

## Is a LPG Consumer a “Consumer” under the Competition Act, 2002

### Consumer: Definition under the Competition Act, 2002

*“Section 2(f) of the Competition Act states that, “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”;*

1. Consumer has been defined to mean any person who buys goods or avails any service for a consideration. A person who purchases the goods for resale or for any commercial purposes or for personal use or a person who hires or avails the services for any commercial purpose is not a “consumer”.

2. User of such goods or services by a person with the approval of the person who paid and promised to party the consideration is also a consumer, as defined.

3. Section 2(f) of the Competition Act, 2002 is on the lines of the definition of ‘Consumer’ under Section 2(d) of the Consumer Protection Act, 1986, except that under the CP Act a person who obtains goods for resale or for any commercial purpose and a person who avails of any service for any commercial purpose is not a “consumer”.

4. Under Section 18 of the Competition Act, 2002 the Competition Commission is duty bound to protect the interest of consumers and ensure freedom of Trade carried on by other participants in the market. Under Section 19(1)(a) of the Competition Act, 2002, a consumer may make a complaint to the commission to inquire into any alleged contravention of the provisions contained in Section 3 or Section 4 of the Competition Act, 2002.

5. Legal Precedents:

**a. *Ballarpur Industries Ltd. v. DG(I&R), (1998) 64 Com Cases 1884:***

Under the erstwhile MRTP Act the definition of ‘consumer’ contained in the Consumer Protection Act, 1986 was to be adopted for the purposes of MRTP Act, 1969.

**b. *Sanven Pharmaceuticals (P) Ltd. v. Charak Pharmaceuticals (India) Ltd.:***

Section 2(d) of the Consumer Protection Act, however excludes from its purview the definition of “consumer”, a person who purchases goods for resale or for commercial purpose.

### Service: Definition & Meaning under the Competition Act

Section 2(u) of the Competition Act, 2002, defines Service as follows:

*“Service means service of any description made available to potential users. The definition is very wide and it includes services in connection with business of any industrial or commercial matters and in particular the services of banking communication, education, financing, insurance, chit funds, real estate, transport, material treatment, processing, supply of electrical or other energy, board and/or lodging, entertainment, amusement, construction, repair, conveying of news or other information and advertising”.*

1. The definition uses the words “with business of any industrial or commercial matters”. These words seem to exclude service relating to any philanthropic purpose. But then it seems to include, though not specifically stated, professional services rendered by professionals like Advocates, Chartered Accountants, Architects and similar services, as their services would be in the nature of ‘commercial matters’.
2. Section 2(r) of MRTP Act, 1969 defined the terms ‘service’ as under:

*“Service means service of any description which is made available to potential users and includes the provision of facilities in connection with banking, financing, insurance, chit fund, real estate, transport, processing, supply of electrical or other energy, board or lodging or both, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service”.*

#### **“Service”: Definition and Meaning under the Consumer Protection Act, 1986**

*“Section 2(1)(o) of the Act provides that “service” means service of any description which is made available to potential users and includes the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or loading or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service”.*

1. The definition provides a list of eleven sectors to which service may pertain in order to come under the purview of the CP Act. The list of these sectors is not an exhaustive one. Service may be of any description and pertain to any sector if it satisfies the following criteria:
  - Service is made available to the potential users, i.e., service not only to the actual users but also to those who are capable of using it.
  - It should not be free of charge, e.g., the medical service rendered free of charge in Government hospital is not a service under the CP Act.
  - It should not be under a contract of personal service.
2. When we talk about ‘service’ under the CP Act, we take it as a regular commercial transaction. Thus the services rendered under the contract of personal service are specifically excluded from the definition.
3. The expression ‘contract of personal service’ is not defined under the CP Act. In common parlance, it means - a contract to render service in a private capacity to an individual. For example, where a servant enters into an agreement with a master for employment, or where a landlord agrees to supply water to his tenant, these are the contracts of personal service. The idea is that under a personal service relationship, a person can discontinue the service at any time according to his will, he need not approach Consumer Forum to complaint about deficiency in service.
4. There is a difference between ‘contract of personal service’ and ‘contract for personal service’. In case of ‘contract of personal service’, the service seeker can order or require what is to be done and how it should be done. Like a master can tell his servant to bring goods from a particular place. But in a ‘contract for personal service’, the service seeker can tell only what is to be done. How the work will be done is at the wish of the performer. Like when a person gives a suit to the tailor for stitching, he does not tell him which method he should use to stitch it.
5. That is the ‘contract of personal service’ is excluded from the definition of service, however the ‘contract for personal service’ is recognized as service under the CP Act.
6. It does not make a difference whether the service provider is a Government body or a Private body. Thus even if a statutory corporation provides a deficient service, it can be made liable under the provisions of CP Act.

7. Some other sectors/professionals/services which are not specified in the definition of service but which have been considered by the Consumer Forums as service sectors from time to time are Advocates, Airlines, Chartered Accountants, Courier, Chit Fund, Education, Gas Cylinder/LPG, Medical services, Postal services, Railways, Investment related services, and Telephone services.
8. Thus the service provider against whom a complaint is made performs a service for consideration which is sought by the potential user i.e. the 'consumer'.

**Conclusion:**

1. LPG Domestic Consumer is a Consumer under 2002 Act as he is taking LPG service.
2. Oil Marketing Company is the 'Service provider'.
3. That a LPG domestic consumer is a 'consumer', as the MRTP Act 1969 adopted the definition of 'consumer' from the Consumer Protection Act, 1986; as stated above and therefore Competition Act, 2002 is applicable.