COMPETITION POLICY IN THE CONTEXT OF LIBERALISATION IN INDIA

Dissertation submitted to Jawaharlal Nehru University in partial fulfilment of the requirements for the award of the Degree of

MASTER OF PHILOSOPHY

DEEPIKA WADHWA

CENTRE FOR ECONOMIC STUDIES AND PLANNING
SCHOOL OF SOCIAL SCIENCES
JAWAHARLAL NEHRU UNIVERSITY
NEW DELHI 110067

2004

CENTRE FOR ECONOMIC STUDIES & PLANNING
SCHOOL OF SOCIAL SCIENCES
JAWAHARLAL NEHRU UNIVERSITY
NEW DELHI-110067, INDIA

DECLARATION

This dissertation entitled **"Competition Policy in the Context of Liberalisation in India"** being submitted to the Centre for Economic Studies and Planning, School of Social Sciences, Jawaharlal Nehru University, New Delhi, in partial fulfilment of the requirements for the award of the degree of MASTER OF PHILOSOPHY, is my original work and it has not been submitted in part or full for any other degree of this or any other University.

Deepika

DEEPIKA WADHWA

We recommend that the dissertation be forwarded to the examiners for evaluation.

PROF. C. P. CHANDRASEKHAR

(SUPERVISOR)

PROF. ARUN KUMAR

(CHAIRPERSON)

Phone: 91-11-26717676, 26717557 Ext. 4421/26704421 Cable: JAYENU Fax: 91-11-26717603, 26717585, 26717586

ACKNOWLEDGEMENTS

I am indebted to Prof. C.P. Chandrasekhar for his valuable suggestions and guidance at various stages of my dissertation work. He not only supervised this work with patience, but also gave clarity to my arguments and steered me clear off contradictions.

I wish to extend sincere thanks to Dr. Manish Gupta, Mr. Mayur Trivedi and Mr. Sobhanbrat Talukdar for their crucial help in collection of data. I am also thankful to Bishtji for his timely assurances and to Nadeemji for meticulously typing the dissertation.

I am really glad to have got friends like Subrat, Lipika, Swati and Preetika who have stood by me at difficult times. It is very difficult to find words of gratitude for my parents, grandma, my brother and Nandu whose love, support and encouragement have always been there; and not to miss my dear Ponki whose love is invaluable for me.

21 July 2004 Deepika Wadhwa

CONTENTS

LIST OF TABLES

PREFACE

In the last decade, the vast changes in the global economy have resulted in a far greater integration of markets across the world. Subsequently, competition concerns have been raised in this new environment, both in terms of domestic anti-trust issues as well as implications of cross-border Mergers & Acquisitions by large multinationals. Competition policy and law was not among the priorities of most developing countries in the era of state intervention in economic activities. But the fundamental changes in their internal and external economic environment have witnessed a considerable increase in the number of countries adopting competition laws.

The Indian economy also has undergone substantial changes over the past decade, with the launching of wide-ranging reforms in its industrial, trade and financial sectors. The scope of reforms has gradually broadened across all sectors and deepened over time resulting in a steady decline of the role of the state in productive activities and regulation of the economy. Towards the end of the last decade, in this new environment, the Government of India proposed a new Competition Bill, which was enacted in 2002.

The purpose of this study is to examine the role of competition and competition policy from the perspective of developing countries, and in particular, India. The study discusses the role of competition policy in relation to economic development of developing countries. It also describes and assesses the proposals put forward for an agreement on competition policy in the WTO. By providing an overview of the structure and regulatory framework of private corporate sector in India (in the pre and post-reforms period), it tries to capture the impact of external liberalization on this sector, in particular that of the entry of TNCs, and emphasizes the need for government intervention to promote globally competitive indigenous firms. It further presents the scope and objectives of the new competition law in India (the Competition Act, 2002) and critically reviews the same. And, finally the study ends with some concluding remarks.

Chapter I

INTRODUCTION

National and international competition enforcement matters have received far more attention from the policy makers in the 1990s than in previous decades since the process of globalisation posed distinct challenges for competition regimes in this decade.

As a result, there has been a growing interest in the competition policy in many developing countries. There are now approximately hundred countries in the world where the competition law has already been enacted and many more countries are drafting or debating such a law in their national legislative system.

Is competition policy and law really relevant for developing countries and if so, to what extent competition can be effectively incorporated in their regulatory structure? To answer these questions, the chapter first reviews competition policy in general and with a discussion of the market structure of developing countries, it reviews the competition policy from their perspective.

Competition Policy and Competition Law

Competition means rivalry in the market place, whereby firms compete against each other in order to secure customers for their products. Competition allows the market to reward producers with good performance. It thus encourages entrepreneurial activity and market entry by new firms. It provides a stimulus for enterprises to increase efficiency, invest in the production of a greater variety, better quality products at prices close to costs, and to create new products. This enhances consumer welfare, efficient resource allocation throughout the economy, fosters growth, and ultimately, leads to development (UNCTAD, 1997, Pg 131).

The presence of competition forces the firms to adopt the most efficient production methods, to eliminate fat and organisational slack, and to seek new and superior product and process technologies lest they be overrun by more progressive rivals (Scherer, 2002).

Competition policy is essentially understood to refer to all those governmental measures and instruments that directly affect the behaviour of enterprises, the structure of industry and determine the 'conditions of competition' that reign their markets. A coherent and pragmatic competition policy should be capable of enhancing competition in local and national markets. It is an instrument to achieve efficient allocation of resources, technical progress and consumer welfare and to regulate concentration of economic power which is detrimental to competition. On a wider note, a well designed competition policy should govern policies relating to globalisation, liberalisation and deregulation, which may have effect on competition (Chakravarthy, 1999).

The World Bank defines it as consisting of two elements:

1. A set of policies that enhance competition in local and national markets through a liberal trade policy, relaxed foreign investment and ownership requirements, deregulation and privatisation.

2. Legislation i.e. competition law designed to prevent anti-competitive business practices and unnecessary government intervention. It provides teeth and legal backing to the competition policy.

Thus, competition laws/antitrust laws which exist at the national level are a subset of competition policy. They are one of the aspects of corporate governance frameworks by which the state regulates private sector activity (Lee & Morand, 2003).

Hoekman and Holmes (1999) define it as:

> "The set of rules and disciplines maintained by governments relating either to agreements between firms that restrict competition or to the abuse of a dominant position."

A key distinction between competition law and competition policy is that the latter pertains to both private and government actions, whereas anti-trust rules pertain to the behaviour of private entities (firms).

Rationale Behind Antitrust Policies

If we existed in a world that functioned in accordance with the perfect competition paradigm, there would be little need for anti-trust policies and other regulatory efforts. All markets would consist of a large number of sellers of a product and consumers would be fully informed about the product implications. Unfortunately, economic reality seldom adheres to the textbook model of perfect competition. Mostly markets are dominated by a small number of large firms and there are potential economic losses that result from monopolies (Viscusi, 1994)

Antitrust laws emerged more than a century ago. The first competition (antitrust) laws were pioneered by Canada (1889) and the US (1890) in response to the concerns against the excessive market power and the resulting economic and political influence - obtained by a few exceedingly large conglomerates. This attention was stimulated by a belief that consumers were vulnerable to the market power of monopolies.

The major concern raised against monopoly and similar kind of concentration is not that being big is necessarily undesirable. But because of the control over the price exerted by a monopoly there are economic efficiency losses to society. Product quality and diversity may also be affected. Society could potentially be better off if limitations were imposed on the operation of a monopoly or a similar kind of concentrated industry.

