



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL**
**ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

WWW.WHITEBLACKLEGAL.CO.IN

DISCLAIMER

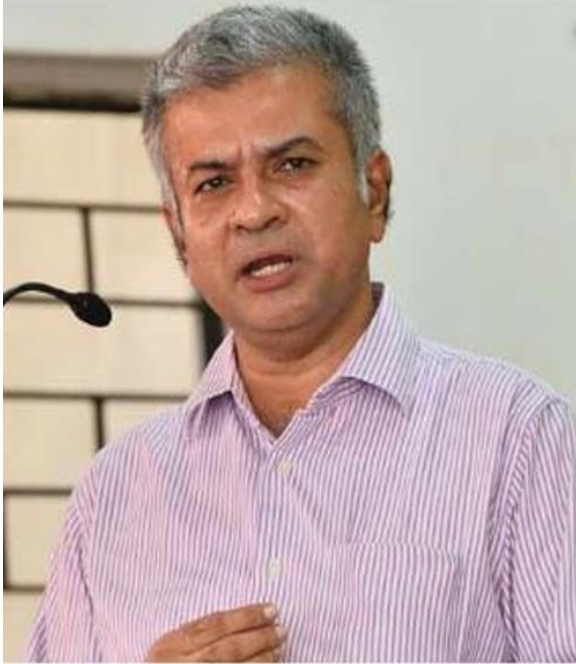
No part of this publication may be reproduced or copied in any form by any means without prior written permission of Editor-in-chief of White Black Legal

– The Law Journal. The Editorial Team of White Black Legal holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of White Black Legal. Though all efforts are made to ensure the accuracy and correctness of the information published, White Black Legal shall not be responsible for any errors caused due to oversight or otherwise.

W H I T E B L A C K
L E G A L

EDITORIAL TEAM

Raju Narayana Swamy (IAS) Indian Administrative Service officer



Dr. Raju Narayana Swamy popularly known as Kerala's Anti Corruption Crusader is the All India Topper of the 1991 batch of the IAS and is currently posted as Principal Secretary to the Government of Kerala . He has earned many accolades as he hit against the political-bureaucrat corruption nexus in India. Dr Swamy holds a B.Tech in Computer Science and Engineering from the IIT Madras and a Ph. D. in Cyber Law from Gujarat National Law University . He also has an LLM (Pro) (with specialization in IPR) as well as three PG Diplomas from the National Law University, Delhi- one in Urban Environmental Management and Law, another in Environmental Law and Policy and a third one in Tourism and Environmental Law. He also holds a post-graduate diploma in IPR from the National Law School, Bengaluru and a

professional diploma in Public Procurement from the World Bank.

Dr. R. K. Upadhyay

Dr. R. K. Upadhyay is Registrar, University of Kota (Raj.), Dr Upadhyay obtained LLB , LLM degrees from Banaras Hindu University & Phd from university of Kota.He has succesfully completed UGC sponsored M.R.P for the work in the ares of the various prisoners reforms in the state of the Rajasthan.



Senior Editor

Dr. Neha Mishra



Dr. Neha Mishra is Associate Professor & Associate Dean (Scholarships) in Jindal Global Law School, OP Jindal Global University. She was awarded both her PhD degree and Associate Professor & Associate Dean M.A.; LL.B. (University of Delhi); LL.M.; Ph.D. (NLSIU, Bangalore) LLM from National Law School of India University, Bengaluru; she did her LL.B. from Faculty of Law, Delhi University as well as M.A. and B.A. from Hindu College and DCAC from DU respectively. Neha has been a Visiting Fellow, School of Social Work, Michigan State University, 2016 and invited speaker Panelist at Global Conference, Whitney R. Harris World Law Institute, Washington University in St.Louis, 2015.

Ms. Sumiti Ahuja

Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi,

Ms. Sumiti Ahuja completed her LL.M. from the Indian Law Institute with specialization in Criminal Law and Corporate Law, and has over nine years of teaching experience. She has done her LL.B. from the Faculty of Law, University of Delhi. She is currently pursuing Ph.D. in the area of Forensics and Law. Prior to joining the teaching profession, she has worked as Research Assistant for projects funded by different agencies of Govt. of India. She has developed various audio-video teaching modules under UGC e-PG Pathshala programme in the area of Criminology, under the aegis of an MHRD Project. Her areas of interest are Criminal Law, Law of Evidence, Interpretation of Statutes, and Clinical Legal Education.



Dr. Navtika Singh Nautiyal

Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Intercountry adoption laws from Uttranchal University, Dehradun' and LLM from Indian Law Institute, New Delhi.



Dr. Rinu Saraswat

Associate Professor at School of Law, Apex University, Jaipur,
M.A, LL.M, Ph.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

Dr. Nitesh Saraswat

E.MBA, LL.M, Ph.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.

More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.



Subhrajit Chanda

BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.



TOPIC- “MAPPING THE JOURNEY OF COMPETITION LAW IN INDIA”

By - Dibyanshu Pradhan
SOA National of Law Bhubaneswar, Odisha

ABSTRACT

This paper delves into the intricate journey of competition law in India, tracing its evolution from its inception to its current state. Through a meticulous examination of legislative developments, landmark cases, and regulatory frameworks, it elucidates the dynamic landscape of competition regulation in the country. The abstract explores the key milestones, challenges, and transformations that have shaped the trajectory of competition law enforcement in India. By analyzing the interplay between legal provisions, enforcement mechanisms, and judicial interpretations, it provides insights into the efficacy and effectiveness of competition law in fostering market competitiveness, consumer welfare, and economic growth. This abstract aims to offer a comprehensive understanding of the nuances and complexities inherent in mapping the journey of competition law in India.

