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*India**

The Indus[1] Valley civilisation is one of the oldest in the world, dating back at least 5,000 years. Aryan tribes from the Northwest invaded in about 1500 BC; their union with the earlier inhabitants created the classical Indian culture. The arrival of European traders, beginning in the late 15th century, followed Arab incursions starting in the 8th century, and Turkish in the 12th. By the 19th century, Britain had assumed political control of virtually all of the Indian territory.

PROFILE	
Population:	1.1 billion***
GDP (Current US$):	599 billion***
Per Capita Income: (Current US$)	530 (Atlas method)*** 2,670 (at PPP.)***
Surface Area:	3.3 million sq. km
Life Expectancy:	63.7 years**
Literacy (%):	61.3 (of ages 15 and above)**
HDI Rank:	127***

Sources:
- World Development Indicators Database, World Bank, 2004
- Human Development Report Statistics, UNDP, 2004

(**) For the year 2002

(***) For the year 2003

Non-violent resistance to British colonialism under Mohandas Gandhi along with a band of freedom fighters led to independence in 1947. The subcontinent was divided into the secular state of India and the smaller state of Pakistan comprising Muslim majority areas. However, Pakistan was divided into two territories: West Pakistan (carved out in the west of India) and East Pakistan (carved out of the province of Bengal). A third war between the two countries in 1971 resulted in East Pakistan becoming the separate nation of Bangladesh.

Economy

Market regulatory laws have been in place even in 400BC, such was the enlightened governance system to regulate the greed of merchants.

Today, India, the world's largest democracy is the fourth largest economy in terms of PPP. It is a huge country with 28 states and six union territories, with an elected legislature. In terms of governance, many subjects are in the exclusive jurisdiction of states, such as police, agriculture and health. The Union Government does legislate on these subjects, but it is up to the states to adopt the legislation with or without amendments. There are concurrent subjects, where the Union Government has parallel jurisdiction (such as industries, mines & minerals, electricity), and there is a Union list over which the Union government has the exclusive right. These include subjects like foreign affairs and international treaties, defence, currency etc.

After independence, India followed the Soviet style industrialisation that required extensive State intervention along with import substitution. However, since July 1991, it has radically liberalised its economy and, today, actively engages in the promotion and protection of competition in its markets.

India's economy encompasses traditional village farming, modern agriculture, handicrafts, a wide range of modern industries, and a multitude of support services. There are many paradoxes

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* Original paper done by Pradeep S. Mehta of CUTS in July 2004 and revised in September, 2005 & February 2006

1 http://www.cia.gov/cia/publications/factbook/geos/in.html

in this huge country. While 26 percent people are poor and without access to basic needs, India is also a nuclear power and has been able to send satellites into the space.

Since reforms were adopted in 1991, government controls have been reduced on foreign trade and investment, and privatisation of domestic output has proceeded slowly. The economy has posted an excellent average growth rate of 6 percent since 1990, reducing poverty by about 10 percent. India is capitalising on its large numbers of well-educated people skilled in the English language, to become a major exporter of software and outsourcing services and software workers.

Competition Evolution and Environment

The architects of independent India were deeply influenced by socialism. Not surprisingly then, India's first Government wanted rapid industrial development and equitable distribution of wealth. With this objective in mind, the Constitution carried provisions to ensure that 'concentration of wealth…(does not lead) to the common detriment'.

However, even as national and *per capita* incomes increased over the years, there was little evidence of the intended trickle-down. Concerned with this, the Government appointed the Committee on Distribution of Income and Levels of Living (Mahalanobis Committee) in October 1960. In contrast to views of many, the Committee's report did not blame industrial licensing for the growth in concentration of economic power.

Nevertheless, the Mahalanobis Committee recommended looking at the industrial structure, and whether there was a concentration. Thus, the Government appointed the Monopolies Inquiry Commission (MIC) in April 1964, with the following terms of reference:

- to investigate the extent and effect of concentration of power in the private sector, i.e. its factors and social consequences; and
- to suggest necessary legislative, or other measures in light of the findings.

In its report, submitted to the Government in October 1965, the MIC underscored that there was high concentration of economic power in over 85 percent of industrial items in India.

Table 11.1: 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 3 Manufacturers*

It noted that dominant positions allowed firms to manipulate prices and output, and even producers and distributors that were not dominant engaged in restrictive practices. Further, it said 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 the adequate mechanisms to check it.

Following discussions by the Mahalanobis Committee on the MIC reports, the Planning Commission of India, in July 1966, appointed the Hazari Committee to review the operation of the existent industrial licensing system. The report echoed previous concerns regarding the skewed benefits of the licensing system. After a heated Parliamentary debate over this report, the Government, in July 1967, appointed the Industrial Licensing Policy Inquiry Committee (ILPIC), which was asked to look into the licensing and financial structure. The ILPIC submitted its report two years later, which suggested that:

- No specific instructions had been given to licensing authorities, for the purpose of preventing concentration and monopolistic tendencies, and that
- The procedures, in fact, nurtured the growth of large industrial groups.