Objectives of Competition Policy

The objectives and means of competition policy have been subject to various controversies. On one side, there are ardent followers who consider economic freedom and the ensuing competition as an end in itself. On the other side, there are those considering competition policy as a constituent part of an interventionist industrial policy aimed at establishing market structures and enticing enterprises to behave in a way conducive to the enhancement of economic welfare. (Neumann, 2001)

Competition policy seeks to prevent restrictive business practices and build market structures that lessen competition. The objective of such a policy is to maintain and encourage competition in order to foster greater efficiency in resource allocation and maximize consumer welfare. These objectives are achieved through an interface with other economic policies affecting competition in local and national markets.

The objectives of competition policy are the guiding principles to make decisions regarding the contours of a competition policy and legislation. However, other factors, such as size of the market, commitment of the government to the cause of fostering competition, politico-economic factors such as influence of lobby groups, and above all, resource and capacity constraints affect the decisions of the governments on what type of competition policy and law they would like to enact.

Scope of Competition Policy

The scope of anti-trust issues is quite vast. It encompasses the traditional concerns with a monopoly, however these issues have become less prominent now than they once were. The current structure of anti-trust policies is diverse in character and impact.

The overall intent of these policies has not changed markedly over the past century. Their intent is to limit the role of market power that might result from substantial concentration in a particular industry. What has changed is that the concerns have shifted from the rise of single monopolies to mergers, leveraged buyouts, and other financial transactions that combine and restructure corporations in a manner that might fundamentally influence market behaviour (Viscusi, 1994).

Basically, competition laws everywhere deal with three main subject areas, namely: (i) Restrictive Trade Practices (RTPs) (ii) Abuse of dominance or monopoly power (iii) Mergers and acquisitions.

The scope of competition policy ultimately gets reflected in the political decisions - about how to organize and regulate economies - which differs depending on the size of economy, level of development, the specific sector being addressed and the particular circumstances. As regarding the scope of competition policy in a developing country, it must address issues such as (1) restrain on anti-competitive behaviour by domestic privatised large firms (2) limit abuses of monopoly power by mega corporations created by the international merger movement (3) promote development (Singh, 2002 a).

The advanced nations consider competition policy amongst their most useful policy instruments. But given the differences that exist between industrialized and developing countries, policy implications which can be very sound or appropriate for the developed countries may not have similar effect in developing countries.

Thus, arise a few fundamental questions from the viewpoint of developing countries: - is competition desirable in all cases and whether it should be always fostered; how much competition do developing countries need; should they vote for free trade as a means to enhance competition or is there an existential need to establish a certain degree of competitiveness through protectionism before facing the world economy; how should government intervention be designed in order to help industries become competitive. Last but not the least, to what extent is the domestic competition law and policy necessary to address these issues.

In the light of the structural and technical constraints that dominate the developing countries, the following section discusses these relevant issues.

Market Structure in Developing Countries

The competitive structure of the market is mainly determined by technology and market size. In developed countries, the establishment of a dominant market position is usually the outcome of a prolonged competitive struggle whereas in developing countries, due to the process of late industrialization, monopolistic/oligopolistic structures are technically inevitable. (Merhav, 1969)

The reason being that the minimum economic scale of internationally transferred technologies was often so large, relative to the size of home market, that only one or a few firms could be profitably sustained, even in industries which in advanced countries were nearly competitive in nature.

The underlying technical inflexibility is further strengthened by the rigidities of an oligopolistic structure. In an oligopolistic market structure the scale of output is not only small because the total domestic market is narrow, but also this market is further fragmented among a number of firms. Thus, real costs of production are high resulting from smaller scale and lower productivity (ibid).

In small national markets, ensuring vigorous competition can conflict with the attainment of relevant scale economies. Small markets may accommodate only a few plants of minimum economic scale, or they may make it difficult to reach minimum-cost output levels of manufacturing products subject to high start-up costs. The smaller the market, the sharper the conflict between competition and scale economies is likely to be (Scherer, 2002).

Thus, due to the limitations of financial, organisational and technical resources, uncertainty in new markets and the dynamics of growth itself, it is not very likely than an under-developed/developing economy will evolve the most rational structure that technology and market size potentially permit (Merhav, 1969).

It is generally considered that free trade policy measures in particular have a significant impact on competition in national and international markets. But complete freedom of trade is also not desirable in developing countries even if international trade serves to sharpen competition in the domestic market since the firms of the developing countries may be giants in their home market but are pygmies in the world market.

Therefore, the free trade path to enhance competition is also not feasible in developing countries as this will undermine the domestic competition since foreign firms having access to superior levels of technique and backed up by vastly greater resources have the edge of efficiency over the domestic firms. The local monopolies of developing countries may be weakened so as to be overtaken by global monopolies.

Since the market structures that exist in the advanced world are technically not feasible in developing countries, therefore, the markets in developing countries offer less scope for the increase in efficiency through the process of competition among the established firms.

The industrial structure typical of a developing country finds itself in the worst of all possible worlds. Government intervention in developing countries towards enhancing competition in a regulated way may, in practice, be very substantial. But care should be taken so that state intervention does not favour lobby groups and lead to more concentration in the economy.

So an important concern for most of the developing countries is that to what extent competition can be effectively incorporated in their regulatory structure.

Competition Policy and Industrial Policy

In a developing country, it is imperative for the competition policy to be integrated into national development strategies and be coherent with its industrial policy since these policy measures are required for economic development.

Thus, any discussion of the appropriate current and future stance of competition policy must be held in the context of specific notions about the objectives and form of industrial policy, and about the form of overall economic strategy. The role of competition policy in this framework must be to regulate economic behaviour to assist in the achievement of efficiency objective. And, if certain forms of competitive behaviour are not compatible with the achievement of the overall efficiency objective then competition policy must be sufficiently flexible to accommodate non-competitive behaviour required for it.

A developing country, before adopting a competition policy, should take into account the following factors:

1. It should have an adequate control space in the form of tariff barriers and quantitative restrictions etc. Given this control space, the structure of industry should be defined and conduct of firms should be regulated. There are two policy options for it. Firstly, the one which does not interfere with the market structure or its evolution, but monitors and restraints anti-competitive conduct by firms. The second policy choice plays an active role in the evolution of an industrial structure. By evolving the structure, the conduct and performance of the firms is regulated.

   The opening up of economies of developing countries in 1990s has substantially diluted their control space as tariff barriers, quantitative and FDI restrictions, etc. have been removed, resulting in what has been proclaimed as a much more competitive environment, especially in the industrial sector. However, it is important for developing countries to protect their domestic industry by widening their control space.

2. It should distinguish between national and international capital. Unless any country has adequate national capital, it can neither be industrially competitive nor can it reap the linkage effects which are necessary for economic development.

3. Finally, there is a strong case for active state intervention because only the state can impose a certain minimum measure of discipline among the firms and encourage rivalry of progressive kind.

Is Competition Policy and Law Necessary in Developing Countries

Many of the developing countries adopted reforms in the 1990s, moving on from a command-and-controlled economy to a market driven economy. In the context of trade liberalisation, globalisation and increase in FDI, anti-competitive practices are becoming not only more stringent but also international in scope. Big MNCs merge or takeover smaller domestic businesses to acquire a dominant position, which are then exploited according to their corporate strategies.

In this changing global environment, competition policy/law is one such instrument which can respond appropriately to these concerns and which can establish a climate that is conducive to investment and economic growth. A well-designed competition policy is imperative to maintain and encourage the process of market competition to promote economic efficiency in the interests of consumers (Chakravarthy, 1999).

