


# Competition Law and Consumer Law: Remedies for Consumer Welfare and Differences in the Acts

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## **Introduction**

The Competition Act 2002 and the Consumer Protection Act 2019 share a common ideology, that is the promotion of consumer welfare. However, their methodology to achieve the same, and thereby, their outcomes are vastly different. As per the Federal Economic Competition Commission, the Competition Act 2002 (“Competition Act”) promotes vigorous competition and prevents anti-competitive business practices ensuring that businesses compete on the merits of their work. On the other hand, the Consumer Protection Act 2019 (“Consumer Act”) aims to deal directly with consumers and provide remedies via the replacement of products/services and monetary compensation.



While the Consumer Act provides enhanced remedies for a consumer to seek relief, the main goal of the Competition Act is to ensure corrective measures towards illegal cartels, monopolies, and dominant players in the market. For example, with the new Consumer Protection Act 2019, consumers can claim damages in e-commerce transactions (Section 94 of the Consumer Act protects the rights of consumers in unfair trade practices in e-commerce). This is a development that was unknown to the 1956 Act; however, recent changes in the rapidly expanding e-commerce have led to an increase in online transactions. This has led to incorporation of remedies with respect to online transactions in the Consumer Act. The Competition Act plays a significant role in the market by monitoring prices, reviewing the quality of products/services, and penalizing businesses for taking undue advantage of consumers. This article focuses on understanding the limitations and differences between the two acts and how they promote consumer welfare directly or indirectly.

## **Similarities and dissimilarities between the Competition Act and the Consumer Act**

A significant similarity between the Acts lies in their common aim of aiding and assisting the promotion of consumer welfare and interests. The objective of the Consumer Act is to protect the consumer’s rights in claiming compensation and redressal in case of defective products/services and to have access to such redressal. In contrast, the objective of the Competition Act is to assure the availability of goods and services at competitive prices for consumers by prohibiting anti-competitive agreements.

According to the Consumer Act, a person has the right to file a complaint against any trader or service provider who engages in any unfair or restrictive business practices as a result of which the complainant has experienced financial loss or damage, problems with the quality of the goods provided, or deficiencies in the quality of the services provided. The Act provides for a three-tier judicial mechanism for dispute redressal. Firstly, as per Section 28(1) of the Consumer Act, the District Commission is the first forum a Consumer can approach for dispute resolution, this is followed by the State Consumer Disputes Redressal Commission at the state level and the National Consumer Disputes Redressal Commission at the national level. At present, according to the National Consumer Disputes Redressal Commission (NCDRC), there are 678 district commissions and 35 state commissions making district commissions almost twenty times more accessible. With the new Consumer Act and under Section 34(1), the remedy has been provided to the consumers by increasing the claim amount of district commissions to take complaints from 20 lakh rupees to 1 crore rupees. Consumers have a better scope to seek redressal. Furthermore, in the said Act, Section 2(34) defines product liability as the responsibility of a product manufacturer or product seller to compensate the consumer for defective products. Under Section 83 of the Consumer Act, product liability action allows consumers the recourse to file consumer complaints against manufacturers as well, apart from the usual sellers. Under Section 47(vii) of this Act, failure to issue an invoice to a consumer is an unfair trade practice and constitutes an offence. Section 47(viii) further protects the consumers by allowing returns and/or refunds of defective goods within a maximum of thirty days of time.

The Competition Act provides numerous remedies to consumers as well. Section 4 of the said Act checks the unfair or discriminatory condition of products or services and ensures that the price in the purchase or sale of goods or services cannot be to the prejudice of the consumers. The consumer has the right to request the Competition Commission of India ("CCI"), established under Section 7(1), to inquire and take necessary steps for any adverse/alleged agreements between enterprises and corporations. However, Section 4 is applicable to only companies or corporations having a dominant position in the market, as held by the Competition Commission of India in Shri Pravahan Mohanty vs HDFC Bank Limited, Chennai & Ors. on May 23, 2011. Section 4 is applicable when there exists an abuse of the dominant position in the market, as was held in Belair Owners' Association vs DLF Limited, Huda & Ors. on January 3, 2013. Section 19 provides that the Commission must consider the benefits of consumers while determining the adverse effect of the agreement.

A significant dissimilarity between the two Acts is that the Consumer Act focuses on consumer benefits, remedies, solutions, and possible outcomes to defective goods/services, while the Competition Act focuses on the betterment of the entire market by promoting healthy competition. Moreover, the definitions of a "consumer" in both Acts are different. The Consumer Act does not include a consumer to be a person who obtains goods/services for resale or any commercial purpose, meaning that only the end user or buyer can be a consumer under this Act, wherein no resale or further commercial transactions occur. The Competition Act includes a consumer when a purchase of

goods/purchases is for resale or any commercial purpose or personal use, meaning that any re-seller or any retailer who intends to resale for any commercial purpose is also a consumer under this act. Despite the contrasting definitions of a 'consumer' in the Consumer Act and the Competition Act, the courts have managed to harmonise the application of these laws by focusing on their distinct objectives and mandates. However, the onus remains on the Competition Commission of India to make the right call-in specific enforcement decisions. Also, while there is no provision related to unfair trade practices in the Competition Act, the Consumer Act protects consumers from unfair trade practices under Section 2(47).

