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Competition Law Regime in India: Evolution, Experience and Challenges

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Abstract

Cet article présente le régime indien de droit de la concurrence dans toute sa complexité actuelle. En effet, deux textes régissent la matière : l'un ancien, et l'autre plus récent, adopté en 2003. La conjonction de ces textes conduit à un véritable statu quo. L'article retrace les différentes étapes du régime indien de la concurrence, les motivations ayant présidé à l'adoption des textes en vigueur, les principales dispositions de la loi nouvelle ainsi que les grands enjeux auxquels doit faire face la politique indienne de concurrence.

India is presently in a unique position with respect to its competition law regime: the country has two competition laws in operation - one is an outgoing law and another one is a newly enacted law and this status quo prevails since year 2003! This paper presents a description of the competition law regime in India covering its evolution, working of competition law, reasons for enactment of the new law, key provisions of the new law, and the challenges ahead in implementing the new competition law regime.

I. Evolution of Competition Law in India

1. The Constitution of India, in its essay in building up a just society, has mandated the State to direct its policy towards securing that end. Articles 38 and 39 of the Constitution of India, which are part of the Directive Principles of State Policy, mandate the state to direct its policy towards securing:

that the ownership and control of material resources of the community are so distributed as to best subserve the common good; and

that the operation of the economic system does not result in concentration of wealth and means of production to the common detriment.

2. Accordingly, after independence, the Indian Government assumed increased responsibility for the overall development of the country. Government policies were framed with the aim of achieving a socialistic pattern of society that promoted equitable distribution of wealth and economic power. However, even as the economy grew over the years after independence, there was little evidence of the intended trickle-down. Concerned with this, the Government appointed a Committee on Distribution of Income and Levels of Living (Mahalanobis Committee) in October 1960. The Committee noted[1] that big business houses were emerging because of the "planned economy" model practised by the Government and recommended looking at industrial structure, and whether there was concentration. Subsequently, the Government appointed the Monopolies Inquiry Commission (MIC) in April 1964, which reported[2] that there was high concentration of economic power in over 85 percent of industrial items in India (Table 1).

3. The MIC observed that big businesses were at an advantage in securing industrial licences to open or expand undertakings. This intensified concentration, especially as the Government did not have adequate mechanisms to check it. Subsequently, the Planning Commission of India, in July 1966, appointed the Hazari Committee to review the operation of the industrial licensing system. The report[3] echoed previous concerns regarding skewed benefits of the licensing system. Following this, the Government, in July 1967, appointed the Industrial Licensing Policy Inquiry Committee, which felt that licensing was unable to check concentration, and suggested that the Monopolies and Restrictive Trade Practices (MRTP) Bill (as proposed by the MIC) be passed, to set up an effective legislative regime.

4. With this backdrop, the MRTP Act, India's competition law, was enacted in December 1969 to check concentration of economic power, control the growth of monopolies and prevent various trade practices detrimental to public interest. It came into force in June 1970 and the MRTP Commission, a regulatory authority to deal with offences falling under the statute, was set up in August 1970. Under the Act, large

1 Mahalanobis Committee Report on Distribution and Levels of Income, Government of India, New Delhi, 1964.

2 Monopolies Inquiry Commission Report, Government of India, New Delhi, 1965.

3 Hazari Committee Report on Industrial Licensing Procedure, Ministry of Industry, Government of India, New Delhi, 1965.

business houses and dominant undertakings (also called MRTP companies[4]) were required to be registered with the federal government. Public sector enterprises, co-operative societies and agriculture were exempt from the purview of the Act.

5. The thrust of the Act was directed towards:

- prevention of concentration of economic power to the common detriment;
- control of monopolies;
- prohibition of monopolistic trade practices (MTPs);
- prohibition of restrictive trade practices (RTPs);
- prohibition of unfair trade practices (UTPs) (post-1984 amendments)

6. With the passage of time, it was noticed that the objectives of the MRTP Act could not be achieved to the desired extent. Accordingly, the Government appointed a High-Powered Expert (Sachar) Committee in June 1977, which recommended widening the scope of the MRTP Act to include unfair trade practices (UTPs) like misleading and deceptive advertising[5]. Subsequently, the MRTP Act was amended in 1984 to bring unfair trade practices within its ambit.

