the first Federal Anti-Trust Laws. The Act aimed at restraint of trade and monopolisation of Inter-State and Foreign Commerce.

The Clayton Act is a civil statute (carrying no criminal penalties, was passed in 1914 and significantly amended in 1950). The Act is the result of failure of the Sherman Act to stop the trend towards concentration in the American economy. It attempts to nip monopolise in the bud by specifying practices that monopolists used to gain monopoly power.

The Federal Trade Commission Act, 1914 prohibits unfair methods of competition in Inter-State Commerce but carries no criminal penalties. However, there was Federal Trade Commission to monitor violations of the Act. Thus, in US basically anti-trust laws protect competition by ensuring free and open competition, which bring benefits to consumers by way of lower prices, new and better products.

The UK Competition Act, 1988 which came into force in March 1, 2000 is based upon the Competition Law of the European Commission. The Act prohibited agreements, which have the object of preventing, restricting or distorting competition which directly or indirectly fix prices, trading conditions, limit or control production, markets or sources of supply.

The Enterprise Act introduced the next major reform of UK Competition Law, 2002 which concentrated on a new regime for the assessment of mergers and markets in the UK. The third and final stage of reform process in the UK Competition Law will be the implementation of European Commission, which is a radical modernisation of UK's Competition Policy. To regulate the competition and its practices, most of the countries have the competition authority commonly known as the Competition Commission.

Competition Act, 2002: The Competition Act, 2002 intends to provide, keeping in view of the economic development of the country, for the establishment of a Commission to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by

other participants in markets, in India, and for matters connected therewith or incidental thereto. The renewed efforts of the Government in implementing a Competition Act, 2002 is a laudable step in the right direction and a new beginning in the frontiers of India's Competition Policy towards harmonizing international trade and policy.

Parameters of Competition Law

- ◆ **Prohibition of certain agreements**, *which are considered to be anti-competitive in nature*. Such agreements [namely tie in arrangements, exclusive dealings (supply and distribution), refusal to deal and resale price maintenance] shall be presumed as anti-competitive if they cause or likely to cause an appreciable adverse effect on competition within India.
- ◆ **Abuse of dominant position** by imposing unfair or discriminatory conditions or limiting and restricting production of goods or services or indulging in practices resulting in denial of market excess or through in any other mode are prohibited.
- ◆ **Regulation of combinations** which cause or likely to cause an appreciable adverse affect on competition within the relevant market in India is also considered to be void.

Consumer - [Section 2(f), Competition Act, 2002] : "Consumer" means any person who—

- (i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, whether such purchase of goods is for resale or for any commercial purpose or for personal use;
- (ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first-mentioned person whether such hiring or availing of services is for any commercial purpose or for personal use;

It is noteworthy that the definition of consumer is substantially the same has given to the expression under Section 2(d) of the consumer protection Act, 1986. The difference is that under clause (i), in the Competition Act, it uses the words "whether such purchase of goods is for the resale of for any commercial purpose or for personal use" in places of the words "but does not include a person who obtains such goods for resale of for any commercial purpose", as in the Consumer Protection Act. Likewise, in clause (ii), the words used in the Competition Act are "whether such hiring or availing of services is for any commercial purpose or for personal use" in place of the words "but does not include a person who avails of such services for any commercial purpose" as in the Consumer Protection Act. Thus, the interpretation of "consumer" in the Consumer Protection Act will be the same as in

Competition Act. In the latter, “consumer” will also include a person who purchases goods for resale or for any commercial purpose or for personal use.

