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Contribution

by

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Capacity Building in Consumer Protection: Trends and Challenges

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Introduction

1. Both competition and consumer protection form the bulk of the enforcement work done by the Competition Commission of Pakistan. Although the Commission has competence and jurisdiction in matters pertaining to competition, it is one of many other mechanisms of consumer protection currently in effect in Pakistan.
2. This paper identifies the current status of Pakistan's consumer protection efforts and the role of the Competition Commission of Pakistan in ensuring consumer protection and welfare.

The Legal Framework of Consumer Protection

3. Notwithstanding the efforts by the Federal and Provincial Governments of the country in promulgating necessary legislation, consumer protection remains a challenge in Pakistan. These legislations include:
 - *Islamabad Consumer Protection Act, 1995* (ICPA);
 - *NWFP¹ Consumer Protection Act, 1997* (NCPA);
 - *Punjab Consumer Protection Act, 2005* (PCPA);
 - *Baluchistan Consumer Protection Act, 2003* (BCPA); and
 - *Sindh Consumer Protection Act, 2015* (SCPA).
4. All consumer protection laws in Pakistan firstly contain provisions for setting up CONSUMER PROTECTION COUNCILS, which is a main part of the consumer protection regime. A major role of these councils is to create *awareness* among consumers about their rights and responsibilities and *minimise* the incidence of faulty products and unreasonable services in the marketplace. The second most important step is the formation of *Consumer Courts* that are the main consumer redressal forums, parallel to the existing ordinary courts.
5. So far, the Government of Punjab has done demonstrably more to promote rights and interests of consumers by setting up 11 CONSUMER PROTECTION COUNCILS and CONSUMER COURTS in 11 districts of the Province, both functioning under a PROVINCIAL CONSUMER PROTECTION COUNCIL and the LAHORE HIGH COURT, respectively.
6. The NCPA does not specifically mention the establishment of separate consumer courts but §14 has vested the powers and enforcement of consumer protection laws with the District Magistrates. §17 of the NCPA gives the Sessions Court appellate jurisdiction against the orders of the District Magistrate.
7. In the Federal Capital Territory, the ICPA prescribes the DISTRICT & SESSION COURTS as the forum for lodging consumer complaints.

¹ The North-West Frontier Province, subsequently renamed Khyber Pakhtunkhwa in 2010.

8. The BCPA requires a consumer court to be presided over by a judge or judicial magistrate (§12). The forum for appeal of any decision taken lie with the Sessions Court or the High Court (§18).
9. The SCPA provides for the formation of both CONSUMER PROTECTION COUNCILS and CONSUMER COURTS. However, as the law was promulgated in 2015, the formation of these entities has not taken place as yet.

THE FOCUS OF CONSUMER PROTECTION LAWS

10. Pakistan's provincial/ territorial consumer protection laws generally have one **focal issue** that pertains to **defective products or services** and the **liabilities** arising from these. The defects are covered in the Unfair Trade Practices and could be in the form of standard, design, quality, quantity, construction, composition or lack of warning etc. The laws explicitly prohibit bait advertising in any form. The manufacturer's liability arises if defect is proven and the consumer has been harmed. The manufacturer is not held liable if the consumer could know of the potential harm through ordinary knowledge or did not suffer any loss from the use of the product. However, the manufacturer is also not responsible if the consumer only suffered lack of benefit from the exchange. The liabilities in the laws greatly *put the onus of proof on the consumer* where the essence of the law may be lost due to limited resources available to the consumer.
11. The PCPA and SCPA focus on the presence of these defects in the products/services whereas the other three focus on the false representation of the presence of these defects. Furthermore, none of the five provincial/ territorial consumer protection laws have provided remedy to a consumer for omission of material information on the part of the manufacturer or service provider regarding the product or service. The PCPA, however, does cover exclusion of any condition, guarantee, right or remedy (§21).
12. The laws also specify the obligation of manufacturers in terms of the display of prices at the business place, receipt of the sale should contain date, quality, quantity, name and address of seller. Moreover, all laws have detailed prescribed procedures for receipt of complaints, settlement of claims, functions of the authorities, imposition of penalties and filing of appeals.