INTRODUCTION

Competition law in India has emerged as a vital regulatory framework governing economic activities, aimed at fostering fair competition, preventing monopolistic practices, and safeguarding consumer interests. Understanding the evolution of competition law in India is essential for comprehending its current landscape and anticipating future developments. This introduction provides an overview of competition law in India and highlights the significance of studying its evolution.

Competition law, also known as antitrust law, encompasses a set of legal principles and regulations designed to promote market competition, prevent anti-competitive behaviour, and ensure a level playing field for businesses. In India, the evolution of competition law can be traced back to the colonial era, with the enactment of the Indian Companies Act, 1913¹, which contained provisions related to monopolies and restrictive trade practices. However, the modern framework of competition law in India began to take shape with the introduction of the Monopolies and Restrictive Trade Practices (MRTP) Act, 1969².

¹ Indian Companies Act, 1913

² Monopolies and Restrictive Trade Practices Act, 1969

The MRTP Act represented a significant milestone in India's competition law regime, aiming to prevent the concentration of economic power, regulate monopolistic practices, and promote fair competition. It established the Monopolies and Restrictive Trade Practices Commission (MRTPC) as the regulatory authority responsible for enforcing the provisions of the Act. Over the years, the MRTP Act underwent amendments to address emerging economic challenges and align with global best practices.

In 2002, India embarked on a new phase of competition law with the enactment of the Competition Act, replacing the outdated MRTP Act. The Competition Act introduced a modern and comprehensive framework for regulating anti-competitive practices, mergers and acquisitions, and promoting competition advocacy. The Competition Commission of India (CCI) was established as the apex regulatory body entrusted with the enforcement of the Act, marking a significant shift towards a more robust and proactive approach to competition regulation.

ORIGIN AND EVOLUTION OF COMPETITION LAW IN INDIA

A. Colonial-era regulations

Competition law in India has its roots in the colonial-era regulations that were primarily aimed at regulating the activities of trading companies. During British rule, various legislative measures were introduced to govern economic activities and ensure a level playing field in the marketplace. One of the earliest attempts to regulate competition can be traced back to the Indian Companies Act of 1913, which contained provisions related to monopolies, restrictive trade practices, and unfair competition. However, these provisions were rudimentary and lacked the sophistication of modern competition law frameworks.

The Indian Companies Act of 1913 provided for the regulation of companies and the prevention of oppressive and fraudulent practices. It empowered the government to investigate and take action against companies engaging in monopolistic behaviour or unfair trade practices. Additionally, the Act aimed to protect the interests of shareholders and creditors by ensuring transparency and accountability in corporate governance.

Despite these early regulatory efforts, competition law in colonial India remained relatively undeveloped compared to its counterparts in the Western world. The focus was primarily on maintaining order in the marketplace rather than promoting competition or protecting consumer welfare. Moreover, the enforcement mechanisms were weak, and the regulatory authorities lacked the expertise and resources to effectively address anti-competitive practices.

B. Introduction of the MRTP Act (1969)

The modern framework of competition law in India began to take shape with the introduction of the Monopolies and Restrictive Trade Practices (MRTP) Act in 1969. The MRTP Act was a landmark legislation aimed at preventing the concentration of economic power, regulating monopolistic practices, and promoting fair competition in the Indian marketplace. It marked a significant departure from the colonial-era regulations and laid the foundation for the development of a comprehensive competition law regime in the country.

The MRTP Act sought to achieve its objectives through a combination of regulatory and adjudicatory mechanisms. It established the Monopolies and Restrictive Trade Practices Commission (MRTPC) as the regulatory authority responsible for enforcing the provisions of the Act. The MRTPC was empowered to investigate complaints of anti-competitive behavior, issue cease and desist orders, and impose penalties on violators. Additionally, the Act provided for the establishment of appellate tribunals to adjudicate disputes arising from the enforcement of the Act.

One of the key features of the MRTP Act was its broad definition of "restrictive trade practices," which encompassed a wide range of anti-competitive conduct such as price-fixing, collusion, bid-rigging, and market division. The Act also prohibited monopolistic practices, mergers, and acquisitions that were likely to have an adverse effect on competition in the market. By prohibiting unfair trade practices and promoting competition, the MRTP Act aimed to protect consumer interests, promote economic efficiency, and ensure a level playing field for businesses.

In conclusion, the introduction of the MRTP Act in 1969 marked a significant milestone in the evolution of competition law in India³. It represented a departure from the colonial-era regulations and laid the foundation for a modern competition law regime aimed at promoting fair competition and protecting consumer welfare. Despite its limitations, the MRTP Act played a crucial role in shaping the competition policy landscape in India and setting the stage for further reforms in the years to come.

IMPORTANCE OF THE MRTP ACT

A. Objectives and Significance

The Monopolies and Restrictive Trade Practices (MRTP) Act, enacted in 1969, aimed to address several key objectives:

³ Pandey, A. (2017) Evolution and development of competition law in India, iPleaders. Available at: <https://blog.iplayers.in/competition-law-evolution/> (Accessed: 20 March 2024).

