

FROM MRTP TO COMPETITION ACT: AN EVOLUTION OF COMPETITION LAWS IN INDIA

Soumi Bandyopadhyay*

INTRODUCTION

Competition is defined as “a situation in a market in which firms or sellers independently strive for the buyers’ patronage in order to achieve a particular business objective, for example, profits, sales or market share”¹ (World Bank, 1999)

Competition law plays a crucial role in promoting fair competition and protecting consumers in the marketplace. In India, the evolution of competition law has been a long and complex journey, characterized by several legislative and policy changes. The Monopolies and Restrictive Trade Practices (MRTP) Act, 1969 was the first competition law enacted in India, which focused on controlling monopolies and restricting trade practices that were deemed harmful to competition. Under the MRTP Act, the Monopolies and Restrictive Trade Practices Commission (MRTPC) was established to oversee the implementation and enforcement of the Act. The MRTPC was empowered to investigate and penalize any entity found to be engaging in monopolistic or restrictive trade practices. However, the MRTP Act was criticized for being inadequate in addressing contemporary competition issues, and a new competition law was needed. Following the economic reforms of 1991, globalization had a significant impact on India. As a result, there was a requirement to revise the existing Monopolies and Restrictive Trade Practices (MRTP) Act to keep up with the swiftly evolving economic landscape.² In response to this need, the Competition Act, 2002 was enacted, which replaced the MRTP Act and established the Competition Commission of India (CCI) as the key regulator for enforcing competition law in India.

The evolution of competition law in India is a complex and dynamic process that has undergone significant changes in the past few decades. It has been influenced by several landmark court cases, which have shaped the interpretation and enforcement of competition

*LLM, FIRST YEAR, PONDICHERY UNIVERSITY.

¹Parthapratim Das, *Development of Competition law in India*, IPLEADERS BLOG (April 18, 2023, 10:18 p.m.), <https://blog.ipleaders.in/competition-law-india/>

²Mohd Aqib Aslam, *Monopolistic and Restrictive Trade Practices, 1969*, LEGAL SERVICE INDIA (April 16, 2023, 10:03 p.m.), legalserviceindia.com/legal/article-7043-monopolistic-and-restrictive-trade-practices-act-1969-an-overview.html

law in India. The modern competition law framework in India is based on the Competition Act of 2002. The Competition Act is enforced by the Competition Commission of India (CCI), which is a statutory body established in 2003. The Competition Commission of India (CCI) is a quasi-judicial entity that serves as a regulatory agency to prevent and regulate anti-competitive business practices in India.³The CCI is responsible for enforcing the provisions of the Act and promoting competition in the Indian market.

Since its enactment, the Competition Act has undergone several amendments to address emerging challenges and align with global best practices. In 2007, the Act was amended to allow for the regulation of mergers and acquisitions that may have an adverse effect on competition. In 2009, the Act was amended to include provisions related to anti-competitive agreements, abuse of dominance, and competition advocacy.

One of the key highlights of the evolution of competition law in India has been the increasing focus on promoting competition and addressing anti-competitive practices in the digital economy. In 2019, the CCI released a report on e-commerce in India, which highlighted the need for a level playing field in the online marketplace and the importance of competition regulation in the digital economy. The evolution of competition law in India is ongoing, and there are ongoing debates on the effectiveness of competition law in promoting competition and protecting consumers in the Indian marketplace.

THE MONOPOLIES AND RESTRICTIVE TRADE PRACTICES ACT, 1969

HISTORICAL BACKGROUND OF THE ACT:

The Monopolies and Restrictive Trade Practices Act of 1969 (MRTP Act) was the country's first legislation governing competition. The MRTP Act came into effect on 1st June 1970 with the intention of preventing the concentration of wealth in the hands of few people. It additionally disallowed practices that are harmful to the public at large, such as monopolistic and discriminatory behaviours. The MRTP Act was based on the tenets of Articles 38 and 39 of the Directive Principles of State Policy of the Indian Constitution, which state that the state must secure a social order for the advancement of public welfare and that certain principles of policy must be adhered to by the state, came into effect in 1969.