7. Following the adoption of economic reforms in early 1990s in India, most far-reaching amendments to MRTP Act were introduced in 1991. Two of the five thrust areas mentioned above, namely, prevention of concentration of economic power to the common detriment, and control of monopolies, were de-emphasised. The 1991 amendments removed the need for prior Government approval to establish new undertakings or the expansion of existing undertakings, and also diluted the provisions of mergers and acquisitions (M&As). The thrust was on curbing monopolistic, restrictive and unfair trade practices. Size, as a factor, to discourage concentration of economic power, had been given up. Furthermore, the amendments deleted exemption granted to Government undertakings and cooperative sector. Exemption to agriculture was not touched, because it is an issue under the legislative control of states (provinces).

II. Experience with the MRTP Act

8. Despite its laudable goals, the MRTP Act did not deliver as expected. This was partly because the Act was created at a time when all the process attributes of competition such as entry, price, scale, location, etc., were regulated. The MRTP Commission had no influence over these attributes of competition, as these were part of a separate set of policies.

9. Another reason for its inadequacy in dealing with anti-competitive practices was the absence of proper definitions in the Act. A perusal of the MRTP Act shows that there is no definition nor even a mention of certain offending trade practices, which are restrictive in character, for example, cartels, predatory pricing, and bid-rigging. Further, the MRTP Commission was unable to take any action against any of the international cartels that attracted the attention of other competition authorities.

10. The MRTP Commission was poorly resourced, which further constrained its functioning. Its budget was a very small proportion of both the Gross Domestic Product (GDP) and the budget of the Central Government (Table 2). CUTS[6] had carried out a comparative analysis of nine countries, including India in terms of budget of the Competition Authority as a percentage of the total Government budget. It observed that all other countries had a larger proportion than India.

11. The inadequacy of budget allocation was compounded by the need for the MRTP Commission to seek Government permission to incur expenditure beyond certain limits. This severely curtailed its independent functioning. The independence of the MRTP Commission got further impaired due to the discretionary power of the Government to appoint senior level officers.

III. From MRTP Act to Competition Act

12. When the MRTP Act was drafted in 1969, the economic and trade milieu prevalent at that time constituted the premise for its various provisions. There had subsequently been a sea change in the milieu with considerable movement towards liberalisation and economic reforms, since the early 1990s. Major amendments were made to the MRTP Act in 1991, but even these were considered inadequate to deal with the emerging economic order.

13. Over the years, a large number of judicial pronouncements were made on the basis of the MRTP Act and these decisions constituted precedents for the future. In view of the changing economic scenario, these precedents would not have proved useful, as the decisions were made in a different economic setting. Thus redrafting the law to suit the changing times became inevitable.

14. Another factor underlying the desire for a new competition law stemmed from the changes in the international economic environment, in particular from the establishment of the World Trade Organisation (WTO). The Ministry of Commerce, Government of India set up an Expert Group on interaction between Trade and Competition Policy, subsequent to the establishment of a similar group at the WTO, following the

4 A company was classified as MRTP Company when it by itself or together with its interconnected undertakings had an asset value of at least one billion Indian rupees (the asset threshold value was raised from INR200 million during the 1984 amendments to MRTP Act) or was dominant in the relevant market i.e. commanded a market share in excess of one-fourth.

5 Sachar Committee 1978, 'Report of the High-powered Expert Committee on Companies and MRTP Acts', Ministry of Law, Justice and Company Affairs, Government of India, New Delhi, August, 1978.

6 Pulling Up Our Socks - A Study of Competition Regimes of Seven Developing Countries of Africa and Asia: The 7-Up Project, CUTS, Jaipur, 2003.

Singapore Ministerial Declaration of 1996. The Expert Group recommended[7] that there is a need for an appropriate competition law to protect fair competition and to check anti-competition practices, many of which could surface during the implementation of WTO Agreements. A sound and effective competition law was considered the need of the hour.