- Preventing the concentration of economic power: The Act sought to curb monopolistic practices and ensure that no single entity or group could dominate the market to the detriment of competition and consumer welfare.
- Regulating restrictive trade practices: It aimed to prohibit agreements, arrangements, and practices that could restrict competition in the market, such as price-fixing, collusion, and bid-rigging.
- Protecting consumer interests: By promoting fair competition and preventing unfair trade practices, the MRTP Act aimed to safeguard consumer rights and ensure access to quality goods and services at reasonable prices.

The significance of the MRTP Act lies in its role as the first comprehensive legislation in India specifically designed to regulate competition and prevent anti-competitive behaviour. It represented a departure from the colonial-era regulations and marked the beginning of a concerted effort by the Indian government to promote market competition and economic efficiency.

B. Role in Regulating Monopolies and Restrictive Trade Practices

The MRTP Act played a crucial role in regulating monopolies and restrictive trade practices in India:

- Prohibition of monopolistic practices: The Act prohibited monopolies and restrictive trade practices that had an adverse effect on competition in the market. It aimed to prevent entities from abusing their dominant position to the detriment of consumers and competitors.
- Regulation of mergers and acquisitions: The MRTP Act provided for the regulation of mergers and acquisitions that were likely to have an adverse effect on competition. It required parties to such transactions to seek prior approval from the Monopolies and Restrictive Trade Practices Commission (MRTPC) to ensure that they did not lead to the creation of monopolies or the restriction of competition.
- Enforcement of fair competition: The Act empowered the MRTPC to investigate complaints of anti-competitive behaviour, issue cease and desist orders, and impose penalties on violators. It provided a mechanism for aggrieved parties to seek redressal and ensure compliance with the provisions of the Act.

Through its regulatory and enforcement mechanisms, the MRTP Act sought to create a competitive market environment conducive to innovation, efficiency, and consumer welfare. It aimed to level the playing field for businesses of all sizes and promote a healthy competitive landscape in which innovation and entrepreneurship could flourish.

C. Promotion of Fair Competition and Consumer Welfare

The MRTP Act aimed to promote fair competition and consumer welfare by:

- **Preventing anti-competitive practices:** By prohibiting monopolies, restrictive trade practices, and unfair trade practices, the Act aimed to ensure that market forces operated freely and efficiently, without undue interference from dominant players.
- **Safeguarding consumer interests:** The Act sought to protect consumer rights by promoting competition, preventing price manipulation, and ensuring access to a variety of goods and services at competitive prices. It aimed to empower consumers to make informed choices and hold businesses accountable for their actions.
- **Fostering economic efficiency:** By promoting competition and preventing monopolistic practices, the MRTP Act aimed to stimulate economic growth, innovation, and productivity. It recognized that a competitive market environment encourages businesses to strive for excellence and invest in research and development to stay ahead of the competition.

Overall, the MRTP Act played a pivotal role in shaping the competitive landscape in India and promoting consumer welfare. It laid the groundwork for the subsequent reforms in competition law and set the stage for the enactment of the Competition Act, 2002, which introduced a more modern and comprehensive framework for regulating competition in the Indian marketplace.

CONCEPTS DISCUSSED UNDER MRTP ACT

A. Monopolies

- **Definition:** Monopolies are characterized by the dominance of a single entity or group in a particular market or industry, allowing them to exert significant control over pricing, production, and distribution without facing substantial competition. This dominance often arises from barriers to entry, economies of scale, or exclusive control over key resources or technologies.
- **MRTP Act's Stance:** Recognizing the potential adverse effects of monopolies on market competition and consumer welfare, the MRTP Act aimed to prevent and regulate monopolistic practices. It sought to ensure that monopolies did not abuse their market power to the detriment of consumers, competitors, or the economy as a whole.
- **Regulatory Measures:**
 - *Prohibition of Practices:* The MRTP Act prohibited various practices associated with monopolies, including price discrimination, predatory pricing, and exclusionary conduct. Price

discrimination involves charging different prices to different consumers for the same product, thereby exploiting market power. Predatory pricing refers to the practice of setting prices below cost to drive competitors out of the market. Exclusionary conduct includes actions aimed at excluding competitors from the market or limiting their ability to compete.

- *Investigation and Enforcement:* The Act empowered regulatory authorities to investigate complaints of monopolistic behaviour and take appropriate enforcement actions. The Monopolies and Restrictive Trade Practices Commission (MRTPC) was tasked with overseeing compliance with the Act and ensuring a level playing field in the marketplace. It had the authority to issue cease and desist orders, impose fines, and prescribe corrective measures to restore competition.
- **Objective:** The primary objective of regulating monopolies under the MRTP Act was to promote fair competition, prevent market distortions, and safeguard consumer interests. By curbing monopolistic practices and fostering a competitive market environment, the Act aimed to encourage innovation, efficiency, and economic growth while ensuring that consumers had access to a variety of choices at reasonable prices.

B. Restrictive Trade Practices

- **Scope:** Restrictive trade practices encompassed a wide range of agreements, arrangements, and behaviours among businesses that had the effect of limiting competition in the market. These practices often involved collusion or cooperation between competitors, as well as vertical agreements between firms and their distributors or retailers that restricted the ability of other firms to compete.
- **Examples:**
 - *Collusive Agreements:* Collusive agreements⁴ among competitors, such as price-fixing, market allocation, and bid-rigging, were among the most common restrictive trade practices targeted by the MRTP Act. Price-fixing involves competitors agreeing to set prices at a certain level, thereby eliminating price competition and inflating prices for consumers. Market allocation agreements divide markets among competitors, reducing competition and consumer choice. Bid-rigging involves conspiring to manipulate the bidding process for contracts or projects, undermining the competitive bidding process and leading to higher prices for goods or services.

