

# COMPETITION ACT: A PRAGMATIC AND IMPROVED FRAMEWORK TOWARDS COMPETITION

A Comparative assessment with respect to the  
Monopolies and Restrictive Trade Practices Act



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## **MRTP ACT :**

- Restrict concentration of economic power.
- Restrict control of monopolies.
- Prohibition of restrictive and unfair trade practices.

## **COMPETITION ACT :**

- Eliminating the rigidly structured MRTP act.
- Reforming the legal system to sustain Competition.
- Encourage freedom of trade.
- Prevent anti-competitive practices having an adverse effect on competition.
- Protect the interests of the consumers .

# MECHANISM FOR ACHIEVEMENT OF OBJECTIVES

## UNDER MRTTP

- Monopolies and Restrictive Trade Practices Commission:
  - Est. August, 1970-Repealed (1<sup>st</sup> Sep, 2009)
  - Despite repeal, has jurisdiction and power for 2 years (Sep 1<sup>st</sup>, '09- Aug 31<sup>st</sup>, '11) to adjudicate pending cases (Sec 66 of the Competition Act).

## Under Competition Act

- Competition Commission of India (C.C.I):-
  - Est. Oct 14<sup>th</sup>, 2003
  - Cases could be filed w.e.f 1<sup>st</sup> Sep 2009.
  - Performed an “advisory” role till then.
- Competition Appellate Tribunal (C.A.T) –
  - Appeal Forum
  - Est. 19<sup>th</sup> Oct, 2009

## MAIN FOCUS AREAS OF THE ACT

- Prohibition of Anti-Competitive Agreements.
- Prohibition of Abuse of Dominance.
- Regulation of Combinations.
- Competition Advocacy.

# FEATURES

## A. PROHIBITION OF ANTI-COMPETITIVE AGREEMENTS

- Anti-competitive agreements void *per se* (Sec 3):
  - Vertical (Tie in arrangements, Exclusive supplies etc. )
  - Horizontal (Cartels, Bid rigging)
- Leniency provision – for *whistleblowers* in a cartel (if disclosure is before prosecution).
- Entire agreement void if found to be anti-competitive. Under MRTP, the restrictive trade covenant part is void.
- C.C.I armed with “residuary powers” to curb anti-competitive agreements. No residuary powers under MRTP.

# FEATURES

## B. PROHIBITION OF THE ABUSE OF DOMINANT POSITION

- Dominance judged from factors mentioned under Sec 19 (4):
  - Market share of the enterprise
  - Size and resources of the enterprise
  - Entry barriers
- ‘Dominance’ acceptable but not the abuse of dominance. Under the MRTP act, monopolies *per se* were prohibited..

# FEATURES

- C.C.I adheres to the concept of “relevant market”. Entirely absent under the MRTP Act.-Microsoft Case.
- Important shift from ‘size’ / ‘structure’ to ‘behavior’ / ‘conduct’- Vitamin Cartel case.
- Instances of unfair, discriminatory or predatory pricing; restricting quantities, markets or technical development, etc. will qualify.

# FEATURES

## C. REGULATION OF COMBINATIONS

- Defined procedures for Combinations under the Competition act. No specified procedure under the M.R.T.P.
- Includes M&A's, Amalgamations, Acquisitions- all above a certain high level threshold (Rs.10 Billion aggregate value of assets or Rs.30 Billion turnover of combining parties).
- Thresholds deliberately high to allow small Indian companies to combine to become active international players.
- When value of the combination exceeds the specified threshold limits, pre-Notification to the Competition Commission mandatory which was not the case under the MRTP act.

# FEATURES

## D. COMPETITION ADVOCACY

- Create awareness and training on competition issues. “Gradualist approach” adopted.
- Empowered to participate in formulation of country’s economic policies.
- Statutory Authority may make a reference on a “Competition issue” for opinion which has to be given by CCI within 60 days.
- Establishment of “Competition Fund” for above ( The CCI is autonomous in terms of funding as it provides for the establishment of the Competition fund)
- Commission assisted by various advisory committees on
  - Regulations
  - Economic Information
  - Course Curriculum
  - Predatory Pricing

# BASIC DIFFERENCES

MRTP ACT	COMPETITION ACT
1) Based on pre-reforms scenario.	1) Based on post-reforms scenario.
2) Unfair trade practices were included within the purview.	2) Unfair trade practices excluded from the purview. Included under the Consumer Protection Act.
3) Not Extra-territorial.	3) Extra-territorial (Section 32).
4) Dependant on the Central Government.	4) Role of Central Government is limited. Greater independence to C.C.I and the C.A.T.
5) MRTPC became “ functus officio” after it passed the final order.	5) CCI does not become functus officio after passing final orders. Has the power to review and rectify its own orders.
6) Deems several agreements as anti-competitive without enquiry.	6) Agreements anti-competitive only when they have an appreciable adverse effect on competition..

# BASIC DIFFERENCES

<b>MRTP ACT</b>	<b>COMPETITION ACT</b>
7) Approval of Central Government necessary.	7) Renders opinion and prevails over Central and State Governments and Statutory authorities.
8) No penalty provisions.	8) Provides for penal sanctions (Sec 27, 43, 43 (A), 44, 45, 48).
9) Interim relief cannot be granted.	9) Interim relief can be granted
10) No procedure to solve a difference of opinion.	10) Difference of opinion solved by a “Majority” vote.

# THANK YOU

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