

Competition Law is regulated by the Competition Act, 2002. It is an Act to provide, keeping in view of the economic development of the country, for the establishment of a Commission to prevent practices having an adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets, in India, and for matters connected therewith or incidental thereto.

Introduction to Competition Act

The competition act of 2002 was passed by the parliament of India so as to form a commission to oversee the business operations of companies and individuals in the country following fair practices of competition and economic growth of the country. It applies for agreement, acquisition or any cartel involving business transactions that has an economic impact for the country.

Need for competition The ultimate objective of competition is to secure the interest of the

Consumer –

- it empowers the consumer and offers best guarantee for consumer protection. It is a means of reducing cost and improving quality.
- It also implies an open market where shortages are rapidly eliminated
- through the best allocation of resources. It accelerates growth and development; preserves economic and
- political democracy.
- Lower prices
- Improved quality
- Better services
- Wider choices

FOR BUSINESS

- Availability of inputs at competitive price
- Level playing field
- Redressal against denial of market access and other anticompetitive agreements.

IN **THE MARKET** Promotes

- ♣ efficiency Leads to higher productivity
- ♣ Punishes the laggards
- ♣ Enhances choice,
- ♣ improves quality

- ♣ Reduces costs
- ♣ Facilitates better
- ♣ governance

• Competition and Growth

- There is a positive association between GDP growth and level or degree of competition. Several studies suggest that competition enhances productivity at industry level, generates more employment and lowers consumer prices.

MONOPOLIES AND RESTRICTIVE TRADE PRACTICES ACT, 1969 – AN OVERVIEW

The Monopolies and Restrictive Trade Practices Act, 1969 (MRTP Act) was an Act that provided that the operation of the economic system does not result in the concentration of economic power to the common detriment, for the control of monopolies, for the prohibition of monopolistic and restrictive trade practices and for matters connected therewith or incidental thereto. The MRTP Act was amended repeatedly in 1974, 1980, 1982, 1984, 1985, 1986, 1988 and 1991. The effect of these amendments was to render the provisions governing monopolies virtually inoperative, but bring unfair trade practices within the purview of the Act. The Act was restructured in 1991 by omitting Sections 20 to 26 and shifting the provisions contained in Chapter IIIA regarding restrictions, acquisition and transfer of shares to the Companies Act, 1956. Areas focused under the MRTP Act

- Prevention of concentration of economic power to the common detriment
- Control of monopolies
- Prohibition of monopolistic trade practices (MTP)
- Prohibition of restrictive trade practices (RTP)
- Prohibition of unfair trade practices (UTP)

Objectives of MRTP Act

The principal objectives sought to be achieved through the MRTP Act were: (a) Prevention of concentration of economic power to the common detriment; (b) Control of monopolies; (c) Prohibition of monopolistic trade practices; (d) Prohibition of restrictive trade practices; (e) Prohibition of unfair trade practices.

Out of these five, the first two were de-emphasized, after the 1991 amendment to the Act. The emphasis not only shifted to the last three mentioned objectives but they were re-emphasized to the extent that monopolies tend to bring about monopolistic trade practices and the Act provides for their surveillance. Briefly, the Act was designed to guard against different aspects of market imperfections. For instance, a merger, which can increase the dominance of the combine or has resulted in a large share in the market, can be looked at in terms of the provisions of the Act and the objectives governing them.

Restrictive Trade Practices (RTPs)

A restrictive trade practice is generally one which has the effect of preventing, distorting or restricting competition. In particular, a practice which tends to obstruct the flow of capital or resources into the stream of production is an RTP. Likewise, manipulation of prices, conditions of delivery or flow of supply in the market which may have the effect of imposing on the consumer unjustified costs or restrictions are regarded as restrictive trade practices. Certain common types of restrictive trade practices enumerated in the Act which do not have an element of competition are: a) Refusal to deal; b) Tie-up sales; c) Full line forcing; d) Exclusive dealings; e) Concert or collusion-cartel; f) Price discrimination; g) Re-sale price maintenance; h) Area restriction; i) Predatory pricing.

Unfair Trade Practices (UTPs)

Unfair trade practice means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service adopts any unfair method or unfair or deceptive practice. (Section 36A of MRTP Act) Essentially unfair trade practices fall under the following categories: a) Misleading advertisement and false representation; b) Bargain sale, bait and switch selling; c) Offering of gifts or prizes with the intention of not providing them and conducting promotional contests; d) False representation of the product's safety standards; e) Hoarding or destruction of goods. Making false or misleading representation of facts disparaging the goods, services or trade of another person is also an unfair trade practice under MRTP Act. Monopolistic Trade Practices (MTPs) Monopolistic Trade Practice is a trade practice which has or is likely to have the effect of: 23 i. maintaining the prices of goods or charges for the services at an unreasonable level by limiting, reducing or otherwise controlling the production, supply or distribution of goods or the supply of any services or in any other manner; ii. unreasonably preventing or lessening competition in the production, supply or distribution of any goods or in the supply of any services; iii. limiting technical development or capital investment to the common detriment or allowing the quality of any goods produced, supplied or distributed, or any services rendered, in India to deteriorate; iv. increasing unreasonably: a. the cost of production of any goods; or b. charges for the provision, or maintenance of any services; v. Increasing unreasonably: a. the prices at which goods are, or may be, sold or re-sold, or the charges at which the services are, or may be, provided; or b. the profits which are, or may be, derived by the production, supply or distribution (including the sale or purchase) of any goods or in the provision or maintenance of any goods or by the provision of any services; vi. preventing or lessening competition in the production, supply or distribution of any goods or in the provision or maintenance of any services by the adoption of unfair methods or unfair or deceptive practices.