⁴ LawBhoomi (2022) Competition law: A systematic review, LawBhoomi. Available at: <https://lawbhoomi.com/competition-law-a-systematic-review/> (Accessed: 22 March 2024).

- *Vertical Agreements*: Vertical agreements between firms and their distributors or retailers could also restrict competition by limiting the ability of other firms to enter the market or compete on equal terms. For example, exclusive distribution agreements or resale price maintenance agreements could prevent retailers from selling competing products or offering discounts, stifling competition and harming consumer choice.
- **M RTP Act's Approach**:
 - *Prohibition and Enforcement*: The MRTP Act prohibited restrictive trade practices that were deemed to be against the public interest or detrimental to consumer welfare. It aimed to promote fair competition by ensuring that businesses competed on merit rather than engaging in anti-competitive behaviour. Regulatory authorities were empowered to investigate complaints of restrictive trade practices and take enforcement actions against violators. The MRTPC had the authority to issue cease and desist orders, impose fines, and prescribe corrective measures to restore competition in the marketplace.
 - **Goal**: The goal of regulating restrictive trade practices under the MRTP Act was to promote fair competition, prevent collusion and market manipulation, and protect consumer interests. By prohibiting anti-competitive agreements and behaviours, the Act aimed to foster a competitive market environment where businesses competed based on merit, innovation, and efficiency, ultimately benefiting consumers through lower prices, better quality products, and greater choice.

C. Unfair Trade Practices

- **Nature**: Unfair trade practices encompassed a wide range of deceptive, fraudulent, or dishonest practices employed by businesses to gain an unfair advantage over competitors or deceive consumers. These practices often involved false or misleading advertising, misrepresentation of product quality or performance, and exploitation of consumer vulnerabilities.
- **Examples**:
 - *False Advertising*: False advertising involves making false or misleading claims about a product or service in order to attract customers or gain a competitive advantage. This may include exaggerated claims about product effectiveness, safety, or performance, as well as deceptive pricing or promotional offers.
 - *Misrepresentation*: Misrepresentation occurs when businesses make false or misleading statements about the nature, characteristics, or benefits of a product or service in order to induce consumers to make a purchase. This may involve concealing information about potential risks or

side effects, exaggerating product benefits, or making unsubstantiated claims about product superiority.

- *Deceptive Pricing*: Deceptive pricing practices involve manipulating prices or terms of sale in a way that misleads consumers about the true cost or value of a product or service. This may include artificially inflating prices to create a false sense of scarcity or urgency, using bait-and-switch tactics to lure customers with low prices and then upselling them on more expensive products or services, or failing to disclose hidden fees or charges until after a purchase is made.

- **MRTTP Act's Response:**

- *Prohibition and Enforcement*: The MRTTP Act prohibited unfair trade practices that were detrimental to consumer welfare or contrary to the public interest. It aimed to protect consumers from deceptive or fraudulent business practices and ensure a fair and transparent marketplace. Regulatory authorities were empowered to investigate complaints of unfair trade practices and take enforcement actions against violators. The MRTTPC had the authority to issue cease and desist orders, impose fines, and prescribe corrective measures to remedy the harm caused to consumers.
- **Purpose**: The purpose of regulating unfair trade practices under the MRTTP Act was to promote consumer confidence, protect vulnerable consumers from exploitation, and maintain the integrity and transparency of the marketplace. By prohibiting deceptive or fraudulent business practices, the Act aimed to build trust between businesses and consumers, encourage fair competition, and ensure that consumers could make informed choices based on accurate and reliable information.

D. Concentration of Economic Power

- **Definition**: Concentration of economic power refers to the accumulation of significant control or influence over economic resources, markets, or industries by a small number of entities or groups. This concentration of power can arise from various factors, including market dominance, economies of scale, control over key resources or technologies, or barriers to entry that prevent new competitors from entering the market.
- **Concerns**: Excessive concentration of economic power can lead to market distortions, reduced competition, and negative consequences for consumer welfare. It may result in higher prices, lower quality products or services, reduced innovation, and limited consumer choice. Concentration of economic power can also create barriers to entry for new competitors, stifling competition and hindering economic growth and development.

- **M RTP Act's Measures:**

- *Regulation of Mergers and Acquisitions:* The MRTP⁵ Act regulated mergers, acquisitions, and corporate consolidations to prevent the creation of monopolies or the suppression of competition. Parties to such transactions were required to seek prior approval from regulatory authorities such as the MRTPC to ensure that they did not lead to the abuse of market power or the restriction of competition. Regulatory authorities were tasked with assessing the potential impact of mergers and acquisitions on competition, consumer welfare, and market structure. They considered factors such as market share, market concentration, barriers to entry, and the likelihood of coordinated behaviour among market participants. If a merger or acquisition was found to be anti-competitive or detrimental to consumer interests, regulatory authorities could impose conditions, such as divestiture of assets or market restructuring, to mitigate the potential harm.
- **Objective:** The objective of regulating the concentration of economic power under the MRTP Act was to ensure a competitive marketplace conducive to innovation, efficiency, and consumer welfare. By preventing the abuse of market power and promoting competition, the Act aimed to protect the interests of consumers, encourage entrepreneurship and innovation, and foster a dynamic and competitive economy.