Unfettered competition may not be appropriate for a developing country given its structural constraints. Therefore competition policy in developing countries should be seen in a broader context than in advanced countries.

The usual competition policy/law will not be appropriate for developing countries since it may hinder domestic firms' ability to become competitive by making it difficult for them to coordinate their business policies and consolidate operations. Also the risks, uncertainty and the lower profits associated with competition could limit the ability of developing countries to control R&D to innovate and improve product quality.

The objective of such a policy cannot be to prevent or hinder the growth of firms, because large size will be required to face international competition abroad and domestically. Rather, the goal should be to regulate the activities of leading firms in the domestic markets so that they do not conspire to fix prices or to segment markets and do not erect insurmountable barriers to the entry of new firms into their markets.

Whatever be the policy choice, every country should have the flexibility and freedom to provide for certain exemptions and exceptions to competition law or even competition policy, having regard to its specific needs and circumstances, particularly relating to its trade and economy. The caveat of flexibility has been suggested on the apprehension that if competition policy were to be given an unbridled run, it is possible that some of the MNCs may outcast the domestic industries because of the financial and marketing clouts of these MNCs (ibid).

Competition in the market is undoubtedly desirable, but neither competition alone nor the promotion of competition through competition policy and law is sufficient to meet the protection standards that developing countries require. Therefore, the capabilities of domestic firms and the conditions under which they compete need to be ascertained through active state participation, in order to ensure permanency of competition and development in the developing countries.

What is needed is to strike a balance between creating globally competitive domestic firms and ensuring competition between the domestic producers.

Competition Policies in Advanced Countries

This section briefly describes the nature of competition policies in few developed countries. The objectives differ from country to country depending upon the domestic circumstances and historical past.

As we shall see, competition policy in the US is primarily concerned with consumer welfare whereas in the E.U., it is concerned with the integration of its member countries. Competition policy in Japan has been subservient to the needs of its industrial policy. The policy makers of developing countries should learn from the selective competition policies used by the developed nations. It does not mean that all developing countries should try to replicate these policies, rather what it means is that developing countries should draw lessons on selectivity from the experiences of the developed countries and adopt them to local needs and circumstances. Another important thing which policy makers of developing countries should realize before implementing any competition policy is that local enterprises matter more than ever in this era of globalisation and liberalisation.

Unites States

Unites States is the country with the longest history of antitrust laws and laws prohibiting restrictions on competition. Basic Federal Antitrust and Trade Regulation Law Policy is set forth in five statutes namely the Sherman Act, 1890; the Clayton Act, 1914; the Federal Trade Commission Act, 1914; the Robinson Patman Act, 1936; the Hart-Scott Rodino Antitrust Improvements Act, 1976. These laws were not enacted as a unit. They came into existence sporadically as need for each was perceived.

Antitrust laws, Consumer Protection Laws, Regulatory Policies designed to correct market failures all work to ensure that competition among goods producers and among service providers, and accurate information in the hands of consumers, generate the best products at the lowest prices; spur efficiency and innovation; strengthen the economy and produce benefits for consumers, workers and investors alike. The scope of competition policy is broad, as reflected in the diverse set of laws and policies designed to promote consumer welfare and ensure that markets work efficiently.

US antitrust law on its face blankets all the aspects of US economy, but exceptions have existed in a number of areas. In the US, there are extensive sets of exemptions covering diverse economic activities as agriculture, transportation, energy, banking and insurance, newspapers, small business concerns, etc. Exemptions are also provided for selected aspects of intellectual property rights dealing with products covered by patents, copyrights and trademarks.

Till the 80s, the US followed a structural policy which more or less forbade horizontal mergers but their number increased once the US authorities judged them less critically. Thus, with the liberalisation of the world economy and the US facing difficulties in maintaining equilibrium in its current account, there appears to have been a relaxation of the strict interpretation of the competition laws. It is a moot point whether this was more due to the influence of foreign competition or to that of Chicago School, but the upshot was that the enforcement of competition laws became relatively relaxed (Singh, 2002a). US antitrust laws and enforcement appear to have reached their zenith and entered into a period of decline.

European Union[1]

The competition law of the European Union consists of Article 81 and 82 of the Treaty of Rome and the competition laws of the individual member countries. The main objective of the European community's competition policy is to ensure unity and dynamism in the common market. As trade and investment barriers were reduced as part of European integration, there was concern about maintaining contestability of markets in the face of mergers and acquisitions. Accordingly, competition policy has been used as an industrial and economic policy instrument, to a greater extent, than has been the case in the US (Lee and Morand, 2003).

---

[1] The material for this section has been drawn mainly from Khemani (2002).

The policy is quite wide in scope. It covers different sectors – private and public firms (local or multinational). Also under the scope of the law are public policies such as subsidies, import and export restrictions, state monopolies and their regulation. The prohibited behaviours are also broad and explicitly defined in the articles of EEC treaty.

The primary objective of the regulations regarding competition in the EC Treaty has been prevention of private contracts to re-establish the borders between the member states which had been abolished by the European Community. The attainment of the main competition objective of the E.E.C treaty is underpinned by two sub-objectives:-

(a) to restrict the abuse of dominant position held by large firms that control large shares of specific markets thereby allowing small and medium-sized firms to exist and prosper, and (b) to prevent member states from abusing their right to provide state aid to public or private domestic firms, thereby levelling the playing field for all firms across the country. EEC competition law also explicitly provides for collusion and cooperation between firms, given net gains in efficiency and technical and economic progress and is strongly influenced by objectives derived from industrial policy.

The EU under article 81 (3) of the Treaty of Rome can grant exemptions from certain agreements and practices if they have significant countervailing benefits, either on their individual merit or through the application of a 'block assumption'. The block assumptions, which have been granted, cover exclusive distribution and purchasing arrangements, patents and R & D specialisation agreements. The Commission has also issued a number of exemptions covering transportation, insurance and agriculture sectors. Export cartels are also exempted in so far as they do not restrict exports and/or competition in the common market.

Japan

Competition policy in Japan has evolved over time since its inception under the US military occupation in the late 1940s. The Antimonopoly Act (AMA) was enacted in July 1947, and the Fair Trade Commission (FTC) of Japan was established as an independent regulatory commission. The period which is relevant for developing countries is that from 1950-1973 when Japan was much more like a newly industrializing country than it is today. During this period, Japan achieved extraordinarily fast economic growth, with manufacturing industry growing at over 13 percent per annum, GDP at 10 percent a year and its share of world exports rising by a huge ten percentage points (Singh, 2002a).

In Japan, during this period, competition policy was subordinated to its industrial policy and the need to maintain the private sectors high propensity to invest. To achieve this end, the Japanese Ministry of International Trade and Industry (MITI) encouraged a variety of domestic cartel arrangements in a wide range of industries. In addition, believing that large-scale enterprises were required for promotion of technical change and for promotion of technical change and for Japanese firms to compete effectively with their western counterparts, MITI encouraged mergers between leading firms in key industries.

Thus, MITI did not just thwart FTC's codes and objectives, but it also implemented an industrial policy that encouraged contest-based competition between oligopolistic firms where the rewards were access to cheap credit and foreign exchange, as well as, where necessary, protection from international competition. These rewards were contingent on relative performance either in export markets, technological development, or in introducing new products.

