

Consumer Law and Challenging Business Environment

By

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Abstract

Since the 1990s, we rarely consider that the competition policy is nothing but the continuation of the welfare of consumers, but this has not always been the case and the way we have come to lead to the situation where consumers seem to be paramount protection is far from having been without pitfalls, backtrack being also more thing possible. The concepts of efficiency and well-being of consumers are poor parents from the justice, equity and control of economic power. This design allowed responsible for law enforcement to look with care stepped on a single objective and relatively simple. This concept also helped to refocus law enforcement and away more blurred and more flexible interpretations of overall well-being and the public interest that had begun to undermine the enforcement of competition rules at the end the 21st century. In essence, the welfare of consumers offered a pure object to competition policy; the economy was the guardian of the purity.

Keywords: Competition Law, Consumers, Market Inefficiencies and Externalities, Inclusion of Consumer Interest, Consumer Protection, Consumer Welfare, Fair Trade Products, Information, Digitalization, Product Quality, Circular Economy

1. Introduction

All competition laws appear as cardinal objective well-being of the consumer. The rhetoric of Competition Authorities is the same all over the world. In a study of Tebbey (2011), sums it up “the competition policy runs the market and protects the consumer from any disappointment”. On this aspect, European law joined the American competition law. The competition law pursues objectives of economic efficiency, creating a favorable environment for

economic development, promoting the production, innovation and the lowest price. Lawyer and economist can therefore find a common ground. However, the convergent search for well-being of the consumer can cover economic differences within the various disciplines. Controversies remain about the place of the consumer competition law.

Economic law does not emerge in the legal life in the form of a structured set of principles, concepts, uniform rules intended to govern primarily economic relationships, and next to which the other branches of law are the branches derogatory whose standards now apply in a well-defined specialty criterion. If the analyst can, in fact, raise common trends in most disciplines that constitute the core of economic law (concentration, competition law, consumer law, securities law, and corporate law in difficulty), it is clear that the latter is realizing only through flowering regulations, more and more specialized, related to the specific needs regulation of economic life (Schaffer et al., 2014). However, the addition of special rights does not necessarily give a new branch of law.

One can certainly argue that it is not to determine the result of an arithmetic addition, but to characterize the product of a chemical combination to use the expression. There would, however, whether one is in the presence of a real chemical combination comparable to that which would have given rise to labor law. An affirmative answer would be valid for the competition law but not for other areas of economic law, so that it is returning to the first observation of a multistage legal system and not a new branch of the legal system (Meiners et al., 2014). Some of its components manage to find their own way and gradually conquer some autonomy over their traditional attachment area. This is the consumer law and especially the competition law, which applies to all economic operators, regardless of their public or private

form (as long as their behavior can affect the competition) are translated into new concepts (like the concept of relevant market) and implement specific procedures.

Remains are limited in scope that community public policy (with the mandatory requirements of competition law and consumer) can resist when enforcement of an arbitration award in the territory of the states (Carroll & Buchholtz, 2014). The establishment of a “global market jurisdictional services” (p. 10) through the mechanisms enshrined in international private law, with the culmination of the evolution the contracting phenomenon of state justice, which has so far escaped the attention of the doctrine, strengthens the movement with the negative effects of such application.

Liberal societies are companies that agree to advance the existence of private economic power, making them naturally benefit from a form of opacity. However, one could think that the evolution of these companies throughout the 21st century has shown that exercise of economic power was also a source of abuse. With respect to competitors, employees, consumers need to correct by appropriate legal mechanisms initially (Freeman, 2010). Secondly and more importantly, to the extent that the legal instruments understand as products of “consumer” and they run with the same mobility that “economic objects they are the legal double”.

2. Research Material and Method

Furthermore, the research study is involved the secondary data (qualitative data). That is the data, which is collected by some other user and in the current study; the common source for secondary data is comprised of journal articles, theories, and the Internet. The search for gathering secondary data and other information is utilized public and private online libraries, Google Scholar, ProQuest, EBSCO Information Services and other resources. The significance

of secondary data is that it is saving the time of the researcher and provided variety of databases of high quality research too.

3. Research Findings

The consideration of the consumer by the competition law is a way to humanize the competition law, integrating social concerns. The consumer is the ultimate consumer, but also through consumer who uses the product or service. Even if the final consumer, it is the economic consumer. He must play the game of the market; it is manipulating and it is a hostage.