The concepts discussed under the MRTP Act reflected a comprehensive approach to promoting fair competition, protecting consumer interests, and maintaining market integrity. By addressing monopolies, restrictive trade practices, unfair trade practices, and concentration of economic power, the Act sought to create a level playing field for businesses, encourage innovation and efficiency, and ensure that consumers had access to a wide range of choices at competitive prices. Through its regulatory provisions and enforcement mechanisms, the MRTP Act aimed to promote a competitive market environment where businesses compete based on merit, quality, and value, ultimately benefiting consumers and the economy as a whole.

THE RAGHAVAN COMMITTEE

A. Establishment and Mandate

⁵ India, legal S. (no date) Merger and the role of Competition Commission of India. Available at: <https://www.legalservicesindia.com/article/2244/Merger-And-The-Role-of-Competition-Commission-of-India>. (Accessed: 22 March 2024).

- **Formation:** The Raghavan Committee, officially known as the High Powered Expert Committee (HPEC) on Competition Law and Policy, was established by the Government of India in 2007. It was formed in response to the growing recognition of the need to review and reform India's competition law framework to address emerging challenges and align with global best practices.
- **Mandate:** The committee was tasked with conducting a comprehensive review of India's competition law and policy framework, including the functioning of the Competition Commission of India (CCI) established under the Competition Act, 2002. Its mandate included assessing the effectiveness of existing laws and regulations, identifying areas for improvement, and making recommendations for reforms to enhance competition, promote consumer welfare, and strengthen the enforcement mechanisms.

B. Recommendations for Reform

- **Modernization of Competition Law:** One of the key recommendations of the Raghavan Committee was to modernize India's competition law framework to make it more robust, transparent, and effective in addressing anti-competitive practices and promoting competition. This included updating the legal framework to align with international standards and best practices, clarifying and expanding the scope of prohibited anti-competitive practices, and enhancing the enforcement powers of the competition authorities⁶.
- **Strengthening Institutional Capacities:** The committee recommended strengthening the institutional capacities of the CCI and other regulatory bodies responsible for enforcing competition law in India. This involved providing adequate resources, infrastructure, and training to enable the competition authorities to effectively investigate complaints, conduct market studies, and enforce compliance with competition laws. The committee also emphasized the importance of enhancing coordination and cooperation among different agencies involved in competition regulation to ensure a cohesive and consistent approach.
- **Promotion of Competition Advocacy:** The committee emphasized the need for promoting competition advocacy to raise awareness about the benefits of competition and the role of competition policy in fostering economic growth, innovation, and consumer welfare. This involved engaging with stakeholders, including businesses, policymakers, and civil society

⁶ Competition law report: An evasive document (2000) BusinessLine. Available at <https://www.thehindubusinessline.com/todays-paper/tp-others/article29069325.ece> (Accessed: 23 March 2024).

organisations, to build support for competition reforms, disseminate information about competition law and policy, and encourage voluntary compliance with competition laws.

C. Influence on Competition Law Landscape

- **Policy Reforms:** The recommendations of the Raghavan Committee had a significant impact on the competition law landscape in India. Many of its recommendations were incorporated into subsequent amendments to the Competition Act, 2002, and other related regulations, leading to a more modern and comprehensive competition law framework. These reforms aimed to enhance the effectiveness of competition enforcement, promote a level playing field for businesses, and protect consumer interests.
- **Enhanced Enforcement:** The committee's recommendations also contributed to strengthening the enforcement mechanisms of the CCI and other competition authorities in India. This involved empowering the competition authorities with additional investigative and enforcement powers, streamlining the adjudicatory process, and introducing measures to expedite the resolution of competition cases. These reforms aimed to improve the efficiency and effectiveness of competition enforcement and ensure timely redressal of anti-competitive practices.
- **Increased Awareness:** The committee's emphasis on competition advocacy and awareness-building efforts helped raise awareness about the importance of competition law and policy among stakeholders in India. This led to increased engagement with businesses, policymakers, and the public on competition-related issues, fostering a greater understanding of the role of competition in promoting economic growth, innovation, and consumer welfare. Overall, the Raghavan Committee's recommendations played a crucial role in shaping the evolution of competition law and policy in India, contributing to a more competitive and dynamic marketplace.

DRAWBACKS OF MRTP ACT

- **Stringent Government Oversight** - The MRTP Act imposed extensive government control over

businesses of all sizes, necessitating approvals from the Central Government before engaging in corporate restructuring. This bureaucratic process was cumbersome and arbitrary, dissuading many businesses from compliance, ultimately hindering market dynamics and adversely impacting consumers.

- **Ambiguous Legal Framework** - The MRTP Act's definition of "restrictive trade practices" lacked clarity, leaving room for varied interpretations by different courts. This ambiguity extended to terms like abuse of dominance, cartels, and collusion, resulting in a loss of the law's intended essence.
- **Absolute Prohibition Approach** - The MRTP Act treated all offenses as inherently illegal without considering the context, disregarding the "Rule of Reason" principle. Even though recognized by courts, the Act favoured a per se rule over a nuanced approach, rendering the rule of reason ineffective.
- **Unfair Dominance Criteria** - The Act deemed market dominance inherently negative, solely based on market share percentages, without considering potential abuses or competitive dynamics. This rigid criterion unfairly penalized businesses based on minor fluctuations in market share.
- **Overemphasis on Export Promotion** - Section 38 of the MRTP⁷ Act prioritized export promotion without considering potential market distortions or adverse effects. This excessive focus on foreign exchange earnings often led to imprudent expenditures with minimal export gains.
- **Reliance on Voluntary Disclosure** - The effectiveness of the MRTP Act relied heavily on voluntary disclosures by enterprises, lacking robust regulatory oversight. This loophole enabled companies to evade registration or delay disclosure, undermining regulatory efforts.
- **Inefficiencies of MRTP Commission** - Despite its judicial mandate, the MRTP Commission's independence was questionable due to government-appointed members and administrative inefficiencies. Its effectiveness was further hindered by delays in appointments, reluctance to expand, and unilateral government decisions.