Japan's antimonopoly act (AMA) was amended in 1977 and 1998. It applies to all industries and now regulates common anti-competitive conduct, such as monopolisation, unreasonable restraints of trade, anti-competitive mergers and acquisitions, unfair trade practices and certain activities by trade associations. However, it has exemptions covering natural monopolies/infrastructure industries relating to 'railways, electricity, gas or any other business constituting a monopoly by the inherent nature of the said business', and intellectual property rights and cooperatives for agricultural and consumer products that are governed by other laws and regulations. In addition, there are provisions for exempting cartels for exports, depressed industries, and small and medium size enterprises. Japan also exempts some pharmaceutical and cosmetic items from the prohibition of the resale price maintenance (RPM) provisions.

The history of antitrust policies in these countries demonstrates that the nature, scope and objectives of antitrust policies have varied according to their macroeconomic conditions and other policy objectives. For example, in the EU, integration of economies of the member countries has widened the control space, as a result of which, ensuring unity and dynamism in the common EU market has become the overriding objective of EU competition law.

Thus, competition policies are not static; they alter in response to changing domestic and external circumstances. Therefore, each country should develop a policy that meets its needs and objectives.

Chapter II

COMPETITION POLICY IN THE INTERNATIONAL CONTEXT

There has been a fundamental change in the organisation of economic activity in the developing countries since the 1990s due to the economic forces of liberalisation and globalisation. Anti-competitive practices have spilled across and gigantic mergers are increasingly creating new giants on the global stage.

This has posed new challenges for developing countries. It was suggested by many policy makers that not only do developing countries require a competition policy but a multilateral one which would be greatly to their advantage.

According to Adhikari (2003), competition policy is by no means a recent phenomenon in the international context as is evident by the UNCTAD set of Multilaterally Agreed Equitable Principles, Rules for the control of Restrictive Business Practices (RBPs) etc.

WTO and Competition Policy

Competition policy which is generally a domestic issue emerged at the international level as part of WTO negotiations. It was put on agenda at the Singapore Ministerial Meeting in 1996 as part of review of the relationship between trade and investment. Despite opposition from many developing countries, the so called 'Singapore issues' (investment, competition policy, trade facilitation, government procurement) were included in the WTO's November 2001 Doha Declaration with the caveat that official negotiation will not take place until after the Cancun Ministerial scheduled for September 2003 and if 'explicit consensus' is attained on modalities of negotiations.

But due to the breakdown of the Cancun Ministerial in September 2003, the Doha agenda at least for the time being appears to have failed. Though it is too early to conclude the form in which competition policy will remain on the table in the international arena but there is a strong possibility of negotiations on this issue to emerge later. The chapter, first and foremost, provides an overview of the competition policy in the context of WTO and its implications for developing countries. Secondly, it discusses the international competition policy from the perspective of developing countries. Also what kind of issues should be addressed to alleviate the problems faced by developing countries in this environment of globalisation and liberalisation?

The Doha Agenda

Doha Ministerial Declaration deals with competition policy in Paras 23-25. It specifies the following areas for the negotiations: "core principles; including transparency, non-discrimination and procedural fairness; provisions on hard core cartels; modalities for voluntary cooperation; and support for progressive reinforcement of competition institutions in developing countries through capacity building." (Para 25, Doha Ministerial Declaration)

Core Principles

The proposal is to make all these principles binding on all the members so that they should be applicable to the competition law that is adopted by any member country. Developing countries have argued that these principles are not universally applicable to all the issues, developed as they were in the context of the original purpose of GATT as an agreement-to facilitate reduction of barriers to inter-national trade in goods.

1.Transparency-The term 'transparency' refers to the degree to which WTO members make publicly available their rules and regulations affecting trade, the method by which those rules and regulations are promulgated and the manner in which internal rules and regulations are enforced (GATT, Article X). The proposal is that this principle should cover all aspects of competitive regime-from legislation, rules and institutional structures to decision-making processes, including decisions on sectoral exclusions and exemptions.

Thus, the proposals on transparency go beyond the transparency requirement of the WTO by covering the area of decision making (which will require that all industries, sectors, or activities exempted from national competition laws be identified and exemption criteria be published).

2.Non-discrimination- The other component of the agenda is the demand for 'national treatment' or 'non-discrimination'. The main pre-occupation of its proponents (U.S., E.U., Japan) seems to be focused on the needs for foreign firms to be accorded 'national treatment'. This implies that foreign firms and their products be given the same treatment as given to domestic firms. Such 'equality' would only accentuate the inequality in market outcomes, since local firms are generally smaller than the larger foreign firms and transnational corporations (TNCs).

The argument put forward by multinationals is that there is no level playing field between them and the national corporations which are government supported. However, the actual situation is quite opposite; the playing fields are tilted heavily in favour of multinationals that have considerable market power in markets for outputs as well as inputs. Also, the current international merger movement has made the fields more unequal even from the perspective of large corporations of developing countries. The establishment of 'level playing fields' would prohibit developing countries from taking measures to shield their firms and industries against competition from massive corporations and from pursuing measures to promote the growth of strong domestic corporations. (Singh and Dhumale, 1999)

3. Procedural fairness- The key component of this principle is the guarantee to rights of access to the system of appeal, including right to reasoned final decisions providing detailed grounds on which such decisions were based, and the right of parties to be heard. The concern is that developing countries with dissimilar legal systems to those of developed countries, and also because of insufficient resources will run the risk of not adhering to the requisite standard of procedural fairness. Also, notions of fundamental fairness differ among legal systems and political cultures, and as yet no broad consensus has been established on the meaning of procedural fairness in the context of competition law enforcement (OhCecilia, 2002)

Hard Core Cartels

One of the substantial area for competition policy negotiations relates to provision on hard core cartels (which are defined as horizontal arrangements among firms that have severe and certain impact on competition by engaging in international price-fixing, collusive tendering, bid-rigging, output restrictions, marketing sharing etc). Domestic hardcore cartels as well as private international cartels[2] will be prohibited under this provision.

No doubt developing countries are adversely affected by the pricing policies of international cartels and are often placed in a weaker position

[2] Private International Cartel- It is said to exist when not all the firms in a private cartel are headquartered in the same economy or when the private cartel's agreement affects the markets of more than one national jurisdiction.

to be able to strongly address these concerns, but a fundamental problem with this proposal is that – how to precisely identify hardcore cartels in general since as yet there is no commonly accepted definition of cartels (Katti, 2002).

Moreover, the assumption that all hardcore cartels have adverse impact for all countries in all markets and at all stages of their development is questionable. The experience of some Asian countries in which cartelisation was, for a time, an element of their industrial policies, challenges this assumption.

The exclusion of export cartels[3] from the provisions on the agreement of hardcore cartels has questioned the validity of this framework. These cartels are largely a developed country phenomenon whose effects are generally felt in developing countries and benefit the exporting country at the expense of the importing country (since the negative effects of export cartels are felt outside the territories of exporting countries). Countries like US have argued that 'export cartels' have efficiency enhancing effects. Therefore, they should not be prohibited in any framework.

In addition, nearly all developed countries (E.U, Japan) have exercised exemptions on cartels (and continue to maintain some of them) on the basis of overriding economic or public interest grounds.

Developing countries may not be able to define ex ante in their laws, which cartels should be exempted or excluded. Also, these exemptions and exclusions are subject to change according to economic and socio-political exigencies. A multilateral obligation towards prohibition on hardcore cartels will restrict the policy flexibility of developing countries.

---

3 Export Cartels- They are special type of private international cartels which cartelise markets abroad.

Modalities for Voluntary Cooperation

Voluntary cooperation emphasizes the importance of cooperation among competition authorities of the member countries of WTO, having enacted a competition law which is based on core principles. It has been argued that voluntary cooperation may be the only practical way to resolve anti-competitive practicing originating in one jurisdiction and having effects in other jurisdictions.