Competition laws and consumption court it so that free and informed, he did not meet his own choices, but those of the market (Albors-Llorens, 2014). Consumers can properly compare offers and make purchasing decisions in line with their preferences can then effectively encourage vendors to offer deals best suited to their requirements. Therefore, there is a convergence between competition policy and consumer. Therefore, more and more, competition law and consumer law meet. We will give an example the Directive 2005 Unfair Commercial Practices to protect consumers and businesses against unfair conduct (Terpstra et al., 2012).

3.1. Market Inefficiencies and Externalities

The market is, according to its theoretical model, an efficient mechanism to optimize the use of limited resources of a company natural resources, labor, capital and technology to satisfy the goods and services consumer needs. For the proponents of any market, it embodies the highest form of democracy. Also in theory, perfect competition is used to allocate resources where they are most productive and eliminate thereby the producers who would not (Waygood, 2011). The price mechanism, meanwhile, would coordinate all economic activities in two ways first, through the information it provides on the scarcity of the product; secondly, by influencing

consumer behavior by encouraging them to make choices that, while satisfying their needs, optimize the use of available resources.

Thus, if the producer price is too high, it will not sell its product; if it does not fit, it will be eliminated from the market. As for the consumer, if he does not agree to pay the price set by the market, its needs will not be satisfied. The same theory also recognizes that sometimes the market fails to be optimal, because of what economists call failures or market inefficiencies. This occurs when the pricing mechanism fails to allocate resources well. This can occur when there is no perfect competition and only one producer has a monopoly (Davies, 2013), when information is asymmetric and that producers and consumers do not have the same information on the characteristics of the product or service, or in the case of public goods that can benefit everyone as soon as someone has assumed the costs.

Also, and this is the case of interest here, the price mechanism is inefficient when the action of an economic agent has consequences for one or more third party that is not part of the action: such market inefficiency is called an externality. Specifically, an externality occurs when the costs and / or profits from economic activity are, as applicable, or assumed by, nor does it benefit the people involved in this activity (Cooper, 2001). An externality thus understood can be positive or negative. Public education and assumed by everyone is an example of a positive externality: employers who benefit from this skilled labor indeed reap the benefits without the costs.

3.2. Inclusion of Consumer Interest

From the institutional point of view, the merger or merger of institutions for the interests of consumers and competition is an important concern. Therefore, a development of the action for compensation for competitive harm before national courts should be taken. The success of

such an action would involve the introduction of a class action and easy access to the competition record held by the competition authorities. The recognition of significant fundamental rights recognized in both consumer laws that competition law. This right to basic needs (water, medicines, food staples, etc.), recognized in the United Nations Guidelines for Consumer Protection of 2001 and by the World Charter of April 1985 Consumers (text adopted by the UN) (Gerber, 2010) could pass through the practical implementation of a mandatory universal service for service providers to provide the poor. Moreover, disadvantaged consumers of services at affordable prices, even if they absorb a loss has to be considered.

However, it is all about balance. Overly protective standards for consumers can be against-productive for competition. For example, too high standards can exclude competitors products but of lower quality. It must be protected, but not too overprotective of binding rules, may constitute barriers to market entry. Therefore, do not look for the highest standard of protection - logic very different from the classic French design of consumer law with numerous prohibited *per se* (Vogel, 2009). The relationship between consumer and market therefore lead to a weakening of consumer law. It should not erect undue barriers to market through rules hampering the competitive game. As in the *bans per se* of national law, provided they pursue consumer protection goals, are likely to disappear if they are not within the list of European prohibited (Weatherill, 2013). The texts of interest to the market and the consumer must be interpreting in the sense most favorable to the market.

3.3. Consumer Protection or Protection of Market Structure

Controversies remain about the place of the consumer's right to competition law. In European law, it is controversial whether the objective of competition law is to protect the consumer or market structure. Under US law, the controversy concerns the opposition between

“consumer welfare” and “total welfare” (Bibas, 2011). There is no consensus on the definition of consumer interest. Some European texts refer to the consumer, while others do not. To take a few examples, the consumer is considered in the guidelines on abusive exclusionary conduct by dominant undertakings or the guidelines on the application of Article 81 (3). However, it does not appear in the exemption regulations “new generations” yet considered integrating economic analysis, such as Regulation 330 of 20 April 2010 on vertical agreements (Kumar & Siddharthan, 2013). Similarly, in assessing the penalty, the infringement of the welfare of the consumer is not an evaluation criterion or aggravation of punishment.