⁷ IJMER. Available at: <https://www.ijmer.in/> (Accessed: 19 March 2024).

- **Outdated Legislation** - The MRTP Act failed to adapt to the dynamic economic landscape, becoming obsolete amidst India's transition to a global economy under the New Economic Policy.
- **Limited Jurisdiction** - The MRTP Act lacked extraterritorial application, limiting its control over international enterprises engaging in anti-competitive practices. This jurisdictional constraint prevented effective regulation of international cartels with potential adverse impacts on the Indian market.
- **Lack of Defined Penalties** - While the MRTP Act outlined the powers of the MRTP Commission to address anti-competitive practices, it lacked specific penalties, undermining its deterrent effect on offenders.
- **Jurisdictional Overlaps** - The insertion of Section 36A in the 1984 Amendment led to confusion regarding the MRTP Commission's jurisdiction, overlapping with consumer protection laws. This resulted in cases being misdirected, burdening the Commission unnecessarily.

THE COMPETITION ACT 2002

Competition involves sellers actively vying for the Favor of buyers to achieve profits or market dominance. The Competition Act of 2002, passed by the Indian Parliament, replaced the Monopolies and Restrictive Trade Practices Act of 1969, serving as the governing legislation for Indian competition law.

Since its enactment, the Competition Act of 2002 has undergone two amendments: the Competition (Amendment) Act of 2007 and the Competition (Amendment) Act⁸ of 2009.

Two key aspects of the Competition Act of 2002 include its provision for establishing the Competition Commission and its mechanisms for preventing anti-competitive behaviours while fostering healthy competition in the Indian market.

The Competition Act of 2002 outlines several broad objectives, as articulated in its preamble:

- Eliminate practices detrimental to competition.
- Foster and maintain competitive markets.
- Safeguard consumer interests.
- Ensure freedom of trade for all market participants in India.

⁸ IJMER. Available at: <https://www.ijmer.in/> (Accessed: 19 March 2024).

- Prevent anti-competitive behaviours.

The Competition Commission of India (CCI) was established on October 14, 2003, aligning with the provisions of the Act. However, full implementation was hindered by a legal challenge in the Supreme Court, prompting considerations for restructuring. The Court suggested the formation of distinct bodies—one for advisory and regulatory functions and another for adjudicatory purposes, in accordance with the separation of powers doctrine. The CCI comprises a chairperson and six members appointed by the Central Government.

The purpose of the CCI, as per Section 18 of the Act and its preamble, encompasses ending practices detrimental to competition, fostering competition, protecting consumer interests, and upholding trade rights in Indian markets. Recommendations from the Raghavan Committee underscored the CCI's role as the central authority for addressing Act violations, regardless of the source of complaints. Section 19(1) of the Act codifies these responsibilities explicitly.

To achieve its objectives, the CCI endeavours to:

- Ensure consumer protection and market efficiency.
- Promote inclusive economic growth and fair competition nationwide.
- Implement competition policies for optimal resource utilization.
- Align sectoral regulations with competition law and foster cooperation with sectoral regulators.
- Cultivate a culture of competition through advocacy efforts and stakeholder education.

Regarding jurisdiction and authorities, Section 61 of the Act precludes civil courts from adjudicating matters within the CCI's purview. The CCI is empowered to investigate and address anti-competitive behaviours. Various entities, including the Director General and judicial bodies like the Competition Appellate Tribunal and the Supreme Court, contribute to enhancing the CCI's jurisdiction and efficacy in combating anti-competitive practices.

CONCLUSION

In summary, the evolution of competition law in India has been characterized by significant milestones, tracing back to its origins in the colonial era and progressing into a modern regulatory framework post-independence. The introduction of the Monopolies and Restrictive Trade Practices Act, 1969, represented a pivotal move towards regulating market conduct and encouraging competition. However, as the economic landscape evolved rapidly, it became evident that the MRTP Act was insufficient to address emerging complexities. The enactment of the Competition Act, 2002, signified a transformative shift in India's approach to competition regulation. Through

the establishment of the Competition Commission of India (CCI), concerted efforts were made to update and fortify the competition law framework. Subsequent amendments and judicial rulings have played a crucial role in refining and elucidating the extent and enforcement mechanisms of competition law in the country.

Effective competition regulation serves as the cornerstone for nurturing a vibrant and competitive marketplace that benefits both businesses and consumers. It fosters innovation, efficiency, and equitable market practices while safeguarding against anti-competitive conduct that could stifle competition and undermine consumer welfare. Nonetheless, persistent challenges persist, such as the imperative to bolster enforcement capabilities, streamline regulatory procedures, and address jurisdictional complexities. Continuous vigilance and refinement of the competition law framework are imperative to ensure its relevance and efficacy in light of evolving market dynamics and international benchmarks.

Overall, the evolution of competition law in India demonstrates a dedication to stimulating economic progress, safeguarding the welfare of consumers, and nurturing a business environment that encourages healthy competition. Through tackling obstacles and seizing chances for improvement, India has the potential to enhance its competition law framework further and play a role in fostering sustainable and equitable development.