Competition Legislation and Institutions

The Industrial Licensing and Policy Inquiry Commission (ILPIC) 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. The establishment of the MRTP Commission included the recommendation to tackle concentration in various sectors of the economy. However, public sector enterprises, co-operative societies and agriculture were exempt from the purview of the proposed Act.

After much debate over the Bill, the MRTP Act was enacted in December 1969. It came into force in June 1970 and the MRTP Commission was set up in August of the same year.

With the passage of time, it was noticed that the MRTP Act's objectives could not be achieved to the desired extent. In June 1977, the Government appointed the High-Powered Expert (Sachar) Committee to consider and report the required changes. The Committee's report, *inter alia*, recommended:

- withdrawal of exemption to public enterprises, to be able to check monopolistic, restrictive and unfair trade practices in the sector;
- widening the scope of the MRTP Act to include unfair trade practices (UTPs) like hoarding, the supply of hazardous products, and misleading and deceptive advertising; and
- enhancement of MRTP Commission's powers and enlargement of its role.

Anticompetitive Business Practices

The MRTP Act was amended accordingly in 1984, except the non-inclusion of hazardous goods. Hoarding was also not included. Other amendments followed from time to time to suit the *status quo*. Following the adoption of reforms, the most far-reaching of the amendments was introduced in 1991, which removed the need for government approval to establish new undertakings or the expansion of existing undertakings, and also diluted the provisions of the mergers & acquisitions clause. Furthermore, it deleted the 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.

Even so, the MRTP Act became outdated in the light of the liberalisation and globalisation process. Thus, a need for a new competition law was felt.

For this purpose, the Government appointed the High Level Committee on Competition Policy and Law (Raghavan Committee) in October 1999. After heated discussions on the Committee's report and the Competition Bill that it recommended, as well as parliamentary debates, the Competition Act 2002 was enacted in January 2003. Its main objectives are to:

- Ensure fair competition in India, by prohibiting trade practices that have an adverse effect on competition;
- Promote and sustain competition;

- Protect the interests of consumers; and
- Ensure freedom of trade for other participants in incidental and connected markets.

The main aspects of the Competition Act are:
- Prohibition of anticompetitive agreements;
- Prohibition of abuse of dominant position;
- Regulation of combinations;
- Establishment of the Competition Commission of India;
- Penalties for contravention and non-compliance;
- Competition advocacy; and
- Constitution of the Competition Fund.

A critical issue missing from the MRTP Act, which has been incorporated in the Competition Act, is that of extra-territorial jurisdiction. Secondly, UTPs were removed from the new law and transferred to the Consumer Protection Act, 1986 (COPRA). It may be noted that COPRA already dealt with UTPs, as well as RTPs at the retail level. Thus, at the consumer level, there is a mini competition authority in each of the 590+ districts of India, a unique redressal system. Both the MRTP Act and COPRA also have provisions for awarding compensation, which have been used liberally by the respective fora.

Consumer Protection

Industrial development in the field of manufactured goods and removal of quantitative restrictions on consumer goods imports have led to the influx of various consumer goods into the Indian market to cater to the needs of the consumers.

Further, a variety of services, such as banking, financing, insurance, transport, housing construction, entertainment have been made available to the consumers. In order to protect the consumers from exploitation, and to save them from adulterated and substandard goods and deficient services, the Consumer Protection Act came into force on May 1987.

Box 11.1: Tie-up Sales of Gas Stoves with Supply of Gas Connection

Like in any other command and control economies, some goods and services were always in short supply, which led to political patronage and exploitation. Businesses exploited the situation through restrictive practices like tie-up sales. One such case, which came before the MRTP Commission in 1984, was that of Shyam Gas Company. Shyam Gas Company, the sole distributor to Bharat Petroleum Corporation Ltd, for cooking gas cylinders at Hathras (Uttar Pradesh), was allegedly engaging in the following restrictive practices:

- Giving gas connections to the customer only when he purchased a gas stove or a hot plate from the company or its sister enterprise, Shyam Jyoti Enterprises; and
- Charging customers for the supply of fittings and appliances at twice the market price.

The MRTP Commission held that the company was indulging in an RTP that was prejudicial to public interest. When charged, Shyam Gas Co. agreed to stop the RTP, and the MRTPC directed the company to abide by the undertaking.