Consumer Interest and Public Interest

1. Often, consumer interest and public interest are considered synonymous. But they are not and need to be distinguished. In the name of public interest, many Governmental policies are formulated which are either anti-competitive in nature or which manifest themselves in anti-competitive behaviour. If the consumer is at the fulcrum, consumer interest and consumer welfare should have primacy in all Governmental policy formulations.
2. Consumer is a member of a broad class of people who purchase, use, maintain and dispose of products and services. Consumers are affected by pricing policies, financing practices, quality of goods and services and various trade practices. They are clearly distinguishable from manufacturers, who produce goods and wholesalers or retailers, who sell goods.
3. Public interest, on the other hand, is something in which society as a whole has some interest, not fully captured, by a competitive market. It is an externality. However, there is a justifiable apprehension that in the name of “public interest”, Governmental policies may be fashioned and introduced which may not be in the ultimate interest of the consumers. The asymmetry arises from the fact that all producers are consumers but most are producers as well. What is desirable for them in one capacity may be inimical in the other capacity. A simple *example* will make the point clear. A farmer wants the price of goods he consumes to be as cheap as possible but wants the highest price for his produce. A Government wishing to encourage agriculture for self-sufficiency in food as a national security measure faces the conflict: should it support high prices to encourage production or low prices to protect the consumer? This is a characteristic public interest-consumer interest conflict. In general, it can be stated that buyers want competition and sellers monopoly. The economists’ answer is that there are in a society too many such divergent interests and therefore the resolution is best left to markets without Government intervention. They are all too conscious of the possibility of abuse of the expression “public interest” by vested interested.

Competition and Consumer Welfare : Competition means rivalry in the marketplace, which is regulated by a set of policies and laws to achieve the goals of economic efficiency and consumer welfare, and to check on the concentration of economic power. All these goals have an interactive relationship and, when in harmony, deliver total welfare. Indeed, it is the consumers who are supposedly the biggest beneficiaries of competition. On the other hand, it is the consumers who are the main losers due to anti-competitive activities in a market. The consumers are worse off because of their lack of capacity to deal with such problems.

It is sometimes believed that competition policy and law are tools for the rich, the urban, and industries alone. However, at the macro level, the design and implementation of a competition policy promotes the advancement and increased welfare of the poor. At the

micro level, an effective competition regime or consumer law (covering competition distortions) can prevent consumer abuses, both at industry level as well as in a village or locality where one shopkeeper can cheat the whole community. An appropriate and dynamic competition policy and law are imperative to buttress economic development, curb corruption reduce wastage and arbitrariness, improve competitiveness and provide succour to the poor.

Before we embark on assessing the consumer welfare implications, it is important to understand the notion of consumer welfare. Unfortunately, there is no agreed definition of consumer welfare. Even so, one can have a fair understanding of the notions surrounding consumer welfare by looking at the United Nations Guidelines for Consumer Protection, adopted by the UN General Assembly in 1985, and amended in 1999. These guidelines represent an international regulatory framework for governments to use, for the development and strengthening of consumer protection policy and legislation, aimed at promoting consumer welfare.

The UN Guidelines call upon governments to develop, strengthen and maintain a strong consumer policy, and provide for enhanced protection of consumers by enunciating various steps and measures around eight themes (UNCTAD, 2001). These eight themes are:

1. Physical safety
2. Economic interests,
3. Standards
4. Essential Goods and services
5. Redress
6. Education and information
7. Specific areas concerning health
8. Sustainable consumption

The Guidelines have implicitly recognized eight consumer rights, which were made explicit in the Charter of Consumers International as follows:

- ◆ Right to basic needs
- ◆ Right to safety
- ◆ Right to choice
- ◆ Right to redress
- ◆ Right to information
- ◆ Right to information
- ◆ Right to consumer education
- ◆ Right to representation
- ◆ Right to healthy environment

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These eight consumer rights can be used as the touchstones for assessing the consumer welfare implications of competition policy and law, and to see how they help or hinder the promotion of these rights.

11.5 Consumer Protection Councils In India

- ◆ **The Central Consumer Protection Council:** The objects of the Central Council shall be to promote and protect the rights of the consumers such as,-
 - (a) the right to be protected against the marketing of goods and services which are hazardous to life and property;
 - (b) the right to be informed about the quality, quantity, potency, purity, standard and price of goods{or services, as the case may be} so as to protect the consumer against unfair trade practices;
 - (c) the right to be assured, wherever possible, access to a variety of goods, and services at competitive prices;
 - (d) the right to be heard and to be assured that consumer's interest will receive due consideration at appropriate terms;
 - (e) the right to seek redressal against unfair trade practices {or restrictive trade practices} or unscrupulous exploitation of consumers; and
 - (f) the right to consumer education.
- ◆ **The State Consumer Protection Council:** The objects of every State shall be to promote within the State the rights of the consumers laid down in point (a) to (f) mentioned above.
- ◆ **The District Consumer Protection Council:** The objects of every District Council shall be to promote within the State the rights of the consumers laid down in point (a) to (f) mentioned above.