The proponents have argued that any provision on voluntary cooperation in a multilateral agreement on competition policy should contain four tools - notification, exchange on information (to facilitate enforcement activities on either side), mutual assistance (in the enforcement process), "negative and positive comity."[4]

In contrast to the other proposal for binding obligations, the proposals on modalities on cooperation (among countries are non-binding in nature) Developing countries have raised the apprehensions that any rules that are non-binding on the members in the context of WTO would be biased against them because of the asymmetry in economic power as between the developed countries and developing countries (Peter, 2002).

Most of the developing countries have questioned the agenda put forward by WTO. They have argued that they do not have sufficient experience with these laws unlike developed countries where competition laws have been a part of their domestic economies for the last 100 years. Most of the developing countries which now have such laws acquired them during 1990s, to be able to participate meaningfully in a treaty

---

4 Negative Comity- means that one country would take into consideration the important interests of other affected countries when taking a decision on a case.
Positive Comity- that would involve a country taking enforcement action upon a request from another country which suffered from anti-competitive practices originating in the territory of the requested country.

concerning multilateral competition policy (Singh, 2003).

Ajit Singh (2002a) stressed that these principles are not in the best interest of developing countries. They do not recognise the great disparity that exists between rich and poor countries in the level of technological development, human capital and infrastructural facility, the cost of funds etc.

Thus the agenda put forward on competition policy minimally addresses the main concerns of developing countries. Instead it would limit their policy options by enforcing domestic competition laws so that TNCs can operate in their markets on the same basis as local firms.

While claiming to address 'anti-competitive practices', the proposal ignores the issue of creation of monopolies or dominant positions in national markets through TNC mega mergers and takeovers which resulted in the consolidation of economic power and control in the hands of a few companies thereby increasing the abuse of market power. For example, in the past few years, the cement industry has seen such M&A activities and consolidation. The French multinational, Lafarge S.A., has been particularly active. It has acquired many local firms in a number of Asian and African countries and hence it has become a dominant market player in their regional market.

Already, WTO rules significantly limit the scope of industrial policies in developing countries, and the addition of competition policy rules that favour the developed world would further undermine the capabilities that remain. There is a danger that international rules on competition policy will not take an adequate account of the different needs and levels of development in developing countries. The model, once again could become a 'one-size-fits all' prescription that doesn't provide requisite flexibility that developing countries need, to steer their own development.

Once the competition policy reforms are subject to an international standard, they would be implemented towards improving market access opportunities to the benefit of developed world multinationals and to the disadvantage of ill prepared markets of the developing world. The basic aim of developed countries appears to establish a framework based on WTO principles which will give their multinational firms unfettered access to developing country markets so that they are able to invest wherever they like, whenever they like or for whatever they produce (Singh, 2003).

The entry of super-efficient MNCs into a developing market getting national treatment might typically lead to erosion of the domestic incumbents' market share over a period of time. Since the barriers faced by the developing countries (in the areas of technology, economies of scale, etc.) can result in the less efficient developing country firms falling prey to the developed country firms. The so called 'national champion' industries will have no time to flourish under the umbrella of a protected domestic market to achieve the sufficient scale to be able to compete internationally. Developing world corporations will come to monopolize the means of production in such countries by virtue of their greater efficiency.

A binding agreement at the WTO could bind the countries into establishing new competition authorities or adjusting existing domestic competition regimes into a 'one-size-fits-all', WTO consistent global policy. While burdening them with new compliance costs, such as, creating competition agencies and laws that may not be appropriate in their local context, it would prevent governments from using the same kinds of tools and flexibility to choose appropriate policies for their situations which the proponents of this agreement have used in various stages of industrial development.

Thus the rhetoric of competition can be excessive, and the promises made for competitive markets over stated. This explains why many developing countries are opposed to moving further towards a full negotiating phase. They have rightly viewed a multilateral agreement on competition policy as another set of institutional requirements imposed on them by more advanced countries that would impede their ability to implement independent policies in national interest (Lee & Morand, 2003).

WTO, Intellectual Property Rights and Parallel Imports

In the WTO framework there are many agreements that have a direct bearing on competition. The interface problem between TRIPS and competition law has attracted the attention of many. In the case of IPRs and patents, competition is allowed to be restrained for a longish period in order to allow innovators sufficient opportunity to appropriate the fruits of their invention. The basic idea is that such restraints will lead to temporary monopoly profits which would motivate firms to keep innovating, i.e., their incentives for innovation will be maintained. The pertinent issues are whether the possession of IPRs amounts to dominance and when does the exploitation of IPRs becomes an abuse. But the agenda ignores issues related to Intellectual Property Rights (IPRs) abuses, practiced generally by developed countries. IPRs may generate or contribute towards a position of market power and have important international dimensions as many corporations seek and get IPR protection in many other countries. The implications of IPRs for the developing countries are a cause of worry. While stronger IPRs may benefit the leading innovators in the developed countries, they can raise the cost of formal technology transfers by allowing technology sellers to impose stricter restrictions and by preventing copying and 'reverse engineering', which have been the source of much technological learning in new industrialized countries (Mehta, 2003).

Issues related to IPR abuses could be really beneficial for developing countries as they can help mitigate the abusive and exploitative use of strong IPR regime especially in two main sectors, viz. pharmaceutical and agriculture.

Another area of concern is the treatment of 'parallel imports'- that is, import of branded goods, bought in markets where they are cheaper, to avoid high prices of official marketing channels (or goods brought into a country without the authorisation of the patents, trademarks, or copyrights after those goods were placed legitimately into circulation elsewhere). Policies regulating parallel imports stem from specification of the territorial exhaustion of IPRs. Under national exhaustion, rights end upon first sale within a nation but IPR owners may prevent parallel trade with other countries. In case of international exhaustion, rights are exhausted upon first sale anywhere and parallel imports are permitted. A third option is regional exhaustion by which rights are completed within a group of countries, thereby allowing parallel trade between them, but are not exhausted (Maskus and Lahouel, 1999).

Parallel imports may be seen as a useful policy device against price collusion emanating from exclusive territorial restraints. Thus, most of the developing countries express opposition to restricting parallel trade. Restrictions on parallel trade raise profitability of intellectual property developers, which are overwhelmingly located in developed countries. The treatment of parallel imports could become an important focal point for future WTO discussions on competition law. Because small countries have an interest in adopting international exhaustion and allow parallel imports while large countries (more generally those with important producers of branded goods and services) are interested in getting all countries to apply the principle of national exhaustion (Hoekman & Holmes, 1999)

Multilateral Competition Policy from the Perspective of Developing Countries

Is it really necessary for developing countries to have a multilateral competition policy at all and if it is, then what kind of policies would be appropriate for them?

The fundamental changes brought about in the internal and external environment facing developing countries have resulted in the increase of cross-border movement of goods, services and investment by TNCs. There has been an increase in the anti-competitive impacts of M &As by large MNCs in the last decade, all these factors make it somewhat necessary for developing countries to have multilateral competition rules.