The company was also asked to display, on its notice board, that the consumers were free to purchase the gas stoves and hot plates from anywhere they liked, and that the release of the gas connection would not be denied or delayed if the stove or hot plate was not purchased from the company or its sister company. This order formed the basis of asking all LPG dealers to put up a similar notice in their premises.

Source: Monopolies Trade Regulation & Consumer Protection, D P S Verma, 1985.

The COPRA 1986 seeks to provide for the better protection of consumer interest and, for that purpose, to make provisions for the establishment of consumer councils and other authorities to settle consumers disputes and connected matters. The Act has envisaged the setting up of the consumer protection councils at the central and state levels, namely the Central Consumer Protection Council and State Consumer Protection Councils.

The COPRA 1986 deals with UTPs and RTPs related to arrangements of tied-sales, etc. Its aims are to:

- protect consumers against marketing of goods and services hazardous to life and property;
- provide access to goods and services at competitive prices; and
- award compensation to dissatisfied consumers.

Box 11.2: Builders' Boycott to Break the Cartel!

It has been a long-standing allegation that cement prices in India are not determined by market forces, but by collusive price-fixing of the manufacturers. In 2001, the cement cartel, after showing signs of weakness for a few months, once again became active. The said cartel stopped despatches all over India from November 27, 2000, to December 3, 2000. Dispatch resumed from December 4, but with a uniform price hike all over the country. The price hike was about Rs 50 per bag, a rise of almost 50 percent.

This was too much to digest for the major construction companies, who consumed about 60 percent of the total cement consumption in the country. These companies, under the banner of Builders Association of India (BAI) urged the Cement Manufacturers Association (CMA) to roll back the prices. However, the CMA turned down their demand. The BAI decided to stop purchasing of cement from January 15, 2001, and their construction activities came to a grinding halt in many projects, even though they had strict deadlines. After a few days, the builders realised that civil work could not be stalled indefinitely, as they were also losing over Rs 5 crores daily.

BAI, thus, decided to change its strategy. Instead of boycotting all the manufacturers, they targeted two major companies, Grasim and GACL, who were also believed to be leading the cartel. The idea was to create an incentive problem amongst the players, which could lead to a rift among them.

Meanwhile, BAI also lobbied the Government for a 10 percent reduction in basic customs duty, from the then existing 38 percent, as well as for the removal of the surcharge of 10 percent, anti-dumping duty of Rs. 10 per metric ton, and the countervailing duty of Rs350 per metric ton. The BAI even allied itself with the then Chief Minister of Maharashtra, Vilasrao Deshmukh, who had a series of meetings with the Union Finance Minister, Yashwant Sinha. In the 2001-02 budget, the Government reduced the import duty, and removed the surcharge, as well.

Taking full advantage of this, the BAI arranged to import 800,000 bags of cement from the Far East, at a landed cost of around Rs 140 per bag at a time, when the ruling prices in Mumbai were at around Rs. 185 per bag. Consequently, cement prices started falling.

It is not known if good sense prevailed upon the cement majors; if Lafarge triggered disunity, by refusing to play ball with the domestic players, especially in the eastern market, where it is the biggest player; or if it was because of the actions of the BAI and the Government. The dealers felt that the prices were falling because of renewed competition among the manufacturers.

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

Under the COPRA 1986, an elaborate 3-tier redress system has been established, with a simple procedure for consumers or their organisations to seek redress of complaints. The apex body, the National Commission, is at New Delhi, whilst State Commissions are at state capitals (32) and a, or more than one, District Forum at the district level. The ultimate arbiter is the Supreme Court of India.

In addition to the above laws that directly deal with competition, significant amendments have been introduced in other laws to promote competitive markets. For instance,

- The Foreign Exchange Management Act (FEMA) was enacted in 1999, and has considerably liberalised the foreign exchange regime;

- The number of industries has been greatly reduced under the Industries Development and Regulation Act 1951 (retaining those of strategic or security concerns), which implies that prior government approval will no longer be required for the exempted undertakings; and

- A reservation policy for the small scale sector has also been diluted considerably reducing the number of items reserved from 836 to 605.

Sectoral Regulation

India has also been liberalising and privatising some sectors that were hitherto state monopolies with the purpose of introducing competition. Some of the sectoral regulators are:

- Telecom Regulatory Authority of India (TRAI) and the Telecom Disputes and Appellate Tribunal regulates the telecom sector;.
- Central Electricity Regulatory Commission (CERC) at the federal level, and a State Electricity Regulatory Commission (SERC) operating in most states regulate the electricity markets. An Electricity Appellate Tribunal has also been since established at the federal level to hear appeals against CERC's orders;
- Insurance Regulatory and Development Authority (IRDA), regulates the newly opened insurance sector; and
- Tariff Authority for Major Ports.