CASE ANALYSIS

Google Inc. & Ors v. Competition Commission of India

Facts

The appellants have contested a ruling issued by the National Company Law Appellate Tribunal on January 4, 2023, invoking this Court's appellate jurisdiction under Section 53T of the Competition Act 2002. While accepting the appeal, the NCLAT has instructed the appellants to submit 10% of the penalty determined by the CCI's order within three weeks. However, there has been no suspension granted concerning the remaining directives of the CCI, prompting the filing of the appeal before this Court⁹. The NCLAT has not issued an interim suspension and has scheduled the

⁹ Google Inc. & Ors v. Competition Commission of India on 27 April, 2015

appeal for final adjudication on April 3, 2023. Accordingly, pursuant to the provisions of Section 27 of the Act, the Commission directs Google to halt and refrain from engaging in anti-competitive practices found to violate the stipulations of Section 4 of the Act, as outlined in this order.

Issues

1. Whether the NCLAT has granted an interim stay?
2. Whether there has been any finding by CCI on the abuse of Google's dominant position in India?
3. Whether Google's policy of withholding its own apps from non-Google Android app market places reinforces the compulsion for OEMs to pre-install these apps on their Android devices?
4. Whether the tying arrangement used by Google through Android is anticompetitive?

Contention of Google

Google argued that the Competition Commission of India (CCI) order displayed confirmation bias, drawing parallels to a previous European Commission ruling in 2018. The company contended that its agreements didn't restrict device manufacturers from pre-installing rival apps, and emphasized that market dominance doesn't inherently equate to abusive behaviour, attributing its popularity to user satisfaction.

Contention of CCI

The CCI characterized Google's policies in India as forms of "digital feudalism," "digital slavery," "technological captivity," "chokepoint capitalism," and "consumer exploitation." It asserted that companies not adhering to Google's contracts had disappeared, alleging that Google misused its dominant position in the Android OS market by limiting the entry of other apps into its Play Store. Given Google's near-total control of the smartphone market in India, the CCI felt compelled to act if Google was found breaching competition laws, seeing it as their duty to prompt the company to rectify its practices. Consequently, the CCI invoked its authority under Section 27 of the Competition Act, instructing Google to cease engaging in anti-competitive behaviours contrary to the provisions of Section 4 of the Competition Act.

Analysis

Here google argues that developers can counterbalance any advantages associated with the preinstallation of an app through downloads. They assert that users have the option to access rival search services via browsers. However, the Commission observes that Google search is designated as the default search service in Google's own browser, Chrome, which holds a significant market share within the Android ecosystem. It's noteworthy that the investigation has revealed that

preinstallation of the core suite of apps is non-exclusive, meaning MADA partners are free to preinstall competing apps and position them as prominently as Google's apps. According to Google, it offers a non-monetary exchange, providing OEMs with an advanced OS and suite of apps for free, while OEMs promote Google's revenue-generating apps through preinstallation. The requirements imposed by Google on OEMs through MADA may be viewed as anticompetitive tying. Although an OEM is not compelled to preinstall any Google app on its Android devices, it's crucial to recognize that the absence of essential Google apps, such as Play Store, diminishes the marketability of the devices. Google's policy of withholding its own apps from non-Google Android app marketplaces reinforces the pressure on OEMs to preinstall these apps on their Android devices. For Android OEMs aiming for a commercially viable business, signing MADA and AFA and accepting all their restrictions appears to be the only meaningful choice. Through the tying arrangement, Google has utilized Android as a means to solidify the dominance of its search engine. Therefore, maintaining the openness and 'free' nature of the Android OS is as much in Google's interest as it is for the OEMs and users. Google's position as a gatekeeper in the Android mobile ecosystem enables it to leverage its power to safeguard and further strengthen its dominance in online search by creating obstacles for rival search service providers to enter and compete effectively in the mobile search arena. While the well-regarded benefits of the open-source system of Android are acknowledged, they cannot justify exclusionary conduct that undermines competition in specific areas or markets.

Ruling:

The Delhi High Court affirmed that the CCI possesses the power to revisit or reassess its rulings under certain circumstances, emphasizing that this should be exercised judiciously and not as a routine practice for all cases where the investigation lacked thorough scrutiny.

Mohit Manglani v. M/s Flipkart India Pvt. Ltd. & Ors

Case Summary:

The Informant has accused the Opposite Parties (OPs) of engaging in anti-competitive behaviour through 'exclusive agreements' with sellers of goods/services. It is alleged that OP 1 has been promoting author Chetan Bhagat's upcoming book titled 'Half Girlfriend' through various media channels, both online and in print. For example, OP 1 holds a 100% market share in the relevant market for the book 'Half Girlfriend'. These alleged practices are believed to have a significant

negative impact on competition within India¹⁰.