But given the asymmetry of efficiency which exists between developed and developing world firms, it won't be advisable for developing countries to follow the developed world path. Even casual comparison will lead to the conclusion that developing firms cannot compete with their developed world counterparts that enjoy huge advantages in technology and aggregate capacity in terms of access to capital and finance. Therefore some of the conventional models of competition may not be appropriate for a developing country. This means that development strategy has to be at the centre, and competition as well as competition policy has to be approached in such a manner as to meet the development needs of a developing country. (Khor, 2002)

The issue of competition policy has hardly received any serious attention from the perspective of economic development in the WTO fora. Thus what is required by developing economies is an optimal degree of competition which would not only enhance sufficient rivalry among their firms so as to reduce inefficiency in the corporate use of resources and would also look at the development needs of the developing world (Ibid,) Competition policy should complement other national objectives and policies (such as industrial policy) and the need of local firms and sectors to be able to successfully compete in this globalised world. There should be appropriate blend of competition and cooperation in the operation of competition and industrial policies since the developing country firms are already facing intense foreign competition. From a development perspective, competition and development requires that domestic industrial, agricultural and service sector should build up the capacity to become more and more capable of competing successfully in the domestic market and then, if possible, internationally.

Singh and Dhumale (1999) have recommended examples of Japanese and Korean competition policies as a role model for developing countries. An important point is that in both these economies, although there were competition laws but they were subservient to the requirements of industrial policy in each country.

A multilateral agreement on competition policy, to be development friendly, must be highly flexible allowing each country to determine its competition policy for itself on the basis of the country's need and circumstances. This implies that if a cost benefit analysis for a particular country shows that there is no gain from it, the country need not have a competition policy at all. This requires a case-by-case approach rather than one size fits all.

It may be perfectly legitimate for a developing country competition authority to allow large domestic firms to merge so that they could compete on equal terms with multinationals at least in their home markets. The competition authority may therefore quite reasonably deny national treatment to the multinationals and prohibit their merger activity (because they are already large enough to achieve economies of scale). In these circumstances, a violation of the doctrine of 'national treatment' is likely to be beneficial both to economic development and to competition.

There is as yet no convincing case for a multilateral set of binding rules to govern the competition policies and laws of countries. And there are especially justified grounds for serious concern if such an agreement were to be located within the WTO.

If a multilateral approach is at all needed, there are other venues that are more suitable, for e.g., the UNCTAD, which already has a set of 'Principles on Restrictive Business Practices.' Moreover if the object is to arrange for cooperation among competition authorities of countries, then there should certainly be no multilateral disciplines of the WTO type, obliging developing countries to have universal competition policies. (Khor, 2002)

Last but not the least, the global economy does need a multilateral body to address some of the really substantive issues:

(1) Competitiveness of domestic firms: to consider measures to be undertaken by domestic firms and also by their governments in order to enable local firms (especially small firms) to become competitive and to grow.

(2) Competition impeded by IPR protection.

(3) Global monopolies and oligopolies and their effect on local firms in developing countries.

(4) Big mergers and acquisitions by TNCs and their effects on developing countries.

Chapter III

STRUCTURE, GROWTH AND REGULATION OF PRIVATE CORPORATE SECTOR IN INDIA

Private corporate sector, an integral component of the Indian Industry has undergone many structural changes especially after the opening up of the economy in early 1990s. The present chapter discusses the structure, growth and regulatory framework of private corporate sector in India in the pre-reform period (when India followed a policy of planned and highly regulated industrial policy) and post-reform period (since 1991 when country embraced more liberalised policies). Besides, it tries to capture the impact of external liberalization on this sector particularly due to the entry of TNCs, and by comparing the size of Big Business Houses of India vis-à-vis the TNCs, it emphasizes the need for government intervention to promote globally competitive indigenous firms.

Pre- Reform Period (1950-1990)

The most representative of monopoly capital in the Indian private corporate sector in the early stages of post-independence period was the 'business group'. However, the process of premature monopolisation resulted in the consolidation of the 'business group' as the representative unit of oligopoly in the industrial sector. One of the defining characteristic of the group was that unlike the highly diversified yet independent giant corporations of the Western Economy, the 'business group' in India consisted of a number of legally independent firms operating in number of mostly unrelated areas, and controlled by a single, central decision-making authority (Ghose, 1972; Chandrasekhar, 1999).

The other features of business groups were: wide diversification and considerable technological integration, growth through acquisition of existing firms, market domination in most product markets as between different products and market segments, existence of linkages between different business segments, existence of linkages between different business groups through joint-ventures and with foreign capital through foreign collaboration; and linkages with banks and other sources of finance. These business houses adopted different growth strategies in different kinds of industries in order to limit the entry of potential rivals and to maintain their economic power. In the more dynamic areas where profit margins were high, they adopted an offensive strategy of obtaining licenses, establishing capacity and bidding for a dominant share of the market. Whereas in areas where demand was slowly growing and profits were low either because of slack market conditions or price controls, they adopted defensive strategy to retain their early bases of monopoly power without actually investing in the productive capacity. This was done by pre-empting capacity by adopting licenses, preventing entry by others, but not translating their licenses into installed capacity and thus maintaining their dominance in an area which could be exploited at anytime in the future when market conditions turned more favourable (Ghose, 1974; Chandrasekhar, 1988).

Goyal (1988) also identified the main factors which were responsible for the rapid expansion in the number and size of big business houses, i.e., the system of inter-corporate investment, the wide participation of public sector financial institution in the risk capital, the interlocking and business collaborations between TNCs and large private companies.

The various studies which were undertaken in the early 1960's to investigate effects of growth of private corporate sector, highlighted that oligopolistic market structures overwhelmingly dominated the Indian industrial sector and monopolistic trade practices were not rare rather they prevailed on a very high scale. In 1964, the monopoly inquiry commission (MIC) reported that of a total of 1298 products studied by it, 87.7 percent were in the hands of oligopolists with 437 being produced by one firm each and 229 by two firms each. In fact, except for food products, cotton textiles and jute textiles, almost the whole of Indian industry was characterised by monopoly, duopoly and oligopoly. R.K. Hazari (1966) in his pioneering study also pointed one that the policies adopted in India had generated a particular type of oligopolistic business structure which was not only quite specific but also stable in character. This extremely centralized structure, that combined products monopoly with a high degree of concentration of overall industrial assets and sales and reduced potential competition through the holding of investment decision provided stability of this oligopoly (Chandrasekhar, 1999).

The next section studies the regulatory framework which was responsible for this structure of Indian oligopoly.

Regulatory Framework

The given structure and characteristics of the corporate sector were influenced by the nature of the regulatory framework that was implemented during the import substitution regime. Some of the prominent regulatory measures implemented during the pre-reform period in order to reduce concentration of economic power in private sector are discussed below.

<u>Industries (Development and Regulation) Act, 1951</u>

The first major component of the regulatory framework was the instrument of industrial licensing, which was mandatory for all (except small scale industry which was exempted) under the IDRA, 1951. Its main purpose was to regulate private investment in India and to achieve national objectives, such as balanced regional development, prevention of concentration of economic power or excess capacities, encouragement to labour-intensive technology and small scale industry. This Act also allowed the government to prescribe prices, methods and volumes of production and channels of distribution. Although there were numerous amendments to the Act over the years, no significant changes were made in the basic provision until the early 1990s.

The Industrial Policy Resolution adopted in 1956 laid main emphasis on simultaneously accelerating the rate of economic growth, speeding up industrialization through state-led investments, preventing private monopolies, curbing concentration of economic power of the business houses by expanding the public sector and reducing regional disparities of income and wealth (Mookherjee, 1995).