Their currently proposals to establish independent regulators for petroleum and gas, surface transport etc. Furthermore, banking and finance sectors in India are regulated by the Reserve Bank of India (RBI) while Securities and Exchange Board of India (SEBI) regulates the securities market.

Box 11.3: Misleading Advertising & Bait-and-Switch

UTPs, which are now exclusively within the scope of the COPRA, were brought under the purview of the MRTP Act in August 1984. The first sales promotion organiser to be charged under the Act was Bal Krishna Khurana, who was famous, in all of North India, for selling 'export quality' hosiery goods at ridiculously low prices.

CUTS reacted accordingly when Khurana hit Jaipur in 1984 to sell his goods at throwaway prices. CUTS had been receiving complaints from a large number of victims of these sales and decided to investigate. Consequently, CUTS moved the MRTP Commission against Khurana and

demanded to know how he could offer 'export quality' hosiery goods, worth Rs 210, for as low as Rs 5 to15.

In its complaint before the Commission, CUTS stated that misleading advertisement and bait-and-switch selling, that followed, caused harm and inconvenience to the public and buyers. Visits to Khurana's stalls caused mental agony to consumers as what they took home were mainly bogus goods after wasting time and money.

The MRTP Commission promptly ordered an inquiry into the complaint, which was followed by an order restraining Khurana from organising any more sales promotion ventures.

Furthermore, the MRTP Commission advised newspapers not to carry misleading advertisements, as one of the duties of the media is to protect consumer rights, and not solely earn revenue through bogus advertisements. The newspapers responded to the advice. Even so, after a gap of a few years, sadly, newspapers continue to carry such advertisements.

Source: How To Survive As A Consumer, CUTS, 1998.

There appears to be very little consistency in the regulatory legislation across the sectors, particularly in the electricity, telecom and port sectors. It is difficult to find a common baseline in order to ensure any degree of uniformity in sectoral legislation, as variance exists in almost every aspect of the laws. This variance is visible in the regulatory mandates; objectives; the interface with the Government and other bodies; accountability, and so on.

Electricity regulators are supposed to deal with sectoral competition concerns, such as abuse of market dominance, formation of monopolies, etc. The electricity law does not recognise a possible role for the Competition Commission of India (CCI) within its scope, though the CCI was established a year prior to the enactment of the Electricity Act.

In contrast, the amended Telecom Regulatory Authority of India (TRAI) Act has effectively reduced the telecom regulator's role to that of an advisory body. The regulator is required to organise stakeholder consultations and, after discussions, submits its recommendations to the Department of Telecommunication (DoT). The implementation of such recommendations is entirely subject to the DoT's sole discretion. Moreover, the provisions, with regard to the appointment and removal of regulators, are so weak that practically it is difficult for a regulator to maintain a different viewpoint than that of the DoT.

Recently, the Prime Minister has directed the Planning Commission to evolve a regulatory framework for the infrastructure services after taking on board international best practices. Initially, the Commission attempted to complete the task within three months. However, realising the complexities involved, the Planning Commission expects to take more time to produce the report. Rightly, the Commission is consulting various stakeholders, including consumer groups and investors, to get their views on a potential framework. Therefore, one can expect an inclusive and pragmatic set of recommendations as the final result. Hopefully, the report will provide the needed base criteria to establish an efficient and effective regulatory framework for infrastructure services.

Concluding Observations and Future Scenario

The Competition Act 2002 provides for the establishment of the Competition Commission of India (CCI), which, like its predecessor - the MRTPC, is a quasi-judicial body. The CCI, *inter alia*, has the power to:

- Issue cease and desist orders;

- Grant interim relief;
- Award compensation;
- Impose fines; and
- Order the division of dominant undertakings.

Presently, in its first year, the CCI is engaged in competition advocacy. In the second year, it will tackle cases related to anticompetitive practices other than M&As, which will be dealt with in the third year.

However, the functioning of the CCI has been affected by a writ petition filed in the Supreme Court, which challenged the appointment of a non-judicial person as its chairman, asserting the doctrine of the separation of the powers of the executive and the judiciary.

In response, the Government of India has suggested that the Act will be modified and the CCI will be split into two bodies: one the regulatory body to be headed by an expert, and an appellate body to be headed by a judge. The amendment bill is yet to be finalised and approved by the Parliament, at the time this paper was written. In the interlude, the CCI functions in a lame duck fashion with one Member and few staff, which are engaged in the preparatory work and advocacy seminars.

India is likely to emerge as the second largest market in the world in the not so distant future. In this scenario, the CCI will be expected to play a balanced role, protecting both consumer interests and those of the Indian businesses. The CCI will also have an important task of collaborating with the various sectoral regulators and herein competition advocacy will play a vital role.

Suggested Readings:

"*Consumer Protection in India*". Man Chand Khandela. Jaipur, 2001.