15. In view of the above, the Government appointed a High Level Committee on Competition Policy and Law (Raghavan Committee) in October 1999 to advise a modern competition law for the country in line with international developments. There was almost unanimity among those who gave their depositions to the Committee that the MRTP Act had outlived its utility, and that a new competition law was required for the country, in tune with the liberalised regime. It was considered that amendments to the MRTP Act would have entailed cumbersome innumerable changes in its provisions. Instead, enacting a new law was considered a better option. Thus, after heated discussions on the Committee's report[8] and the Competition Bill it recommended, as well as parliamentary debates, Competition Act 2002 was enacted in January 2003 to replace the MRTP Act. The Competition Commission of India (CCI) was established in October 2003 to implement the provisions of the Act.

IV. MRTP Act vs Competition Act

16. The Competition Act, 2002[9] seeks to prevent practices having adverse effect on competition; promote and sustain competition in markets; protect the interest of consumers; and ensure freedom of trade carried on by other participants in markets in India. The new law focuses on four core areas:

- Anti-competitive agreements
- Abuse of dominance
- Combinations regulation
- Competition advocacy

17. Explicit definitions and criteria have been specified in the Competition Act (as against the MRTP Act) to assess whether a practice has an appreciable adverse effect on competition. One distinguishing feature of the new law is that it emphasises on behavioural approach to examining competition in the market, as against the structural approach followed by the MRTP Act. Importantly, the CCI has been given a competition advocacy role, which would help in creating a culture of competition. Merger regulation provision has returned to the scope of the Indian competition law, after being removed from the MRTP Act, during the 1991 amendments. The new law has extraterritorial reach and the provision is based on the *'effects doctrine'*. Another important distinction is that the new law no longer covers unfair trade practices (UTPs), and all pending cases are to be transferred to the Consumer Protection Act, 1986, which covers UTPs

V. Practices Covered under the Competition Act 2002

1. Anti-competitive Agreements (Section 3)

18. The Act frowns upon agreement, which causes or is likely to cause an appreciable adverse effect on competition within India. The Act covers both horizontal and vertical type of agreements. The 'rule of reason' test is used for determining the illegality of an agreement. This approach does not apply in case of four types of agreements between enterprises involved in the same or similar manufacturing or trading of goods or services, which are presumed to have an appreciable adverse effect on competition. These are:

- agreements determining prices,
- agreements limiting or controlling quantities,
- agreements to share or divide markets,
- agreements to rig bids

19. Joint venture agreements that result in efficiency gains are not covered under these provisions of the Act. Further, the Act lays down two exceptions to the applicability of the provisions relating to anti-competitive agreements.

1.1 Intellectual Property Protection with Reasonable Conditions

20. The Act recognises that the bundle of rights that are subsumed in intellectual property rights (IPR) should not be disturbed in the interests of creativity and intellectual/innovative power of the human mind. It accordingly exempts reasonable conditions forming a part of protection or exploitation of IPRs.

1.2 Export Cartels

21. Export cartels are outside the purview of the Competition Act. A justification of this exemption is that most countries do not put any shackles in their export efforts in the interest of balance of trade/payments.

7 Report of the Expert Group on Interaction between Trade and Competition Policy, Ministry of Commerce, Government of India, Jan. 1999.

8 Report of 'The High Level Committee on Competition Policy and Law', Department of Company Affairs, Government of India, New Delhi, 2000.

9 Government of India, Ministry of Law and Justice, "The Competition Act, 2002", *The Gazette of India*, No.12, January 14, 2003.

2. Abuse of Dominance (Section 4)

22. Dominant position has been defined in the Act in terms of the 'position of strength' enjoyed by an enterprise in the relevant market in India. Such a position of strength enables an enterprise to operate independently of competitive forces prevailing in the relevant market, or affects its competitors or consumers, or the relevant market in its favour. The new law has taken care to define the relevant market in its product and geographic dimensions.

