Ch 2 **Consumer Protection and Trade Competition**

- Q! What Competition law is
- Why Completion??
- Who is CONSUMER?
- Why Protection?
- What is Prohibited??

Introduction to consumer protection law and policies

- **Competition law** is a part of competition policy designed to regulate **anti-competitive** business practices
- Competition law is **government intervention** to **correct** market distortions because of anticompetitive practices
- Q? **Why** government intervention???

Why governmnet intervention?

- b/c
  - Market **failures** (competition not bringing **efficiency**)
  - Anticompetitive practices **distorting** markets
  - Efficiency (followed by economic **development**)
  - Consumer **welfare**
  - Protection of the interests of **competitors**
- Pre-requires **Competition policy**

Competition policy

- Policies with **implications** for market **competition include**:
  - Deregulation and privatization,
  - Trade **liberalization**,
  - Intellectual property,
  - Industrial policy,
  - Government procurement,
  - Labor, and taxation

Objectives of Competition Policy and Competition Law

- Maintaining and enhancing **market competition** by **addressing restrictive** business practices
- **Efficiency** and consumer **welfare** at the **heart** of the objective of competition law
- Promotion of competitive **free market**;
- Promoting **industrial** policy
- **Controlling anti-competitive** and unfair market practices

Anticompetitive practices

- Practices that may impede competition
- Grouped into **three**:

1. Abuse of a dominant position;
2. Restrictive or collusive agreements; and
3. Mergers and acquisitions.

1. **Abuse of dominance**

- **Misuse** of market power', '**monopoly**' or 'attempt to monopolize'
- i.e where a firm uses its market power to **anticompetitive** ends.
- **Common** cases of abuse include:-

  -Excessive prices,

  -Predatory pricing,

  -Discriminatory pricing,

  -Refusal to deal/supply

Determining Abuse of dominance

- There are **three (3) Stages** in determining whether an enterprise has abused its dominant position
  - **1st**, **defining** the **relevant market**
  - **2nd**, determining whether the concerned undertaking is **in a dominant position** in that relevant market
  - **3rd**, determination of whether the **undertaking** in a dominant position has engaged in **conducts specifically prohibited** by the **statute** or amounting to abuse of dominant position

2. **Restrictive or collusive agreements**

- Implicit or explicit **agreements** to reduce or **eliminate competition** and hence become anticompetitive
- The main **forms** of restrictive agreements **include**:
  - Price fixing;
  - Quantity fixing;
  - Market allocation;
  - Collusive bidding/tendering

3. **Mergers and acquisitions**

- A **fusion** between two or more firms that may **impact on competition** by reducing number of competitors in a market and may **create risk of abuse of dominance**.
- Competition laws **regulate/prohibit** mergers and acquisitions where "they **substantially restrict competition**"

Unfair Competition

- Actions of firms that may cause an economic **injury to another firm, through a deceptive or wrongful** business practice.
- The **most common examples** of unfair competition are:-
  - **Trademark infringement** and misappropriation
  - **False** advertising,
  - **Unauthorized** substitution of one **brand** of goods for another,
  - Use of **confidential** information by former employee to solicit customers,
  - Theft of trade **secrets…etc**…
- Focus on competitors/consumers **not** competition itself

Competition and consumer protection

- Consumer protection refers to the **set of laws and policies aimed** at:

  - ensuring **social justice**,

  -**equity** and **fairness** in the relationships **between producers /business persons?/ and consumers**

- The major **problems** consumer protection seeks to address include:

- imperfect information about product attributes, - imperfect information about **market** prices, - consumer **costs** of obtaining market information

Consumer protection policies

- **UN Guidelines** for Consumer Protection provides Consumer protection policies that **includes**:-
  - The right to **safety**,
  - The right to be **informed**,
  - The right to **choose**,
  - The right to be **heard**,
  - the right to **redress**,
  - the right to consumer **education**

Who is CONSUME?