Facts:

- The Opposite Parties (OPs) are accused of participating in anti-competitive activities with sellers of goods and services.
- OP 1 has conducted promotional activities for the yet-to-be-launched book 'Half Girlfriend' by author Chetan Bhagat, published by Rupa Publications.
- OP 1 holds a monopoly, with a 100% market share in the relevant market for the book 'Half Girlfriend'.
- These alleged practices are believed to significantly hinder competition within India.
- The Commission examined the documents provided by the involved parties and listened to their representatives.
- OPs argued that they function as third-party platforms, providing a convenient environment for a potentially large customer base and manufacturers.
- They asserted that online and offline retail are not distinct relevant markets, as they represent different distribution channels that can be substituted.
- Despite the increasing demand for e-commerce and online retail, it accounts for less than 1% of total retail in India, according to OPs.
- OPs claimed that their agreements with manufacturers do not include exclusivity clauses, and the Informant relied solely on product screenshots without reviewing the actual agreements.
- ADCTA, a computer traders' association, alleged that e-portals and e-commerce websites engaged in unfair trade practices and funnelled illegal black money as Foreign Direct Investment into the business.
- The OPs are accused of engaging in predatory pricing practices, abusing their dominant position under sections 4(1) and 4(2) of the Act.
- It is alleged that OPs have exclusive arrangements with product manufacturers for the exclusive launch of upcoming products on their websites, violating certain provisions of sections 3(4) and 4 of the Act.

Issues:

- Have the OPs participated in anti-competitive behaviour with sellers of goods/services?

Do the alleged practices significantly hinder competition in India?

¹⁰ Mohit Manglani v. M/s Flipkart India Pvt. Ltd. & Ors Case No. 80 of 2014
23 April 2015

Do the OPs have exclusive agreements with manufacturers for the exclusive launch of their upcoming products on their websites, violating certain provisions of section 3(4) and section 4 of the Act?

- Do the alleged practices create obstacles for new entrants?
- Have the OPs misused their dominant position under sections 4(1) and 4(2) of the Act?

Analysis

With the recent growth in internet users, easy availability of smart phones and the subsequent moves towards a digital economy; the e-commerce industry has witnessed exponential growth in India. Being one of the fastest developing sectors in the Indian economy; it is expected to grow at a compound annual growth rate (CAGR) of 52 percent by 2020. The Indian e-commerce sector includes a several segments like travel, financial services, real estate and other classifieds, online retail and various others. Going by the statistics, though online retail comprises of less than 1 percent share of the overall retail market; it is that one segment which is shown a tremendous growth rate in India and is expected to jump from around US\$16bn in 2016 to just over US\$45bn in 2021. In addition, the expected CAGR is over 60 percent. With such exceptional growth of this sector and investors showing their interest in this same, it has caused disruption and incumbent retailers have raised several competition related concerns. Moreover, questions with regard to regulation of the e-commerce sector have been brought to light. Keeping the current circumstances in mind, it was inevitable that certain issues were brought under the CCI against the online retail stores. In light of this, some of the pertinent issues in this case lead us to the following considerations:

1. Is there a need to consider differentiation between online and offline platforms?

Technological disruption is permeating all sectors and challenging foundational and traditional concepts of almost all regulations and laws, and Competition Law is no exception. The growing prominence of online platforms has substantially challenged the application of competition enforcement principles, the relevant market concept being one example. The context of relevant market is one of the basic issues that need to be addressed before determining dominance and abuse. In the context of online e-commerce market, one might argue that both offline and online products are part of the same market whereas other might pursue that both do not fall under the ambit of the same market. To address the issue the opinion of CCI remains a vital point of discussion.

The Indian Competition Act, 2002 specifically determines the scope to address the bounds which fall to address the concept of relevant market. This concept is the major basis of defining

competition in any market. However, in the current case, the CCI did not specifically address the issue of relevant markets vis-à-vis e-commerce. Rather, it kept the question as to whether e-portal markets might be treated as a separate relevant product market or as a mere sub segment of the market for distribution open-ended.

2. Ascertaining the exclusivity in agreements

The next issue which was raised in regard to the working of the e-commerce retail stores was in relation to the online market entering in exclusive agreements with the distributors and suppliers of certain products. The complaints in this regard mainly revolved on the lines that certain products were exclusively available on certain online portals and were also not made available any place else including offline markets thus posing appreciable adverse effect on competition.

Going by the legislation the exclusive distribution agreements are anti-competitive when such arrangements result in appreciable adverse effect on competition in India. However, the legislation clearly points out that exclusivity itself is not anti-competitive unless the act leads to barrier to entry and exit in the market. The whole context of exclusive agreement has thus always been under scrutiny; as there is a very thin line that lies between it being justified and anti-competitive.

The issue of the exclusivity arose when online retail stores entered into specific contracts or agreements with suppliers which allowed a specific product to be available on a certain online portal; thus questioning the fairness in trade and also the validity of such agreements. This particular issue has to be looked at from both sides.

In this particular case, however, CCI was mainly in sync with the arguments posed by the online retailers. It opined that the exclusive agreement between a manufacturer and an e-portal is hardly amounting to create any entry barrier. Further, it also opined that it seems that none of the existing players in the retail market seem to be adversely affected by such exclusive agreement, rather the entry of new e-portals portrays enhanced competition in the market.

In assessing the effects of exclusivity agreements, it is important to consider the impact on consumer choice and access. In this regard, although CCI has concluded that distribution channels by online portals actually provide opportunities to consumers to compare the prices, it somehow misfits to fill in the gap of product monopoly as specified above.

Thus, there is a need to put the aspects of exclusive agreements under more scrutiny so as to ensure fairness in competition and also provide better market for end consumers.

Ruling:

The Commission finds it unnecessary to investigate the allegations of abuse of dominance raised by the Informant and ADCTA against the OPs. Based on the analysis provided, the Commission believes that there is no apparent violation of either section 3 or section 4 of the Act by the OPs. Therefore, the matter is concluded under the provisions of section 26(2) of the Act.



W H I T E B L A C K
L E G A L