3. Combinations Regulation (Sections 5 and 6)

23. Combinations, as defined in the Competition Act, include M&As beyond a specified threshold limit. That is, those M&As, which fall below the threshold limits are not considered in the expression "combinations" and are outside the ambit of the Act.

24. The threshold limit specified is INR1,000 crore (US$208mn, on 2004 exchange rate) in terms of aggregate value of assets of the combining parties or INR3,000 crore (US$625mn) in terms of turnover of the combining parties. In case either party is outside India, the threshold is US$500mn for assets and US$1500mn for turnover. If a merging party belongs to a business group, which controls it, the threshold is INR4,000 crore (US$833mn) in terms of assets and INR12,000 crore (US$2500mn) in terms of turnover. If the group has assets or turnover outside India, the threshold limits are US$2bn for assets and US$6bn for turnover. The threshold limits are subject to revision every two years on the basis of wholesale price index or fluctuations in the exchange rate of the rupee or foreign currencies[10].

25. The thresholds are set so high, that many mergers that may raise competition concerns will escape scrutiny under the Act[11]. This is likely in cases where the overall market size is small or merger involves a product whose relevant market is local/regional in nature, which is quite a possibility in India, considering its small market size and fragmented market structure.

26. The Act makes it voluntary for the companies concerned to notify their proposed combination to the CCI. Anyhow, the CCI is empowered[12] to investigate a combination on its own knowledge or information without waiting for merging parties to approach it up to a year after the combination has taken effect. The CCI can undo or modify a combination, if it causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India.

27. The Act lists several factors[13] that need to be taken into account for the purpose of determining whether a combination would have an appreciable adverse effect on competition. Among the listed factors are: actual and potential level of competition through imports, extent of barriers to entry, level of concentration, degree of countervailing power, extent to which substitutes are available or are likely to be available, nature and extent of vertical integration, and nature and extent of innovation. Further, the Act lists certain factors wherein a potentially anti-competitive merger may be allowed on grounds of public interest. The factors include efficiency defence, possibility of a failing firm business, and contribution to economic development. The CCI is expected to assess whether the benefits of a combination outweigh its adverse impact.

VI. Other Key Features of the Competition Act

1. Investigation, Prosecution and Adjudication

28. The adjudicative wing is distinct from the investigative wing in the Act. At the apex of the investigative wing is the Director General (DG), who will only look into the complaints received from the CCI and submit the findings to it. The DG does not have *suo moto* powers of investigation and the investigators will solely be making inquiries at the instance of the CCI.

2. Phased Introduction of the Act

29. The Government has decided to introduce the four core areas in a phased manner. During the first year of the introduction of the new law, the CCI would be engaged in competition advocacy functions only, and the MRTP Act would be operational concurrently. During the second year, provisions relating to anti-competitive agreements and abuse of dominance would be brought into force. The MRTP Act would then stand repealed and the MRTP Commission wound up. During the third year, provisions relating to Combinations Regulation would be brought into force.

10 The Competition Act 2002, *op. cit*, Section 20(3)

11 M. Agarwal, Mergers and Acquisitions in India: Implications for Competition, in Pradeep S. Mehta (ed.), *Towards a Functional Competition Policy for India*, CUTS and Academic Foundation, 2006

12 The Competition Act 2002, *op. cit*, Section 20(1)

13 *ibid*, Section 20(4)

VII. Roadblock in Enforcing the Competition Act and Amendments on the Anvil

30. The Competition Act is facing a challenge even before becoming fully operational. A writ petition filed in the Supreme Court (India's apex court) has challenged the constitutional validity of the Act, and the appointment of a bureaucrat to head the Commission. The petition challenged the appointment of a retired bureaucrat as the Chairperson. It argued that the Competition Commission envisaged by the Act is more of a judicial body having adjudicatory powers and in the background of the doctrine of separation of powers recognised by the Indian Constitution, the Chairman of the Commission had necessarily to be a retired judge.