³DAS, *supra note 1*

The three studies listed below contributed to the creation of the MRTP Act. The first was a study conducted by a committee under the direction of R.K. Hazari that looked into the Industrial (Development and Regulation) Act of 1951's industrial licensing process. The committee concluded that the licensing system's operation had led to the disproportionate growth of some business houses in India. The second study of the country's income distribution and levels was conducted by a group led by Professor P.C. Mahalonobis. According to the committee's assessment, up to 40% of India's revenue has been accumulated by the top 10% of the population. The committee also pointed out that large corporations were growing due to the country's planned economy model and advocated for the need to gather in-depth data on the various facets of economic power concentration.

Under the direction of K.C. Das Gupta, the government-appointed Monopolies Inquiry Commission (MIC), which was established in April 1964, carried out the third study. It was mandated to investigate the scope and impact of the concentration of power in private hands as well as the presence of monopolistic and restrictive trade practices in significant economic activity sectors. The MIC stated that there was a concentration of economic power in terms of both industry and product in its report delivered in October 1965. In light of its conclusions, MIC created a measure to control how the economy functions to prevent the concentration of economic power. The measure also includes provisions for monopoly control and the outlawing of monopolistic and restrictive business practices that are harmful to the public interest.

The primary objective of the MRTP Act was to protect against monopolistic trade practices, restrictive trade practices, and unfair trade practices.

Subsequently, the MRTP Act underwent several amendments in 1974, 1980, 1982, 1984, 1986, 1988, and 1991. The amendments made in 1992 and 1994 were influenced by the recommendations of the Sachar Committee. The committee acknowledged the significance of business models involving advertisements and sales and also highlighted the issue of fictitious bargains being marketed to consumers. The period of 1990 and 1991 witnessed economic reforms in India, leading to the introduction of liberalization and privatization and globalization. These changes highlighted the necessity for a new competition law. In response to the guidelines issued by the World Trade Organization (WTO) in 1999, the Indian government established a high-level committee with a primary focus on the competition policies of the country.

The Raghavan Committee, established after the release of the WTO guidelines in 1999, recommended the formation of a competition commission and the dissolution of the MRTP Commission due to the changing socio-economic scenario. Consequently, a new competition law draft was prepared and presented to the government in November 2000. The competition bill was then introduced in parliament and ultimately passed, leading to the enactment of the Competition Act in December 2002. As a result, the MRTP Act was repealed and replaced by the Competition Act of 2002.

The Competition Act established the Competition Commission of India (CCI) as a quasi-judicial body that operates within the framework of the rule of law when making decisions. The CCI possesses the powers of a civil court to gather evidence. The Act is primarily governed by three key elements: anti-competitive agreements, abuse of dominant positions, and combinations. These elements provide the framework for regulating competition in India under the purview of the CCI.

THE OBJECTIVES AND KEY PROVISIONS OF THE MRTP ACT:

For the purposes of this paper, it is imperative to provide a brief overview of the MRTP Act in order to establish a foundation for its study. We could better appreciate the Act's scope and applicability if we followed its guiding principles:

1. **Command-and-Control Approach:** It used a command-and-control strategy. The Act mandated that before undertaking any type of corporate restructuring or a potential takeover, firms with assets worth more than INR 20 crores must obtain permission from the Central Government. To determine the dominating undertaking, a standard was established. Businesses with assets worth greater than INR 1 crore were assumed to be dominant by default.
2. **Trade Practices that are Monopolistic:** Monopolistic Trade Practices are covered under Chapter IV of the MRTP Act, 1969. These are the activities that are undertaken by Big Corporate Houses by exploiting their position in the market. This meant that activities that hamper or eliminate competition of healthy nature in the economic market were prohibited as these trade practices were anti-consumer.
3. **Restrictive Trade Practices:** Restrictive Trade Practices are activities that stop the flow of capital or profits back into the market. Some businesses often tend to control the supply of goods or products in the market by either restricting production or

taking control of the delivery. The Act disallows and ensures firms do not indulge in these practices.