LEGAL SHORTCOMINGS

13. One of the major shortcomings of these laws is the lack of analysis or consideration given to unfair trade practices that take place in online and digital marketplaces. This is shaping out to be a growing concern worldwide² but the legal framework is not *au courant* with developments. None of Pakistan's existing consumer protection laws specifically provide for any remedy to consumers or raise liability for any manufacturer committing an unfair trade practice online. Furthermore, the laws define an ordinary consumer as a reasonably diligent person, which allows violators to evade most consumer rights violations.
14. Overall, the scope of rights and liabilities of sellers and buyers differ in all five provincial/ territorial consumer protection laws. The disparity in the exercise of original and appellate jurisdiction results in violations of consumer rights remaining unresolved. Adding to these issues is the overall and general lack of awareness of consumer rights in the general public that has kept the consumer protection from taking hold in the economy.

² There are many jurisdictions addressing consumers' problems resulting from the sharing economy. For example, AirBnB, the short-term rental website, is currently looking at issues of how renters' bias affects consumers and taking steps to address this (<http://www.nytimes.com/2016/09/09/technology/airbnb-anti-discrimination-rules.html>). Margarethe Vestager, the EU's Commissioner for Competition, said "There was recently a survey which found that less than a quarter of Europeans trust online businesses to protect their personal information. 81% of us feel that we don't have complete control over our personal data online." http://ec.europa.eu/commission/2014-2019/vestager/announcements/making-data-work-us_en

Consumer Protection under the Competition Act, 2010

15. William Kovacic, formerly of the U.S. FEDERAL TRADE COMMISSION (FTC) said that “consumer protection laws are important complements to competition policy.”³ Competition law is regulation of the marketplace to ensure private conduct does not suppress free trade and competition. It protects competition and optimises consumers’ interests. Consumer protection regulation denotes a body of law designed to protect a consumer’s interests at the level of the individual transaction. Both these areas share the same ultimate goal: removing distortions in the market. Former FTC Commissioner Julie Brill said “Consumer protection law addresses distortions that take place on the *demand* side of the transaction: consumers’ choices in the marketplace are infringed, for example, by deceptive advertising that gives consumers the false impression that a product or service is worth more than it really is. Competition law addresses distortions that take place on the *supply* side: anticompetitive practices like price fixing or exclusive dealing restrict supply among competitors and elevate prices.”⁴
16. The COMPETITION COMMISSION OF PAKISTAN (CCP)⁵ was established as an independent quasi-regulatory, quasi-judicial body in 2007 to ensure healthy competition between companies for the benefit of the economy. The Commission prohibits abuse of dominance in the market, certain types of anti-competitive agreements, and importantly, *deceptive marketing practices*. It also reviews mergers of undertakings that could result in a significant lessening of competition. Combined with its advocacy efforts, the Commission seeks to promote voluntary compliance and develop a ‘competition culture’ in the economy.
17. §10 of the Competition Act ensures protection of consumer rights through prohibition of **deceptive marketing practices**, which include distribution of false and misleading information to a consumer that lacks reasonable basis related to price, character, method or place of production, properties, suitability for use, or quality of goods. The Act also includes consumer rights violations made through **false or misleading comparison** of goods in the process of advertising and **fraudulent use** of another’s **registered trademark, firm name, product labelling or packaging**.
18. The Commission defined an ordinary consumer in one of its earlier Orders (the **Zong** Order, 2009⁶), as different from ‘ordinary prudent man’, where ordinary diligence is not considered a relevant factor. *The onus of proving no violation has occurred shifts automatically on the manufacturer/service provider, thereby favouring consumer rights protection* (see **para 10**). Furthermore, the Zong order says that omission of material information is a form of misleading information, thereby covering the loophole in existing consumer protection laws.
19. Moreover, contrary to the existing consumer protection laws where it is necessary to show that harm has occurred for a consumer to file a complaint and that simply suffering from a lack of benefit does not entitle a consumer to any remedy, §10 of the Competition Act particularly states that the unfair practice must only be ‘**capable of**’ misleading in order to be violating rights. The Zong Order says that it is not relevant to prove actual harm has been caused, but rather the **intention to deceive** is sufficient for any entitlement to remedy under the Competition Act.