31. Pursuant to the litigation, the Government has proposed to amend the Competition Act, 2002. The amendments are under the consideration of the Indian Parliament. Among the key amendments proposed by the government include:

1. Establishment of the Competition Appellate Tribunal

32. The Amendment Bill proposes[14] to split the competition authority, as envisaged in the original Act, into two: Competition Commission of India (CCI) as an expert body, and the Competition Appellate Tribunal (CAT) to carry out adjudicatory functions. The CAT would hear appeals against the orders of the CCI and adjudicate compensation claims arising out of the findings of the CCI or orders of the Tribunal. The Amendment is a forward-looking step designed to keep a check on the functioning of the CCI by providing the option to appeal against its orders.

2. Interface between the CCI and other Regulatory Authorities

33. As per the existing provisions in the Act, sector regulatory bodies can make a reference to the CCI, when any party before a regulatory authority makes such a request. And on receipt of a reference, the CCI will give its opinion, and the regulatory authority shall pass such order as it deems fit[15].

32. The Amendment Bill proposes[16] to allow the regulatory authority to make a *suo-moto* reference to the CCI, even without any party asking for such a reference. The Amendment Bill further proposes that on the opinion given by the Commission on such a reference, the regulatory authority would have to issue speaking orders. Thus, even though CCI's advice is not binding on regulators, they will have to provide a 'reasoned reaction' to such advice received from the CCI. Unfortunately, such a reference continues to be voluntary in nature and at the discretion of the regulatory authorities. Therefore, the amended provision would not serve much purpose. Considering that regulators have to give speaking orders on the opinion given by the CCI, they would have no incentive to refer the matter to CCI in the first place itself, given the discretion they would enjoy. Such inadequacies in the Act might create conflicts between the competition authority and regulators and lead to inconsistent decisions and forum shopping.

3. Leniency Provision

33. The leniency provision, as per existing provisions in the Act[17] provides specific relief to the first party who "spills the beans" in cases of collusion (cartels) and before the beginning of the inquiry. It is now proposed[18] in the Amendment Bill, that all the parties who wish to cooperate with an enquiry can do so right until the time the Director General submits his report to the CCI. Allowing leniency during investigations is a way to induce cartel members to come forward and cooperate.

4. Composition of the CCI

34. The Amendment proposes[19] to constitute a Selection Committee both for the CCI and the CAT to be headed by the Chief Justice of India or his nominee and two other Members who are the Secretary in the Ministry of Company Affairs and the Secretary in the Ministry of Law and Justice, respectively. However, the procedure for selection of the candidates has not been defined and left at the discretion of the Selection Committee. As per selection rules, the Committee is required to recommend a panel of suitable candidates to the Central Government within a time period of 90 days. Putting a time limit in selecting candidates for such an important and technical post and not specifying the selection procedure would lead to quick and ineffective methods of selection, which invariably end up in a non-transparent search process.

35. Furthermore, though the word 'administration' has been removed[20] as one of the qualifying criteria for the selection of Chairman and Members of the CCI, which was originally incorporated in the Act, the Bill still prescribes the age limit for these posts to 65 years[21]. The age limit of 65 years opens the door for appointment of retired/retiring bureaucrats as has normally been done in case of other existing Regulatory bodies in India.

14 The Competition (Amendment) Bill 2006, Section 53A

15 The Competition Act 2002, *op. cit*, Section 21

16 The Competition (Amendment) Bill 2006, Amendment of Section 21

17 The Competition Act 2002, *op. cit*, Section 46

18 The Competition (Amendment) Bill 2006, Amendment of Section 46

19 *ibid*, Amendment of Section 9

20 *ibid*, Amendment of Section 8(2)

21 *ibid*, Amendment of Section 10

36. The Amendment Bill proposes[22] to transfer all the staff of the MRTP Commission to CCI. This would seriously hamper the working of a new body, which requires a fresh outlook.

5. Regional Benches of the CCI

37. Since the CCI would now be an expert body, provision of establishing benches for decision making are proposed to be deleted in the Amendment Bill. Considering the huge size of India and the extent of anti-competitive practices that are prevalent at the local level[23], the proposed amendment will not ensure a proper check of local level competition concerns if the Act is implemented from country's capital.

VIII. Other Challenges Ahead

38. There are certain other areas that may pose challenge in the implementation of the Competition Act and are critical to the effective functioning of the new law. These issues are discussed below.