Industrial licensing which was used as the prime instrument to achieve these goals in fact became an instrument to promote monopoly power. Thus the government's efforts to curb monopoly and economic concentration could not be fulfilled. Various committees which were appointed in the 1960s (the Swamithan Committee, 1964; the Mahalanobis Committee, 1964; the Hazari Report, 1967; the Dutt Committee Report, 1964; and the Administrative Reform Commission, 1969) to examine the industrial licensing regime pointed out that the system had failed practically on all counts whether it was regional dispersal, import substitution or preventing concentration of economic power. It was found that inequalities had increased in the early planning years. Thus the working of the licensing system had helped increase concentration of economic power in private hands especially of established business houses, partly by restricting entry of new firms by the practice of pre-emption of licenses. Table 3.1 provides a distribution of licenses according to the extent of utilisation by the top twenty industrial houses during the period 1979-80. It is clear from the table that large houses had a number of unutilized licenses which indicates the practice of pre-emption so as to maintain their economic power.

Table 3.1

The Distribution of Licenses Held by the Top 20 Industrial Houses According to the Extent of Utilization (Production to Licensed)

Sl. No.	Industrial House	No. of Licenses in Utilization Range				Total Licenses Studied
		Zero	1-25	25-60	60-100	
		(%)	(%)	(%)	(%)	
1	Birla	50 (22.7)	38 (17.3)	39 (17.7)	52 (23.6)	220 (100)
2	Tata	57 (28.8)	40 (20.1)	51 (25.8)	31 (15.7)	198 (100)
3	Mafatlal	5 (14.3)	11 (31.4)	8 (22.8)	8 (22.8)	35 (100)
4	J.K. Singhania	7 (20.0)	10 (28.6)	6 (17.1)	7 (20.0)	35 (100)
5	Thapar	9 (20.9)	7 (16.3)	9 (20.9)	11 (25.6)	43 (100)
6	Sarabhai	2 (28.6)	0 (0.0)	1 (14.3)	4 (57.1)	7 (100)
7	Bangur	7 (24.1)	4 (13.8)	10 (34.5)	5 (17.2)	29 (100)
8	I.C.I.	1 (4.2)	4 (16.7)	4 (16.7)	10 (41.7)	24 (100)
9	A.C.C.	4 (40)	3 (30.0)	1 (10.0)	2 (20.0)	10 (100)
10	Shri Ram	11 (25.0)	11 (25.0)	3 (6.8)	13 (29.5)	44 (100)
11	Kirloskar	19 (22.6)	36 (42.9)	18 (21.4)	9 (10.7)	84 (100)
12	Hindustan Lever	0 (0.0)	4 (30.8)	0 (0.0)	1 (7.7)	13 (100)
13	Larsen & Toubro	8 (18.6)	16 (37.2)	7 (16.3)	9 (20.9)	43 (100)
14	Modi	3 (13.6)	1 (4.6)	4 (18.2)	10 (45.5)	22 (100)
15	Chowgule	1 (33.3)	1 (33.3)	0 (0.0)	1 (33.3)	3 (100)
16	Bajaj	6 (18.8)	11 (34.4)	2 (6.3)	11 (34.4)	32 (100)
17	Lalbhai	6 (27.3)	3 (13.6)	7 (31.8)	4 (18.2)	22 (100)

Note: Figures in brackets are percentages calculated with respect to the house totals
Source: The Corporate Studies Group (1983), *Functioning of Industrial Licensing System-A Report*

Monopolies and Restrictive Trade Practices (MRTP) Act, 1969

MRTP Act was enacted in 1969, as an anti-monopoly legislation. It was designed mainly to serve three purposes:- to regulate the concentration of economic power[4] in private hands, to control monopolies and prohibit monopolistic trade practices[5] and to curb restrictive trade practices.[6] This Act covered only private sector undertakings and didn't apply to any undertaking owned or controlled by government, government companies or a corporation established by or under any central or state Act.

Chapter III or MRTP Act defined two categories of companies (known as MRTP companies):

I. An undertaking which alone or together with other inter-connected undertakings owned a minimum of Rs 20 crore, operating in one or more lines of business.

II. An undertaking which either by itself or along with other inter-connected undertakings supplied or otherwise controlled at least one-third of the market of any good or service within India as a whole, or a substantial part there of. Mergers and amalgamations that resulted in firms satisfying the above definition of the MRTP act also required clearance from the commission set up by the act. Thus growth of large business houses and concentration of economic power was sought to be controlled by this act, which required large or interconnected firms to seek approval before investment even in a selected list of 'core industries' in which they were allowed to invest.

---

[4] Economic power – it meant the power exercisable by the business concerns because of their control over productive assets in a wide variety of goods and services.

[5] Monopolistic trade practices- are defined as those practices which can reduce competition, and thus maintain prices at unreasonable levels or limit technical development or capital investment.

[6] Restricted trade practices- are practices which affect competition and thus affect prices or flow of supplies.

Foreign Exchange and Regulation Act (FERA), 1973

Dealings in foreign exchanges as well as foreign investment came to be regulated through this Act. It was essentially required that foreign equity holdings had to be diluted to a maximum of 40% with exceptions made for a few special industries. Purchases of technology were tightly regulated and also there were restrictions on repetitive import of technology already acquired by another firm.

The 70's led to the weakening of some regulations. A number of engineering industries were permitted to expand capacity at the rate of 5 percent per year, starting from 1975. The mild trend towards deregulation carried over into early eighties. Decontrol in cement and fertilizer industries got accelerated. The scope of FERA companies was widened by enlarging the range of areas permitted to them and non-resident Indians were given facilities for investing in Indian Industries (Mookherjee, 1995).

A number of policy and procedural changes were introduced in 1985 and 1986. The accent was on opening the domestic market to increased competition and preparing our industry to stand on its own in the face of international competition. The technological and managerial modernisation of industry was pursued as a key instrument for increasing productivity and competitiveness in the world.

Thus industrial licenses were no longer required for firms with assets below Rs 5 crore (revised to 15 crore in 1988) as well as in 25 broad industry groups. In 1985-86, the government prescribed the 'minimum economic scale capacity scheme' in about 72 industries. Modernization of equipment resulting in an increase of up to 49% of licensed capacity also no longer required an additional license. The definition of the MRTP firms was relaxed to assets exceeding Rs 100 crore, and about 34 priority industries were exempted from the scope of the act. In about 30 odd industries, the new 'broad banding' policy permitted firms to diversify their product mix without seeking prior approval. A large number of items were freed from quantitative control on imports.

Policy Implications

Despite all the anti-monopoly measures taken by the government, concentration of economic power increased in the private hands. MRTP Act which was enacted in order to curb industrial concentration was never implemented systematically. One of the reasons for the defective implementation of MRTP Act was the discretion given to the government to decide the cases on their own without referencing them to the MRTP commission.

As the Sachar Committed found, out of 618 effective applications received by the central government from 1 June 1970 to 31 December 1977 under sections 21, 22 and 23 of the Act (relating to expansion, mergers, and amalgamations, takeovers and new undertakings), only 59 were referred by the government to the commission. (Goyal, 1979). A study by Mani (1995) also pointed that out of the total cases received by central government during the period 1970-71 to 1988, only a small fraction of the cases were referred to the commission (see Table3.2).