4. **Unfair Trade Practices:-** Unfair Trade Practices are acts of false & misleading nature related to goods and services by the firms. Section 36-A of the MRTP Act, 1969 explicitly prohibits firms from indulging in Unfair Trade Practices (UTPs). The provision against Unfair Trade Practices was inserted by the 1984 Amendment to the MRTP Act.

CRITICISMS AND LIMITATIONS OF THE MRTP ACT:

The Monopolies and Restrictive Trade Practices Act (MRTP Act) of 1969 had several primary defects when it came to addressing anti-competitive agreements, abuse of dominance, and mergers and acquisitions. Here are some of the key shortcomings of the MRTP Act in these areas:

1. **Limited Scope:** The MRTP Act primarily focused on regulating monopolies and restrictive trade practices, leaving gaps in the regulation of other anti-competitive activities. It did not explicitly cover anti-competitive agreements or abuse of dominance, which are crucial aspects of competition law. This limited scope hindered effective regulation of various forms of anti-competitive behaviour.
2. **Lack of Clarity:** The MRTP Act lacked clarity in defining anti-competitive agreements and abuse of dominance, leading to ambiguity and legal uncertainty. The absence of clear provisions and guidelines made it challenging for businesses to determine whether their actions would violate the law. This lack of clarity also made enforcement and legal proceedings more complex.
3. **Ineffective Remedies:** The MRTP Act had limited provisions for remedying anti-competitive practices. The Act primarily relied on cease-and-desist orders, which were often insufficient to deter anti-competitive behavior effectively. The absence of more robust remedies, such as fines or structural remedies, weakened the Act's ability to address and prevent anti-competitive practices effectively.
4. **Dominance per se considered bad:** The MRTP Act presumes that all restrictive trade practices are anti-competitive and require registration of the said agreements. Under

the MRTP Act, dominance per se is considered bad. Under the Competition Act, it is the 'abuse of dominance' that is considered bad.

5. **Inadequate Merger Control:** The MRTP Act did not have a dedicated framework for regulating mergers and acquisitions. As a result, the Act did not provide clear guidelines or thresholds for assessing the anticompetitive effects of mergers. The absence of a comprehensive merger control mechanism allowed potentially anti-competitive mergers to go unaddressed, leading to concentrated market power and reduced competition.
6. **Limited Enforcement Powers:** The MRTP Act did not provide the regulatory authority with adequate enforcement powers. The MRTP Commission, responsible for enforcing the Act, had limited authority to investigate anti-competitive practices, impose fines, or impose effective penalties. This limited enforcement capability undermined the Act's effectiveness in deterring anti-competitive behavior and ensuring compliance.
7. **Lengthy Legal Proceedings:** Legal proceedings under the MRTP Act were often lengthy and time-consuming. The Act lacked mechanisms to expedite cases, resulting in delays in resolving competition-related disputes. These delays reduced the effectiveness of the MRTP Act in providing timely remedies and discouraging anti-competitive practices.
8. **Lack of Autonomy:** The MRTP Commission, responsible for enforcing the Act, faced challenges in terms of independence and autonomy. The Commission's functioning was influenced by government control, which affected its ability to act impartially and effectively regulate competition.

THE ROAD TO COMPETITION ACT, 2002

THE DRAFTING AND ENACTMENT OF THE COMPETITION ACT, 2002:

The Vajpayee government developed the concept of the 'Competition Commission' and introduced it as the Competition Act, 2002. It was considered that competition and private enterprise needed to be encouraged, particularly in light of the 1991 economic liberalisation of India. Modern competition rules are based on the Competition Act of 2002, as updated

by the Competition (Amendment) Act of 2007. The President gave his approval to the Competition Act of 2002 in January of 2003, after Parliament enacted it in 2002. The Competition Commission of India (CCI) and the Competition Appellate Tribunal have been constituted in compliance with the Amendment Act's requirements.