Another notable difference is that the Consumer Act provides relief to the consumers dealing with them directly. The Act has remedies for complaint filing in the three Commissions for unfair trade practices, replacement of goods, and awarding compensation. The Competition Act, however, does not directly deal with consumers. It eliminates practices having an adverse effect on competition, promotes and sustains competition, and protects the consumers' interests, indirectly taking care of consumer interests as a whole in the country. For example, in the case of Subash Yadav v. Force Motor Ltd and Ors, the complainant alleged that the engine of a vehicle began to overheat when the air conditioning was turned on. It was revealed that the opposing party had used a Daimler engine, typically found in Mercedes SUVs costing 300,000 rupees, in a Force One automobile that cost over a million rupees. Furthermore, it was claimed that the opposing party gained a significant market share in India by undercutting other manufacturers' prices through competitively high pricing of the vehicle. However, in this case, the Competition Commission of India chose not to intervene and dismissed the complaint. The commission concluded that the Consumer Protection Act provides a direct mechanism for addressing grievances, while the Competition Act primarily focuses on addressing competition-related issues rather than individual consumer disputes.

When two separate acts have the same goal, one may question the need for both when they could be combined into one. However, combining these acts is not a viable solution because it would not address the irregularities caused by overlaps. The origin of these acts provides an explanation for this. The Monopolies and Restrictive Trade Practices Act (MRTPA) of 1969 contained provisions related to both anti-consumer and anti-competitive practices. This inherent contradiction resulted from the fact that the former dealt with Unfair Trade Practices (UTPs), which are likely to harm consumers, while the latter dealt with monopolistic and restrictive practices that negatively affect competition. Despite its intention to provide relief to consumers, the contradictions within the MRTPA necessitated the creation of the Consumer Protection Act 1986, which was designed solely to protect consumers from the undesirable and unfair practices of businesses. Both acts have undergone numerous amendments in response to market changes and the outcome of different cases heard in consumer courts.

Lastly, as discussed by Jenisha and Kashmira in their article, with reference to Belair Owners Association v. DLF (2012), the Competition Act controls market irregularities, while the Consumer Act controls individual market transactions between the buyer and

the seller. Protection of consumer welfare is much enhanced in the Consumer Act than in the Competition Act.

### **Limitations of Consumer Protection and Competition Law**

Press Information Bureau has reported in its *Suggestions on rules under the Consumer Protection Act, 2019* that the Consumer Act fails to provide the methodologies and guidelines for seeking specific relief for a defective product/service in the sector of the e-commerce market. Although Section 94 prevents unfair trade practices in e-commerce, the Act has yet to establish the criterion for the kind of e-commerce transactions that could be addressed under the Act while lodging a consumer complaint, as well as the jurisdiction for such complaints. Furthermore, online purchasing of real ornaments, heavy machinery, furniture, et cetera provides a vast scope of what kind of defectives can be covered under the Act or the types of remedies that are available to consumers. This vast scope has not been completely answered in the Act.

As generally observed, defective services are difficult to define. The burden of proof rests on the consumer to prove a defective service; however, the Act provides no supporting format or guideline as to what a defective service would constitute or how would defectiveness in a service be measured. In *Mrs. Veena Khanna vs M/s Ansal Properties on July 9, 2007*, the NCDRC held that in case of no replacement of a service, the consumer has the right to be adequately compensated by the service provider for the delay in the service and/or for the new service to be purchased from another service provider. However, a consumer's fault in availing of service does not amount to deficiency of service from the service provider as was held in *Sapient Corporation Employees vs HDFC Bank Ltd. & Ors. on November 1, 2012*.

The Competition Act has achieved remarkable growth in the market industry, but certain loopholes remain. Almost all companies are focusing on gathering consumer data as much as possible. This is legal to the extent that such data is used for feedback on the company's products/services. However, recent developments, such as Shoshana Zuboff's paper on 'Big Data,' highlight the adverse consequences of this data collection. It reveals that large corporations extract data from consumers without their consent and exploit it as a means of unfairly accumulating wealth and market influence, resulting in an excessive textualization of the environment. For example, Amazon collects voice data, browser data, addresses, searches, and recordings. The Act does not provide specific relief against big companies using consumer data without the permission of the consumer. Another recent example is the merger of WhatsApp and Facebook, gaining control over 'big data' and treating it as an asset in determining market power. The competition law has not arrived at a solution to periodic analysis in the context of technological advances. Furthermore, under Sections 2(r), (s), and (t) of the Act, relevant market/geographic market/product market does not specify and particularly include the internet or the e-commerce market, which in reality is the largest market in the country.

### **Conclusion**

Hence, it is imperative to recognize that consumer welfare cannot be achieved in isolation by the application of either of the two. However, in order to guarantee the well-being of customers, aid of both consumer law and competition law is essential. Consumer law aims to enhance people's quality of life through safeguards and repair situations where economic self-determination is hindered by inadequate or deceptive information. At the same time, the primary objective of competition law is to protect the right of consumers to engage in economic self-determination; to guarantee the private autonomy of individuals and their ability to exercise that autonomy without interference from the exploitation of market power.