Indeed, the European competition law is ambivalent. From the beginning, the objectives expressed in the European Treaty, are diverse and do not interest the consumer. Moreover, according to the ordo-liberal perspective that influenced the framers of the Treaty of Rome, competition is certainly not an end but a means. However, only free competition achieves the harmonious development of the objectives of the European Community (Carlin & Gervais, 2012). The competitive order is not to be compromised by other values, because the treaty drafters expected the competition policy of the multiple economic benefits. The ordo-liberal approach has influenced a number of steps. According to this philosophy, expressed in the judgment *Continental* about a stake in a rival group minority business, protection of competition is not negotiable.

The Treaty, such as environmental protection or well-being of the consumer, pursues other interests but they do not have any prejudice to the purposes of the market. Such an analysis is not abandoned, but it has less influence. That is why the law hesitates between protection of the structure of competition in itself and taken into account the interests of consumers. The famous *GlaxoSmithKline* case is an illustration of the differences within the Community Courts.

Was involved an agreement to partition the markets by restricting imports of drugs between states (Smith, 2003). The Court of first instance had held that an agreement restricting parallel trade cannot be considered anti-competitive in purpose, since that given the particular context in which the agreement was part - area where drug prices was largely subtracted from the play of free competition. Due to the regulation of this market, it could not be assumed that the restriction reduced the welfare of the final consumer. The Court of Justice censured this solution.

The Court committed an error of law, because the criterion of the violation to the welfare of the final consumer is not a condition for the finding of a restriction of competition by object: “Article 81 aims to protect not just the interests of competitors or consumers, but the market structure, and thus competition as such” (p. 63). This solution has been reaffirmed many times: for example, in the British Airways case, the Court of Justice affirmed with great clarity “Article 82 EC is not only aimed at practices (Fox, 2003) which may cause damage to consumers but also those which cause them damage by undermining an effective competition structure”. Similarly, the return jurisprudence of the concept of anti-competitive object in antitrust law, contrary to the strengthening of economic analysis in competition law is, in our view, a manifestation this ambivalence between structural design competition and a finalized design, which takes into account the infringement of the market and the welfare of consumers.

3.4. Consumer Welfare or Total Welfare

The debate is one in the USA. Americans discuss the question whether the competition law does not take into account the interests of the consumer. Consumer welfare is defined as a pecuniary interest that a consumer can take an operation on a market, or more much of the total welfare much broader concept which includes consumer interest, but also removed by economic operators of an operation. A practice can then be sanctioned if it affects the economy. This

discussion leads economists and European and American lawyers. According to the authors, only the well-being of the consumer is to be considered, since the industry is serving consumers.

Consumption is the sole purpose of all production. Other authors consider that competition law must defend overall well-being (Branstetter et al., 2011). Because the consumer will only search the lowest price which is not in the interest of businesses so they will have less interest to innovate, invest and produce new products. In addition, the authors point out that competition law does not only aim to redistribute wealth by promoting low prices benefit consumers. Finally, there are authors who consider the competition law must pursue effective goals that provide maximum protection to the consumers.

4. Discussion

Even if the consumer interest is taken into account, should assess the interest of consumers in the short, medium or long term? In times of crisis, can we meet the medium term? The relation to time is not the same. What is the interest of the consumer? Have the lowest price, have a choice, a range of choices, have quality products, or the most innovative products. The assessment of the consumer interest is extraordinarily complex. Consumer interests are not the same whether they are rich or poor (*supra*, on fundamental rights). Even if one is only interested consumers likely to buy, assessments may differ. The trauma caused by the Microsoft case overseas about tying is a good example of analysis differences. For simplicity, we will say that for the European Commission, the interest of the consumer in the medium term is to have access to diverse innovative products. However, tying WMP media player with the Windows operating system would likely not encourage Microsoft and its competitors in the innovation effort. For the Columbia Court of Appeal, (Meese, 2013) the analysis is different. Tying is beneficial for the consumer in terms of price and quality of innovation.

4.1. Consumer Rights of Charge

Every product we buy has the mark of a company whose policies have a greater influence than we can imagine. The conditions of the employees, the environment, quality and safety of its components product, these are all aspects of the manufacturing process that we should all, as consumers consider before purchasing. To meet the requirements of profitability and the lowest prices applied by law unfortunately the majority of consumers, multinationals do not hesitate to exploit workers in developing countries, to make children work, to pollute the environment or violate laws (Henry, 2010). This implacable logic that today, many of the consumer goods we buy are manufactured in countries where workers' conditions are miserable, while we are helplessly witnessing the relocation of factories that manufacture products here in rising unemployment and pressure for more concessions from workers.