In order to not only prevent negative effects on competition but also sustain and foster pro-competitive behaviour, the Competition Act was passed in 2002. The Act also aims to safeguard the freedom of trade practised by all market players in India, as well as any issues related to or incidental to freedom of trade. The new law's framework not only fixed the shoddy setup from its predecessor, but it also made adjustments and provided equipment for the time's economic environment.

The new Act, whose enforcement belatedly began in May 2009, appears on the surface to conform more closely to the principles of modern anti-trust economics. It covers the usual three areas: anti-competitive agreements between firms, abuse of dominance by corporates, and "combinations" (i.e., mergers, amalgamations, or acquisitions of control). Wisely, it does not deal with "unfair" trade practices, which distracted the MRTP Commission. It defines terms that were left open-ended in the MRTP Act and lays down several economic criteria that the CCI should apply in deciding cases, as well as detailed time-bound steps for reviewing combinations.

Unlike in the MRTP Act, the CCI, rather than the government, will decide on combinations and also abuse of dominance. The CCI can block or undo a combination, but it can also require that it be modified so as to allow it to proceed while taking care of competition concerns. The Competition Act explicitly asserts jurisdiction over foreign combinations and the conduct of firms based abroad having anti-competitive effects in India. This restores India's ability to act against foreign cartels and to follow the European Commission in taking action against Microsoft for bundling applications software with its Windows operating system.

Unlike the MRTP Act, the Competition Act provides for substantial monetary penalties on firms that infringe it or fail to comply with CCI orders, and a leniency program that allows for reduced penalties to induce cartel members to provide evidence that can be used against others. The CCI, unlike its predecessor, can call on outside experts and also undertake advocacy to spread awareness of competition principles. Apart from these positive features of

the Act itself, the CCI has been constituted with its full complement of members, a much larger staff, and a website, which the MRTP Commission never had.

OBJECTIVES OF COMPETITION ACT, 2002

The Competition Act 2002 is a law that aims to protect the interests of customers from anti-competitive behaviour, encourage and maintain market competition, defend consumer rights, and ensure the freedom of trade of other market players. The new legislation has replaced the old MRTP Act, which only previously applied to India and prohibited monopolies and other restrictive trade practices.

The Competition Appellate Tribunal, the Competition Commission of India (CCI), and the National Competition Policy (NCP) are the three primary parts of the competition law upon which the Competition Act was constructed. This regulation is passed typically to make sure that market competition features as supposed and that purchasers can get access to a much broader variety of goods at honest costs.

SCOPE AND COVERAGE OF THE ACT

Commercial competition within India is regulated under the Competition Act 2002. The Competition Act was enacted to encourage and preserve market competition, protect consumer interests, and guarantee trade freedom for other Indian market participants. The Government of India's document on competition policy acknowledges that market flaws might produce less-than-ideal results. It encompasses several key areas, including anti-competitive agreements, abuse of dominance, and mergers. Here's a brief overview of how the Competition Act addresses each of these aspects:

Anti-Competitive Agreements: The Competition Act prohibits agreements, arrangements, or practices among businesses that have the effect of significantly preventing, restricting, or distorting competition. These may include price-fixing, bid-rigging, market allocation, and other forms of collusion. The Act aims to ensure that businesses compete fairly and independently, allowing consumers to benefit from competitive prices, choices, and innovation.

Abuse of Dominance: The Act also addresses situations where a dominant firm or group of firms exploits their market power to restrict competition. It prohibits abuse of dominance,

such as engaging in anti-competitive practices that harm competitors, excludes them from the market, or hinder consumer welfare. Examples may include predatory pricing, refusal to deal, tying and bundling, and discriminatory practices. The Act aims to prevent the misuse of market power and promote a level playing field for all competitors.

Mergers: The Competition Act regulates mergers and acquisitions to ensure that they do not substantially lessen competition in the market. It requires that certain mergers and acquisitions be notified to the competent authority for review and approval before they can be implemented. The authority assesses whether the merger would result in a significant lessening of competition, taking into account factors such as market concentration, entry barriers, and the likelihood of coordinated behavior. If a merger is found to be anti-competitive, it may be blocked, or conditions may be imposed to mitigate the adverse effects.