Evolution and Development of Competition Law in India

Competition is a process of economic rivalry between market players to attract customers. Competition also refers to a situation in a business environment where businesses independently strive for the patronage of customers in order to achieve their business objective. Free and fair competition is one of the pillars of an efficient business environment.

In the recent years the Indian economy has been one of the best performers and is on high growth path. Infusion of greater degree of competition can play a catalytic role in unlocking the fuller growth potential in many critical areas of the economy. In the interest of consumers, and the economy as whole, it is necessary to promote an environment that facilitates fair competition outcomes in the market, restrain anti-competitive behavior and discourage market players from adopting unfair trade practices. Therefore, competition has become a driving force in the global economy.

In India the first competition law was enacted in 1969 i.e. Monopolies and Restrictive Trade Practices Act, 1969 [**'MRTP Act, 1969'**]. The Monopolies and Restrictive Trade Practices Bill was introduced in the Parliament in the year 1967 and the same was referred to the Joint Select Committee. The MRTP Act, 1969 came into force, with effect from, 1 June, 1970.

The enactment of MRTP Act, 1969 was based on the socio – economic philosophy enshrined in the Directive Principles of State Policy contained in the Constitution of India. The MRTP Act, 1969 underwent amendments in the 1974, 1980, 1982, 1984, 1986, 1988 and 1991. The amendments introduced in the year 1982 and 1984 were based on the recommendations of the Sachar Committee, which was constituted by the Govt. of India under the Chairmanship of Justice Rajinder Sachar in the year 1977.

The Sachar Committee pointed out that advertisements and sales promotions having become well established modes of modern business techniques, representations through such advertisements to the consumer should not become deceptive. The Committee also noted that fictitious bargain

was another common form of deception and many devices were used to lure buyers into believing that they were getting something for nothing or at a nominal value for their money. The Committee recommended that an obligation is to be cast on the seller to speak the truth when he advertises and also to avoid half truth, the purpose being preventing false or misleading advertisements.

The Finance Minister in its budget speech in February, 1999 said –

"The MRTP Act has become obsolete in certain areas in the light of international economic developments relating to competition laws. We need to shift our focus from curbing monopolies to promoting competition. The Government has decided to appoint a committee to examine this range of issues and propose a modern competition law suitable for our conditions."

In October 1999, the Government of India constituted a High Level Committee under the Chairmanship of Mr. SVS Raghavan [**'Raghavan Committee'**] to advise a modern competition law for the country in line with international developments and to suggest legislative framework, which may entail a new law or suitable amendments in the MRTP Act, 1969. The Raghavan Committee presented its report to the Government in May 2000.

On the basis of the recommendations of the Raghavan Committee, a draft competition law was prepared and presented in November 2000 to the Government and the Competition Bill was introduced in the Parliament, which referred the Bill to its Standing Committee. After considering the recommendations of the Standing Committee, the Parliament passed December 2002 the Competition Act, 2002.

The Monopolies and Restrictive Trade Practices Act, 1969 [**MRTP Act**] repealed and was replaced by the Competition Act, 2002, with effect from 1 September, 2009.

The Competition Act, 2002 was enacted to provide for the establishment of a Commission to prevent practices having adverse effect on competition, and to promote and sustain competition in the business environment and to protect the interest of consumers and also to ensure freedom of trade carried on by other participants in markets in India and for matters connected therewith or incidental thereto. The Competition Act, 2002 came into existence in

January, 2003 and the Competition Commission of India ['**CCI**'] was established on 14 October, 2003. CCI consists of a Chairperson and 6 Members appointed by the Central Government. CCI functions as market regulator for preventing and regulating anti – competitive practices in the country. A Competition Appellate Tribunal was also established, which is a quasi-judicial body established to hear and dispose of appeals against any direction issued, or decision made by the CCI.

The Act was subsequently amended by the Competition (Amendment) Act, 2007 and Competition (Amendment) Act, 2009. The provisions of the Competition Act relating to anti-competitive agreements and abuse of dominant position were notified on 20May, 2009.

Introduction of the Act was a key step towards facing competition. The Competition Act, 2002 is not intended to prohibit competition in the market. The legislation prohibits anti-competitive agreements, abuse of dominant position and regulates mergers, amalgamations and acquisitions.