In sum, our appetite to consume more and more, for less, feeds on injustice between developed and underdeveloped countries, the increase in poverty here and south, and over-exploitation of resources and the environment. As consumers, we will gladly hold the power to change things. By changing our habits, we have a real influence on the market and if we convince one by one all consumers, it is possible to change the world. Therefore, we buy less and buy better. Every bit helps. Read the label to find out where the product. Choose fair trade products from here rather than elsewhere, the healthiest foods, organic farming (Larsen & Fredborg, 2014). Think about the environment, promoting the reduction of energy consumption or, avoiding the over pack. Adopt a more critical attitude towards advertising and consuming thoughtfully.

4.2. Digital Footprint that Consumers are struggling to do

The announcement of the likely increase of nearly 25% of the eco-contribution opens the debate on the use of catalogs and other flyers, and alternatives that may exist for retailers. For the consumer then it is a response to 74% of our citizens saying indeed receive “too prospectus” at the time of digital, they prefer to choose business information they receive rather than suffer the inherent on-solicitation to massive distribution method of the paper. For retailers finally, it should be against a bad situation because this event is an invitation to invest in more targeted alternative digital solutions, cheaper and just as effective.

How this new contribution takes by surprise the whole sector of the mass distribution that runs on low operating margins and sustained across Europe difficult economic context of generalized decline in consumption can nevertheless criticize. Especially since this sector is low enough “digitized” All signs have not yet started their changing communication policy towards digital solutions. Until recently, it is true that the penetration of the new media (internet, mobile, tablets) was notoriously insufficient to claim relay the power of marketing since, Internet use will logically made sense to promote online sales of pure players.

However, it is different today 70% of the American use the Internet, 47% are equipped with a Smartphone and tablets ahead clearly as future media especially for shopping. Since, 60 to 80% of users use these devices to conduct online research before heading to the store the Internet web and mobile can thus finally emerge as solid communication channel for traditional retailers. These solutions called “web-to-store” exist today and are even starting to replace paper investments: the advantage will belong to those who anticipated this shift and immediately exploit this promising communication channel.

This transition also contains a much broader scope than the one microcosm of marketing directions such as digitalization is indeed a real purchasing power reservoir. Competition from pure players makes expensive online audience, but not as much as the paper advertising perspectives if we take into account the high attrition prospectus trashed. In this respect, the better targeting of digital tools, usually paid to the performance when the message found its target, according to our estimates allows a saving of at least 30% on a comparable hearing.

4.3. Reflection in the Fair Trade Products

Carrefour de solidarité international (CSI) has become a central point of fair trade. The real green revolution requires stringent environmental standards at the level of production. Los Angeles smog choking in its: California imposes serious pollution standards for automakers. However, companies are not applauding enthusiastically. Rather, consumers are in an era of deregulation and voluntary codes of conduct with little real power. The consumer is he must avoid repeating the over pack, but manufacturers continue to be wrapped. However, this socio-environmental awareness has given the rise to the phenomenon of fair trade and allowed organic food production to take more and more importance in the United States and Europe and elsewhere. The movement of boycott of Wal-Mart, for example, is a recent illustration (2004-2005) of the pressure that public participation can take to improve deemed irresponsible industrial and commercial practices.

4.4. Consumers Need Reliable Information

The consumer needs reliable information from a trusted third party is known already environmental labels, organic labels, social labels, and we already see the economy Circular allegations or labels that attempt to replay what was already known with the green washing in the bio. In particular, the certification mechanisms that are not based on open standards and scalable

find their limits: products are certified, not necessarily, that social criteria are incorporated that impact assessments are carried out, without information or organization the sector on uses. With a potentially troubled consumer difficulties setting up, or risk the confidence brought by the consumer to the efforts of circular economy themselves. However, there is in the market for commercial certifications the specifications are positioned so and claiming quality labels of circular economy on their products. Conversely, European law has adopted numerous directives and guidelines making more in addition to the operational circular economy approach, even on difficult subjects such as health and environment issues, energy efficiency and biodiversity (Labrecque et al., 2013).

Include among others the directive reach , which showed the power of an open, shared database to advance the industry, including through networks of suppliers and customers outside the networks of Europe, the requirements of eco-efficiency industry or the reduction rules to the source / reuse / recycling (3R) concerning the end of life. Principles yet confirmed by the recent deliberations of the European Parliament confirming one hand the widespread impact studies (McPeak, 2013), on the other the application of the principles of prevention, precaution and polluter pays.

