

Paper Name – Indian Economy - II

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Anti-Trust Law

- Author in this article, defines that antitrust law as one which is primarily concerned with the prohibition or regulation of practices undertaken by firms in order to limit competition. It is also known as the competition law.
- He discusses the three most common anti – competitive practices –
 1. **Horizontal Agreements** – Such agreements can be made between competitors selling the same or similar products to restrict competition between themselves. Some of such agreements are – to fix prices, restrict output, divide up markets or make collusive bids in auction or procurement process.
 2. **Vertical Agreements** – Such agreements can be made between firms at different stages in the production and distribution chain that would limit competition. For example, agreements in which producers require distributors not to sell a competitors' product; not to sell outside a particular territory or to maintain recommended retail prices.
 3. Actions taken by a dominant firm to drive out rivals or prevent the entry of potential competitors. This might involve temporarily charging prices below costs (predatory pricing) or denying rivals access to crucial raw materials or essential facilities such as wire network (for telecommunications) that are owned by the dominant firm.
- Economies do not focus only on controlling anti – competition practices but a number of economies additionally do the following –
 - a) They regulate corporate Mergers and Acquisitions (M & A)
 - b) They consider hard core cartels to be illegal per se (with some clearly defined exceptions)
 - c) These economies approve M & A and other practices under a 'rule of reason' or on a 'case – to – case basis' – only if these activities provide efficiency gains that can offset any adverse effect on competition.
- However, one needs to understand that despite this, firms may enter into restrictive agreements so effective enforcement of antitrust law requires creation of an agency with investigative powers as well as economic and statistics expertise to determine

the effects of any particular practice on competition. In this context, the author discusses or analyzes Indian legal situation. In 2009, the 1969 Monopolies and Restrictive Trade Practices (MRTP) Act was repealed and Sections of 2002 Competition Act were brought in force. In this paper, author reviews both these Acts.

- **The Monopolies and Restrictive Trade Practices (MRTP) Act, 1969 – 2009**

MRTP Act was passed in response to growing evidence of concentration of economic power in Indian industry. It originally required firms that were either large (controlling, along with their ‘interconnected undertaking’ assets above a certain threshold) or dominant (having assets above a threshold as well as minimum market share) to register themselves with government and to obtain approval for substantial expansion, establishment of new undertaking, M&A. The government could also refer M&A applications to MRTP Commission.

- The Act was amended in **1984** to include a new category of ‘Unfair Trade Practices’ (UTPs) dealing with misleading advertisements and prize schemes. In **1986**, Consumer Protection Act (COPOA) was enacted and had almost identical provisions as MRTP but still several advertisements ensured that MRTP was more popular. In **1990s**, vast majority (of different kinds) of cases were pending in MRTP Commission and this put pressure on its resources and weakened its ability to resolve anti – competitive complaints which was focus of anti – trust law. All these sections of the Act were repealed in **1991**, on the account that they hindered industrial growth.

- MRTP Act Sections on Monopolistic and Restrictive Trade Practices covered anti – competitive practices. Powers of Commission was limited to issuing ‘cease and desist’ and only trivial fines could be levied for non – compliance of orders.

- Most of orders of Commission pertained to vertical agreements and cartels were rarely brought into account. Commission entertained the complaints of – unfair or discriminatory pricing, delayed delivery, etc. which are not competitive complaints.

- **The Competition Act, 2002**

In December 2002, Parliament passed a new Competition Act and its salient features were –

- a) It doesn’t attempt to control the size or dominance of firms.
- b) It follows a modern classification in terms of anti – competition agreements, abuse of dominance and combinations (M & A).
- c) It doesn’t have any counterpart to the UTP section.
- d) Novel features of this Act are –
 - i. Mandatory notification and review (by CCI and not government) of combinations for firms above specified assets or turnover thresholds, with

the authority to prevent, undo or modify those having an Appreciable Adverse Effect on Competition (AAEC).

- ii. Long lists of economic factors that the CCI should have 'due regard to' in deciding a case.
 - iii. Provisional for substantial monetary penalties.
 - e) Unlike MRTP, CCI can employ outside experts, take action against conduct by firms based abroad that might have an AAEC in India.
 - f) This Act has been entrusted with competition advocacy and may advise the government or any statutory body on matters come under the Act.
- Competition Act was passed in 2002. However, it's implementation was held up by a legal challenge to constitutional validity of its provisions relating to the composition and selection procedure for the proposed Competition Commission of India (CCI). An amending Act was passed in 2007 to get around this problem but finally it was fully constituted in May, 2009. MRTP Act was repealed in September, **2009** and MRTP Commission was abolished in October, 2009.
 - Concerns or Issues regarding Competition Act –
 - a) Possibility of potential conflict between the CCI and sectoral regulators which have been regulating competition in areas such as telecommunications, financial markets, electricity.
 - b) There are specific clauses in Act that empowers government to issue binding policy directives to the Commission or to supersede it entirely, thus threatening its autonomy.
 - c) Some clauses are ambiguous and may defeat the intention of protecting competition. For example, the Act allows CCI to take into account the 'contribution to economic development' by the firm in dominant position but 'development' can be defined either ways i.e. no clear definition of development is provided in the Act.
 - d) Instead of regarding hard core cartels as illegal per se without investigating their effects, the Act only states that they are presumed to have an AAEC. This presumption may allow for an efficiency defense of cartels.
 - e) The Act doesn't require an AAEC to establish abuse of dominance, which may invite contractual disputes and complaints about unfair or discriminatory pricing. Most of the cases CCI took in the first 2 years of its inception were of this kind.