The Competition Act, along with the relevant regulatory bodies or competition authorities, plays a crucial role in ensuring that markets remain competitive, encouraging innovation, efficiency, and consumer welfare. It provides a framework for identifying and addressing anti-competitive behaviour, protecting the rights of consumers, and fostering a healthy business environment.

COMPARATIVE ANALYSIS OF THE COMPETITION ACT AND THE MRTP ACT:

The Competition Act and the Monopolies and Restrictive Trade Practices (MRTP) Act are two significant pieces of legislation governing competition law in India. A comparative analysis of these acts reveals notable differences and advancements in the Competition Act, addressing the limitations of the MRTP Act.

Scope and Coverage: The MRTP Act primarily focused on addressing monopolies and regulating restrictive trade practices whereas the Competition Act has a broader scope, covering anti-competitive agreements, abuse of dominance, and mergers. It recognizes the significance of competition as a driver of economic growth and consumer welfare.

Emphasis on Competition: The MRTP Act had a limited emphasis on competition and instead emphasized preventing monopolies and restrictive trade practices through government control. The Competition Act shifts the focus towards promoting fair competition, recognizing it as a means to enhance efficiency, innovation, and consumer benefits. It aims to create a level playing field for businesses.

Merger Control: The MRTP Act lacked an effective merger control mechanism, resulting in limited scrutiny of mergers and acquisitions. In comparison, the Competition Act introduced a robust merger control regime. It mandates the notification and review of mergers and acquisitions that meet certain thresholds, enabling the prevention of anti-competitive consolidations and ensuring a competitive market structure.

Enforcement Mechanisms: The MRTP Act lacked a specialized competition authority and relied on the Monopolies and Restrictive Trade Practices Commission (MRTPC) for enforcement. The Competition Act established the Competition Commission of India (CCI) as a specialized authority for enforcing competition law. The CCI possesses enhanced investigative powers, including the ability to inquire into anti-competitive practices and impose penalties.

Approach to Regulation: The MRTP Act had a more regulatory approach, involving prior approval and government control over various business activities whereas, the Competition Act adopts a more market-oriented approach, focusing on enforcement and the promotion of competition. It encourages self-regulation, competition advocacy, and voluntary compliance by businesses.

Consumer Welfare: The MRTP Act did not explicitly prioritize consumer welfare, focusing more on market structure and the prevention of monopolies. The Competition Act explicitly recognizes the importance of consumer welfare and aims to protect consumer interests by promoting competition, preventing anti-competitive behaviour, and ensuring fair and affordable prices.

International Alignment: The MRTP Act had limited alignment with international competition law principles and practices. The Competition Act aligns with international best practices, reflecting the influence of global competition law frameworks and harmonization efforts.

The Competition Act represents a significant improvement over the MRTP Act by addressing its limitations. The Competition Act's broader scope, emphasis on competition, the introduction of merger control provisions, specialized enforcement authority, and focus on consumer welfare contribute to a more effective and modern competition law regime in India.

THE COMPETITION ACT'S SUCCESS IN SURMOUNTING THE LIMITATIONS OF THE MRTP ACT: AN ANALYSIS

The MRTP Act (Monopolies and Restrictive Trade Practices Act) was an Indian legislation that was in force until it was repealed and replaced by the Competition Act in 2002. The MRTP Act had certain limitations and shortcomings, which led to the introduction of the Competition Act with the aim of addressing those limitations and promoting effective competition in the Indian market. Here are some ways in which the Competition Act has been successful in removing the limitations of the MRTP Act:

Expanded Scope: The MRTP Act primarily focused on preventing monopolies and restricting trade practices. However, the Competition Act has a broader scope and covers a wider range of anti-competitive practices, including anti-competitive agreements, abuse of dominance, and mergers. This expansion of scope allows for a more comprehensive and nuanced approach to tackling anti-competitive behavior.

Shift in Focus: The MRTP Act placed significant emphasis on regulating and controlling the behavior of businesses, often leading to excessive government intervention. In contrast, the Competition Act emphasizes the importance of competition itself as a driving force for economic growth and consumer welfare. It encourages market forces to operate freely while targeting specific anti-competitive practices and behavior that may harm competition.