4.5. Product Quality as a Universal Concept

A consumer company that mainly sells beauty products to the middle classes, this explosion is a great opportunity. In concrete terms, the potential for consumers directly interested in good quality products such as L'Oreal who can afford them and consume them regularly will spend 1 to 2.5 billion customers in the coming decade. Since, the company is convinced that in any case there will be 1 to 1.5 billion people, who will want to use good quality cosmetics (Evans & Lindsay, 2012). On a rethinking of the strategy of the company, there was a formative

moment for L'Oreal. The crisis coincided accidentally with the company's centenary in 2009. It was the right time to reflect and really ask the right questions: what is its mission, its purpose, vision, ambition and finally the strategy. This had never been defined so clearly. The need to define the record did not exist before. The company defined the mission of the company L'Oreal is beauty for all. The mission is to offer the best cosmetics for all women and men in the world in terms of quality, safety and efficiency in accordance with all ideals of beauty in their greatest diversity. The perspectives of quality should be the mission of every company. There should be three simple beliefs for a company to succeed in the world today, especially a US and the European company, it must make quality products, innovate and sell them worldwide. Anything that can be done at the government level to help stimulate and encourage companies that bring these three qualities will help the US, European and the global economy overall (Juran, 2010).

4.6. Circular Economy and Consumers

This work requires that industrial sectors can move from a process of direct competition and a marketing offer to a co-construction process, information sharing as collection means the end of life, but also responsible marketing and honest and objective information to consumers on the best use he can earn revenues. Some manufacturers have anticipated the cycles of circular economy and inserted them at the heart of their strategy. The companies have designed, marketed and distributed durable and repairable vacuum cleaners; each spare part is available at a cost adapted in the commercial network or website. All well before the beginnings of legislative adoption of a long warranty. Achievable goals are possible through the involvement of the whole sector and voluntary commitments, consolidated form of energy saving certificates. Skip the linear economy circular economy is a complex way (Geng & Doberstein, 2008). All we advance it as fast as we joined forces; consumers share their experiences based on a variety of

best practices, but also a clear and comprehensive target. Each of the markets of water, energy, transports and consumer goods, United States can invent. The country also knows maintain and preserve a position of choice. At the time the work is mobilized as abundant as the raw materials are scarce, it is time to bring all these talents to innovate and build our business around the circular economy. In addition, it should be implemented in the most open manner and wide as possible.

5. Recommendations

The instrument of this cooperation could be the classic of the international agreement. The fields covered by this cooperation are those in which globalization weakens the traditional regulatory processes including mandatory rules for consumers. The competition law would constitute one of the priority areas of cooperation. The promotion of this discipline, which functions to maintain and protect the identity of consumers, comes up against the reality of the trans-nationalization of economic powers. To the extent that it is established that the globalization of markets as globalizing dominance which are structural barriers to the liberalization of consumers. It becomes clear that neither the concept of objective territoriality of competition law nor the reference to mandatory rules constitute a solution to the problem of regulation of competitive events for consumers.

This can only come from the determination of common rules and the implementation of an international legal order of competition. The competition law in the economy and the international financial activities could be another important component of interstate cooperation in the regulation of the characteristic phenomena of economic globalization. Recent crises may ultimately facilitate this cooperation. In any case, it is clear that evolution leads in the field of international economic relations with the injection of a dose of public law for the emergence of a

separate international economic law but purely interstate in which the role of the confrontational method will further make easy for consumer protection.

6. Conclusion

The study concludes that the assessment of the consumer's interest is not the same as competition law and consumer law. Centralization in the application of antitrust law (in the state of positive law, quasi-monopoly competition authorities) and decentralization in the application of consumer law (monopoly jurisdictions) may explain these differences. If one remains in competition law, despite numerous formal references to the consumer, the picture is mixed. In the field of law anticompetitive practices, protection of consumer interests is not always the primary concern of competition authorities (e.g., GlaxoSmithKline or British Airways). We know that actions for damages filed by consumers are very rare. In addition, even if the dispute can develop with the introduction of the class action, it is difficult to quantify the prejudice of consumers, since it is not expressing only in terms of price, but of choice, quality or innovation.

Upstream, consumer interest is not taken into account in the legislative process except to be taken to postulate that any rule of competition is a priori favorable to the consumer.

Alternatively, one can observe that sectoral regulations could turn against consumers! It is significant to note that the report of the Welsh Commission of 5 November 2012 does not advocate accompanying any European decision on competition of a notice of a representative body of consumers, but an opinion of economic experts and outdoor industrial to the Commission. In the state of positive law, the welfare of the consumer is not a legal standard of competition law, but is instead a guiding principle of interpretation of the rule of competition.

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