1. Inclusion of Provisions to Deal with IPR Abuses

39. As noted above, the Competition Act 2002 exempts reasonable conditions forming a part of protection or exploitation of IPRs. However, 'what is reasonable?' is not explicitly mentioned in the Act. Secondly, the Act is silent on the remedies, if unreasonable conditions accompany IPR licences and limit competition.

40. In India, IPR laws such as the Patent Act or Copyright Act or Trade Marks Registration Act have overriding powers over the Competition Act in matters related to IPR abuses and no attempt has been made in the Competition Act to exploit the flexibility provided under the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs) of the WTO (Article 40). By flexibility, we mean that the TRIPs does not prevent member countries from specifying in their respective legislations licensing practices or conditions that may in practice constitute an abuse of IPRs having an adverse effect on competition in their markets.

2. Autonomy of the CCI

41. The Amendment Bill fails to address certain provisions in the original Act, which impair autonomy of the CCI. The provision such as grant of money to the CCI as the Government may think fit undermines the financial autonomy of the Commission[24]. CCI is bound by direction of the Government on questions of policy[25]. This provision is in contrast to the recommendations of the high level Committee on Competition Policy and Law. Another provision gives power to the Government to supersede the CCI on certain grounds, for example, public interest, and non-compliance of a direction given by the Government[26]. These provisions severely undermine the independence of the Commission.

3. Accountability of the CCI

42. Appropriate mechanisms are required to make regulatory agencies accountable. The provisions discussed above, in the context of autonomy of the CCI, mainly aim at keeping a check on CCI's functioning by limiting its independence. However, this is not a good approach of making an independent authority accountable, as it reduces its effectiveness.

43. Among other measures to make the CCI accountable include the proposed creation of CAT to hear appeals against CCI's orders. Besides, Parliament has an oversight over the rules and regulations made to carry out the provisions of the Act[27]. CCI is also made accountable to the Parliament by requiring it to submit an Annual Report and Statement of its activities[28]. This provision, however, is not effective since one cannot expect the Parliament to devote the amount of time required for a proper study of the Annual Reports and Statements.

4. Exemptions to the Act

44. The Competition Act provides for exemptions to mergers[29] and abuse of dominance[30] on certain grounds such as economic development, public interest, etc. However there is no definition of these terms. In the absence of clear definitions, relevant provisions would be open to varying interpretations, based on subjective interpretations and might dilute the very essence of these grounds for exemptions.

22 *ibid*, Amendment of Section 66

23 P. Dayal, and M. Agarwal, State Government Policies and Competition, in Mehta, Pradeep S. (ed), *Towards A Functional Competition Policy for India*, CUTS and Academic Foundation, 2006. *See also* N. Nanda and B. Jairaj, Competition Abuses at Consumer Level: Study of Select Sectors, *ibid*

24 The Competition Act 2002, *op. cit*, Section 50

25 *ibid*, Section 55

26 *ibid*, Section 56

27 *ibid*, Sections 63(3) and 64(3)

28 *ibid*, Section 53(3)

29 *ibid*, Section 20(4)

30 *ibid*, Section 19(4)

5. Enabling Policy Environment

45. A pre-requisite for competition law is the creation of a competition culture by putting in place policies that imbibe the principles of competition. In India, however, Government policies are most often framed and implemented in a manner that creates impediments to competition and encourages anti-competitive practices[31]. This scenario would present a challenge for the CCI to effectively implement the Act.

46. Under the circumstances, the Competition Act empowers the CCI to participate in the formulation of policies through its competition advocacy function[32]. However, the catch is that the CCI can merely advocate to the Government when called upon to do so and its recommendations are only advisory, which may not be effective enough.