Pro-Active Approach: The Competition Act introduced proactive measures, such as the establishment of the Competition Commission of India (CCI), which is responsible for promoting and ensuring fair competition in the market. The CCI has the power to investigate complaints, issue cease and desist orders, impose penalties, and take other enforcement actions. This proactive approach has helped in creating a more responsive and effective regulatory framework.

Merger Control: One of the key limitations of the MRTP Act was the absence of a robust merger control regime. The Competition Act introduced provisions for mandatory notification and review of mergers and acquisitions that meet certain thresholds. This has helped in preventing anti-competitive consolidation and ensuring that mergers do not harm competition in the market.

Competition Advocacy: The Competition Act also focuses on competition advocacy, which involves creating awareness about the benefits of competition, providing guidance to businesses, and promoting a competition culture. This approach helps in preventing anti-competitive practices from arising in the first place, promoting compliance, and fostering a competitive business environment.

Overall, the Competition Act has been successful in addressing the limitations of the MRTP Act by introducing a more comprehensive and modern competition law framework. It has helped in promoting fair competition, protecting consumer interests, and creating a level playing field for businesses in India. However, the success of the Competition Act ultimately depends on effective implementation, enforcement, and ongoing adaptation to emerging challenges in the marketplace.

RECENT CHALLENGES AND DEVELOPMENTS

In India, competition law faces several challenges in its implementation and enforcement. These challenges arise from various factors and pose significant hurdles to achieving the objectives of promoting fair competition and protecting consumer interests. One of the primary challenges is the complex and dynamic nature of the Indian market. With its vast population, diverse industries, and regional disparities, assessing market structures and anti-competitive practices becomes inherently challenging. Understanding the intricacies of different sectors, identifying anti-competitive behaviour, and determining the appropriate remedies require in-depth analysis and expertise.

Another key challenge lies in the evolving digital economy. The rapid growth of e-commerce, digital platforms, and technology-driven sectors has introduced new dimensions to competition law. Issues such as platform dominance, data privacy, and algorithms necessitate an updated legal framework that can effectively address digital challenges. Developing expertise in digital markets, dealing with data complexities, and adapting competition law principles to the digital era are critical challenges that need to be addressed.

Enforcement effectiveness is also a challenge in competition law. While the Competition Commission of India (CCI) has made significant strides in enforcing the law, resource constraints and the sheer volume of cases can affect the pace and efficiency of investigations.

The need for specialized skills, economic analysis, and technical expertise poses additional challenges in effectively prosecuting anti-competitive practices.

Additionally, the Indian judiciary's role in competition law poses challenges. Ensuring timely disposal of cases, availability of expert judges, and consistent interpretation of competition law provisions are essential for efficient enforcement. The establishment of specialized competition benches and the development of competition jurisprudence can contribute to addressing these challenges.

Leniency programs and whistleblower provisions are vital for uncovering cartels and anti-competitive practices. However, encouraging companies and individuals to come forward and provide evidence remains a challenge. Ensuring confidentiality, providing adequate incentives, and addressing concerns related to reprisals are crucial for the success of these programs.

Furthermore, effective coordination and cooperation between the CCI and sector-specific regulators is critical. Overlapping jurisdiction and potential conflicts can hinder enforcement efforts. Establishing mechanisms for effective collaboration and coordination among regulatory bodies is necessary to address these challenges and promote consistency in decision-making.

To overcome these challenges, continuous capacity building, both within the competition authority and the judiciary, is necessary. Strengthening the enforcement framework, enhancing expertise in digital markets, and promoting awareness about competition law among businesses and consumers are key steps in addressing the challenges faced by competition law in India.

Overall, addressing the challenges in competition law requires a multi-pronged approach involving legislative reforms, institutional strengthening, capacity building, and effective collaboration between stakeholders. By doing so, India can strengthen its competition law regime and ensure a competitive market environment that fosters innovation, protects consumer interests and drives economic growth.