- Q! Who is CONSUMER?
- Why Protection?
- To **be entitled to accorded protection** a person has to be considered as **consumer**
- The **Black's Law Dictionary** defines consumer as:-
  - "a person(a **natural person**) who **buys** goods and services for **personal**, **family** or **household** use, with **no intention of resale** for **business** purposes
- See also Ethiopian Trade Practice and Consumer Protection **Proclamation No. 813/2013**

Definitions of
Consumer Protection Proclamation No. 813/2013

- "**Consumer**" means **a natural person** who **buys** goods and services for his **personal or family consumption**, whether the price is being paid by him or another person and **not for manufacturing activity or resale**

—See Art. 2(4)

The definitions provided above indicates:-

- It is only when **the following elements are fulfilled** that a person is taken as consumer
  - 1st, a consumer is a **natural person**,

➢ Excludes legal persons.

  - 2nd, a consumer **buys** goods and services.
  - 3rd the goods and services in transaction shall be for his **personal or family consumption**
    - ➢ **Not** for **manufacturing** activity or **resale**

The Need for Consumer Protection

- Why Protection ?
- b/c:-
  - **imbalances** in economic terms, educational levels and bargaining powers b/n **consumers and business persons/producers?**.
  - to **protect** the **health** and **well being** of consumers by disciplining the conduct of greedy traders
  - for the promotion of better **economic development**
  - play a role in enhancing **fair market** practices
  - the **failure** **of** **private law** **mechanisms** to adequately protect the interests of consumers

Historical development

- In Ethiopia, for long, there has been **no codified consumer protection law.**
- They are **scattered** in the various branches such as: **civil**, commercial, **penal** laws and other sect oral issue and specific legislations.
- Laws of **contract** and **extra** contractual liability under the Civil Code protect consumers from **contract-based and tort-based harms** in using goods and services.
- These protections are **not adequate enough** in consumer protection

Legislative framework on consumer protection in Ethiopia

- Ethiopia has adopted a specific law dealing with competition in **2003** entitled, **The Trade Practices Proclamation No. 329/2003**.
- The Proclamation was revised in **2010** and issued as the **Trade Practices and Consumer Protection Proclamation No 685/2010**
- It was **currently** replaced by the **"Trade Competition and Consumers Protection Proclamation No. 813/2013"**

Trade Competition and Consumers Protection

Proclamation No. 813/2013“

- Objectives:- See Art 3
- Prohibited **ANTI-COMPETITIVE TRADE RACTICES**:- See Art. 5ff
- **Unfair Competition**:- Art. 8
- REGULATION OF **MERGER**:- Art. 9ff
- **Rights of Consumers**:- 14ff
- DISTRIBIUTION OF **GOODS AND SERVICES**:- Art 23ff
- CONSUMERS PROTECTION **AUTHORITY**:- Art 27ff
- **Adjudicative Benches** of the Authority:- Art. 32

Objectives:- Art 3

- to **protect** the **business** community from anti-competitive and unfair market practices,
- to **protect consumers** from **misleading market conducts**,
- to establish a system that is conducive for the **promotion of competitive free market**;
- to ensure **safe and suitable goods and services** that is equivalent to the **price**
- to accelerate economic **development**

Prohibited ANTI-COMPETITIVE TRADE RACTICES:- Art 5ff

- 1. **Abuse of Market Dominance**
- Acts deemed to be of abuse of marke dominance includes:-
  - **Limiting** production,
  - Hoarding or diverting, preventing or withholding goods **from being sold in the regular channels of trade**,
  - Doing (any) **harmful acts** aimed at a **competitor**,
  - Eg-as selling at a price below cost of production ..etc...
- Read Art 5ff

Assessment of Dominance Art. 6

- **Actual capacity** to control prices or other conditions of commercial negotiations or eliminate or utterly restrain competition in the **relevant market**.
- Q? How do you see with the **three (3) Stages** in determining dominance???
- Read Art 6

2. **Anti-Competitive Agreements**:- Art. 7

- Agreements in a horizontal / vertical relationship shall be prohibited if:-
- has the **effect** of preventing **competition**,
- **fixing** a purchase or selling **price** or other conditions, …
- Read Art 7

3. Unfair Competition:- Art 8

- Any **dishonest**, misleading or deceptive act that harms or is likely to harm the business interest of a competitor
- Inherent in the idea of competition are **three** elements:-
- 1. they must be selling **similar products**,
- 2. in the **same area**, and
- 3. at the **same time**.