³ William E. Kovacic, *Competition Policy, Consumer Protection, and Economic Disadvantage*, 25 J. L. & Pol’y 101, 114 (2007).

⁴ Julie Brill, *Competition and Consumer Protection: Strange Bedfellows or Best Friends?*, The Antitrust Source, December 2010.

⁵ CCP has the same powers as are vested in a Civil Court under Code of Civil Procedure, 1908. CCP has issued detailed rules and guidelines for the purpose of implementation of the Act. Similarly, for the purpose of implementation of CCP Act, an Appellate Tribunal has been set up that has an appellate jurisdiction against the orders of CCP. Furthermore, CCP has been attempting to work in co-ordination with various national governmental bodies to ease the implementation of its law and has in the process made successful liaison with a few. The Commission also works in co-ordination with other international competition agencies under the OECD’s GLOBAL FORUM ON COMPETITION, the INTERNATIONAL COMPETITION NETWORK, and UNCTAD to adopt global best practices.

⁶ The Commission’s Zong order can be found at <http://www.cc.gov.pk/images/Downloads/ZONG%20-%20Order%20-%202029-09-09%20.pdf>

Improving Consumer Protection in Pakistan

20. Although consumer protection laws are in place in Pakistan, there has been an issue of (lack of) awareness among the consumer regarding their rights and access to protection of these rights through available forums. Consumer Rights Commission of Pakistan, a non-governmental organisation, has been working on raising awareness through focus group conferences regarding various industries and products, however it has also been unable to reach out to the masses. An acute need has been felt for a consumer protection awareness drive by the Government of Pakistan on a national level.
21. To help this effort to a certain extent, in December 2015, the Commission launched its roadshow,⁷ a major advocacy campaign to raise awareness of Pakistan's competition law that was directed at the various Chambers of Commerce and Business Councils across 22 cities in Pakistan. It used press releases, animations and advertisements run on national TV to reach out to masses and held meetings with Chambers of Commerce to advocate to businesses.
22. The advocacy campaign by the CCP has been one step in the way of raising awareness, but noticeable change is still to come. With valuable lessons from the 2015 roadshow, the Commission is planning a consumer protection-focused roadshow in early 2017 in an attempt to build the knowledge of stakeholders to take necessary action in cases of consumer issues.
23. The Commission also considers its consumer protection *enforcement* actions as a form of capacity building. All statement of objections are publicised in the media as are the Orders the Commission issues after the process of hearing. This dissemination has helped sharpen focus on the consumer protection activities the Commission does under the COMPETITION ACT, 2010.
24. But apart from one-off roadshows and advocacy events, the Commission realises that it is important to form liaisons with governmental bodies that have direct or indirect linkages with consumer protection. These are, to name a few, the INTELLECTUAL PROPERTY ORGANISATION (IPO), PAKISTAN STANDARDS AND QUALITY CONTROL AUTHORITY (PSQCA), and the PAKISTAN COUNCIL OF SCIENTIFIC AND INDUSTRIAL RESEARCH (PCSIR) *etc.*
25. In today's global competitive environment, businesses are under considerable pressure to bring new products and ideas to markets rapidly to retain competitive advantage, and such pressure can cause businesses to stray from competition and consumer protection laws. National policies for consumer protection need to be redefined keeping in consideration the changing dynamics of the marketplace, both real and virtual. The policies should be framed keeping in mind the economic interest of the consumer and to allow material information be disclosed transparently to the consumer. The policies should also empower the consumer protection bodies to initiate independent probes into defective or sub-standard products or services to ensure consumer safety.
26. Changes in §10 of the Competition Act that expand the scope of the Commission's consumer protection activities would help empower the agency to expand both its enforcement and advocacy activities and help streamline the redressal system available to consumers.

⁷ Details can be seen at http://cc.gov.pk/index.php?option=com_content&view=article&id=322&Itemid=226&lang=en