Conclusion

47. India is at a juncture of implementing a new law designed to suit the changing times. Anyhow, there are several challenges that the new competition authority would have to face in the initial years of its inception as has been elucidated above. While the current law is not without controversy and certain limitations, no competition law is ever perfect, and the law evolves through time, through experience, and development of the case law. Therefore, at this point, it is important that the Amendments are passed soon so that the CCI can begin the actual enforcement. Substantive competition law amendments in the future can then be based on actual experience with investigation, compliance, enforcement, and adjudication under the current law. ■

Table 1: Concentration of Top Three Firms in Various Industries in India in 1964

Concentration Level	Criterion*	Number of industries
High	75% or more	1131
Medium	Between 60 and 75%	63
Low	Between 50 and 60%	31
Nil	Below 50%	73

* *Share of top three Manufacturers*

Source: Competition Regimes in the World – A Civil Society Report, CUTS 2006

Table 2. Annual Budget of the MRTP Commission (Rs in billions)

Year	Actual Expenditure	Budget	Budget of Central Government	(3) as proportion of (4)	GDP	(3) as proportion of (6)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1996	10.48	11.08	2010.07	0.0055	13682.08	0.0008
1997	14.363	14.399	2320.68	0.0062	15224.41	0.0009
1998	16.724	17.728	2793.60	0.0063	17582.76	0.0010
1999	-	17.605	2980.84	0.0059	19569.97	0.0009

Source: Pulling Up Our Socks, CUTS, 2002

31 Pradeep S. Mehta (ed), *Towards a Functional Competition Policy for India*, CUTS and Academic Foundation, 2006

32 The Competition Act 2002, *op. cit*, Section 49

Table 3. MRTP Act vs Competition Act[33]		
S. No.	**MRTP ACT, 1969**	**COMPETITION ACT, 2002**
1.	Based on pre-reforms command and control regime	Based on post-reforms liberalised regime
1.	Based on size/structure as factor	Based on conduct as a factor
2.	Competition offences implicit and not defined	Competition offences explicit and defined
3.	Frowns upon dominance	Frowns upon abuse of dominance
4.	No combinations (i.e. M&As) regulations (post-1991 amendment)	Combinations regulations beyond a certain threshold
5.	No competition advocacy role for the MRTP Commission	CCI has competition advocacy role
6.	No penalties for offences	Penalties for offences
7.	Unfair trade practices covered	Unfair trade practices omitted (Consumer Protection Act, 1986 will deal with them)
8.	Rule of law approach	Rule of reason approach
9.	Blanket exclusion of intellectual property rights	Exclusion of intellectual property rights, but unreasonable restrictions covered

Source: Towards a Functional Competition Policy for India, CUTS and Academic Foundation 2006

33 S. Chakravarthy, Evolution of Competition Policy and Law in India, in Pradeep S Mehta (ed.),

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e-Competitions

> Décisions nationales d'application du droit communautaire de la concurrence

Avec l'entrée en vigueur du Règlement n° 1/2003, les décisions nationales d'application du droit communautaire de la concurrence sont devenues une nouvelle source d'information. Ces décisions sont encore peu nombreuses et difficiles à recenser, les juridictions nationales n'alimentant pas encore régulièrement le site de la Commission. Grâce à son réseau de correspondants, *e-Competitions* offre à ses abonnés un accès en avant-première à ces décisions.

> Droits nationaux de la concurrence des États européens

Le bulletin *e-Competitions* couvre également les nouvelles dispositions nationales de concurrence, ainsi que les décisions d'application des droits internes de la concurrence dès lors qu'elles présentent un lien direct avec les articles 81 ou 82 CE.

e-Competitions présente et commente les principaux textes nationaux destinés à la mise en œuvre par les autorités de concurrence et les juridictions nationales des pouvoirs prévus par le Règlement n° 1/2003.

Accès aux textes originaux

Chaque commentaire est accompagné de la décision ou du texte en langue originale.

Des liens hypertextes renvoient aux textes et décisions communautaires cités (Commission européenne, arrêts de la Cour de justice, règlements, directives, livres verts, working papers…). Le bulletin est rédigé en anglais. *e-Competitions* est à ce jour la seule base de données systématique sur l'application du droit communautaire de la concurrence dans chacun des Etats membres. Plus de 300 décisions ou textes commentés au 1er avril 2006 par 100 auteurs de 25 États membres.

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