Acts deemed to be unfair competition:-

- Confusing acts,
- Possession or use of **information** in contrary to honest commercial practice,
- **false** or unjustifiable allegation that discredits, or is likely to discredit another
- **comparing** goods or services falsely or equivocally in **advertisement**
- obtaining or attempting to obtain **confidential** business information,
- other **similar acts** to be specified by regulation…etc…

- Read **list of acts deemed to be unfair** competitions listed under **Art. 8 (2 a-g)**

Criminal Unfair Competition

- In addition to the **civil and administrative** remedies provided in the competition proc. **Proclamation No. 813/2013**, **Article 719-721 of the Criminal Code** deals with cases of unfair competition.
- Article 720 of the Criminal Code brings about **extra-contractual liability** in accordance with Article **2035** of the Civil Code.

4. **Merger** that causes or is likely to cause **adverse effect on competition**.

- Regulations
- **No** agreement or arrangement of merger may come into effect before obtaining **approval from the Authority**
- **Read Art. 9-13**

Rights of Consumers:- 14ff

- **Proclamation No. 813/2013 e**nforces universally recognized **Rights** of Consumers which includes the rights to:-
  - Information or explanation,
  - Choice,
  - not to be obliged to buy,
  - Treated humbly and respectfully,
  - Compensation,
- See in comp with **UN Guideline**

Obligations of business person /producers/ Art 15 ff

- Rights to be claimed by consumers are Obligations of business persons which includes obligations to:-
  - display price,
  - affix labels,
  - Issuing Receipts,
  - Self Disclosure …
- Read Art 15-18
- Q? who can enforce above mentioned Rights and Obligations?
- There is an **autonomous institution** for this

Institutional framework on consumer protection in general

- For strengthening national consumer protection, **Institutional Framework** should have **functions** (mandates) of:-
  - Investigation
  - Prosecution
  - Adjudication
  - Advocacy
- -Competition and consumer protection mandates
- **Autonomy** and **accountability**
  - -Structural autonomy
  - -Operational autonomy
  - -Budgetary autonomy

Institutional framework on consumer protection in Ethiopia

- The **enforcement** mechanisms and the respective institutions for enforcement of the consumer protection law in Ethiopia **includes**:-
  - CONSUMERS PROTECTION **AUTHORITY**:- Art 27ff
  - Adjudicative **Benches** of the Authority:- Art. 32
  - Trade Competition and Consumer Protection **Appellate Tribunal**:- Art. 33ff
  - **Regional** Consumers Protection **Judicial** Organs:- Art. 34

Power and Function of the institutions

- The respective institutions for enforcement of the consumer protection law in **Ethiopia** have an **Extensive judicial power** that **includes**:-
  - Investigations Art. 36
  - Institution of Action Art 37
  - Adjudication:- Art. 38
  - Appeal:- Art. 39
  - Administrative Penalties:- Art 42
  - Criminal Penalties:- Art. **43**

Assignment 20%

- Anti-competitive and unfair trade practice and their effects under Proclamation No. 813/2013

Additional Institutional ….

- The Ministry of Trade,
- Regional Trade Bureaus and Consumer Protection Organs
- The Federal and Regional Courts
- empowered to adjudicate and pass decisions on criminal liabilities arising out of the violation of the law.
- The Police and Prosecution
- empowered to investigate and prosecute for criminal liabilities arising out of the violation of the law.

Emerging issues on consumer protection and law

- **A**. NEW **DIGITAL CONSUMER TRENDS** AND CHALLENGES
- 1. Emergence of new **digital products and services**
- 2. Widespread **use of internet as information** tool for purchasing purposes
- 3. Increased use of **electronic payments** and emergence of new forms of payment
- Etc…

B . THE NEED FOR **BETTER INFORMATION AND KNOWLEDGE**

- **1**. Increased **complexity of financial** products and services
- **2**. **Purchasing decisions** increasingly influenced by **environmental**, **social**, **ethical** and other **quality** aspects
- **3**. A new **environment** leading to a new kind of **vulnerable consumers**

Privacy and Security challenges

- With this new digital products evolution come many privacy and security challenges.
- There is a need for increasing **privacy protection** with regards to new digital products and services, such as internet of things.
- As technology develops, new and ever-more inventive **fraudulent practices appear**, affecting consumer trust, and should be combated
- Consumers also tend to make increased use of **electronic payments** and face new forms of payment such as virtual currencies..>>>>...