Table 3.2
Insignificant Role of MRTP Commission

Year	Notices for Substantial Expansion		Applications for					
			Establishment of New Undertakings		Merger and Amalgamation		Take over	
	1	2	1	2	1	2	1	2
1970/71	94	16	15	4	12	2	11	Nil
1972	83	5	8	1	3	1	15	3
1973	84	6	26	4	7	1	15	Nil
1974	60	2	53	5	2	Nil	8	Nil
1975	80	1	46	4	4	Nil	8	Nil
1976	83	1	48	4	4	Nil	8	Nil
1977	53	Nil	44	Nil	3	Nil	4	Nil
1978	46	1	35	1	6	Nil	3	Nil
1979	32	1	37	2	5	Nil	2	Nil
1980	38	4	44	2	14	Nil	6	Nil
1981	126	1	135	5	10	Nil	5	Nil
1982	115	4	175	4	6	Nil	2	Nil
1983	108	2	137	5	13	Nil	6	Nil
1984	142	Nil	193	1	7	Nil	5	Nil
1985	69	Nil	231	Nil	6	Nil	19	Nil
1986	104	Nil	262	Nil	5	Nil	21	Nil
1987	NA	Nil	NA	Nil	NA	Nil	NA	Nil
1988	51	Nil	252	Nil	10	Nil	39	Nil
Total								
1970-80	1368	44 (3.21 %)	1741	42 (2.41%)	119	4 (3.36%)	177	3 (1.69%)

Notes: 1= Total number of cases
2= of which those referred to the commission
Figures in brackets indicate percentage share of the total.
Source: Mani (1995)

Another weakness of the Act was that the inter-connected companies were expected to register themselves, voluntarily with the government. It is natural that under such a situation, the larger business houses attempted to minimize the registration of companies controlled by them as they possibly could. The top 20 houses, alone, managed to keep 512 companies outside the scope of MRTP Act which were identified as controlled by them by the Dutt Committee (ILPIC) (Kumar, 1982).

The concept of joint venture also led to the rapid expansion of the Big Business Houses. Since TNCs preferred to establish joint project with large companies and the houses which commanded control over large economic resources, enjoyed high status and also had capabilities to obtain political and administrative patronage. Thus, international monopoly capital only joined hands with entrepreneurs who were at least constituents of the national monopoly capital, it was obvious that the size of such ventures would be large (Goyal, 1988). Also, larger houses, while mainly expected to concentrate only on core or heavy investment industries, could also go in for other industries if the production was meant for export to the extent of 60 percent. Government did not realise the fact that 40 percent of the capacity of a large unit could be quite important in the domestic market, especially when it was operating in an area where smaller units with far less market strength were competing (Paranjape, 1982).

Due to the existence of such policies industrial concentration remained high even in the 80s. Table 3.3, shows the growth of total assets of the top 15 Business Houses during the period 1963 to 1990. It is evident that:

(a) the rate of growth in assets of the top fifteen business houses in successive periods was higher than in the previous period.

(b) During the given period, the lead has been maintained by the top two houses as one set and the others as another set. Top two houses always had the lion's share and claimed nearly 40 percent of the overall addition to the assets of the top 15 during the period.

Table 3.3
Total Assets of Top Business Houses of India at Constant (1981-82) Prices

(in Rs. Crore)

Sl No.	Business House	1963	1972	1975	1980	1985	1990
1	Bajaj	-	156.7	174.4	203.0	493.5	692.6
2	Bangur	367.9	310.9	275.2	299.4	518.2	370.5
3	Birlas	1382.1	1464.8	1448	1623.9	3272.4	3933.3
4	Hindustan Lever	-	194.0	168	248.3	347.1	521.7
5	JKs	278.3	300.9	336	468.3	841.4	1031.6
6	Kirloskar	-	213.9	206.4	249.5	344.7	357.0
7	L & T	-	196.5	220.8	244.9	569.1	637.3
8	Mafatlal	217.0	457.6	390.4	485.4	768.1	731.5
9	Mahindra & Mahindra	-	144.2	182.4	210.9	343.1	349.7
10	Modis	-	144.2	184	225.7	651.9	672.3
11	Reliance	-	-	-	188.2	840.6	1827.9
12	Shriram	259.4	300.9	265.6	273.3	431.4	451.2
13	Tata	1971.7	1596.7	1478.4	1745.2	2944.4	3734.2
14	Thapar	339.6	338.2	316.8	394.6	850.1	994.3
15	TVS	-	126.8	164.8	212.1	413.1	524.0

Source: Compiled from Ghose (1974) and www.indiastat.com (Industrial Data Book, CIER). Data on Index Number (of Wholesale Prices in India-All Commodities) taken from Directorate of Economics and Statistics, Govt. of Gujarat (1999), "Price Indices 1990-1998".

A similar picture emerges if one takes turnover as a base to reflect changes in market concentration in the Indian private sector (Table 3.4).

Table 3.4
Turnover of Top Business Houses of India at Constant (1981-82) Prices

(in Rs. Crore)

Sl No	Business House	1963	1972	1975	1980	1985	1990
1	Bajaj	-	-	216	282.4	486.4	1154.5
2	Bangur	306.6	340.7	350.4	451.3	560.4	-
3	Birlas	1367.9	1785.7	1635.2	2092.2	3367.9	-
4	Hindustan Lever	-	-	419.2	531.8	758.6	-
5	JKs	254.7	286.0	318.4	495.6	861.3	-
6	Kirloskar	-	-	264.0	356.1	458.5	486.2
7	L & T	-	-	174.4	268.8	539.7	-
8	Mafatlal	202.8	410.4	539.2	696.3	948.0	-
9	Mahindra & Mahindra	-	-	182.4	291.4	425.1	773.8
10	Modis	-	-	241.6	454.7	885.9	812.2
11	Reliance	-	-	-	339.1	619.3	1645.2
12	Shriram	283.0	380.5	385.6	502.4	684.6	-
13	Tata	1533.0	1688.7	1710.4	2203.4	3287.5	5693.0
14	Thapar	334.9	315.8	40	551.1	726.7	972.3

Source: Compiled from Ghose (1974) and www.indiastat.com (Industrial Data Book, CIER). Data on Index Number (of Wholesale Prices in India-All Commodities) taken from Directorate of Economics and Statistics, Govt. of Gujarat (1999), "Price Indices 1990-1998".

This high growth of the Indian Big Business was justified as a consequence of the adoption of new, sophisticated and more efficient technologies or to avail the economies of scale. But this logic of industry specialisation to harness economies of scale and adoption of new technologies to cut down costs of production does not appear to be strong in case of most of the Big Business Houses in India, as most business houses were highly diversified and least specialised. For example Birlas were in jute, textiles, steel, shipping, cement, automobiles, tea, electrical and so on. Thus this growth in concentration in the Indian private corporate sector was not accompanied by industry specialization which could reap economies of scale.

It would be inappropriate to say that the policies that evolved over the years failed in their objectives, but this policy regime came at a significant cost to the economy. The built-in-bias of policies in favour of import substitution, export promotion, foreign collaboration resulted in an implicit breakdown of the regulatory system as it defeated the purpose for which it was adopted. Thus the monopolies during this period continued to prosper at the expense of smaller units (Chandra, 1976).

New Industrial Regime: 1991

In July 1991, major structural reforms were introduced in the industrial and financial sectors with a view to improve the efficiency, productivity and international competitiveness of India's manufacturing sector. This was based partly on internal liberalisation but more so on external opening up.

The drastic changes which were announced by the government for the industrial sector included: abolition of industrial licensing except for a selective list of environment sensitive industries. All other industries were permitted to expand according to their market needs, without prior expansion or capacity clearance for the Indian government. Industries reserved earlier for the public sector were deserved.

The entire chap III of the MRTP Act (1969), which restricted growth or expansion by firms, was also eliminated. This was expected to encourage competition by reducing barriers to entry for new firms. The amended MRTP Act gave more emphasis to prevention and control of monopolistic, restrictive and unfair trade practices, so as to provide adequate protection to consumers.

One of the important features of the industrial reforms was to ease the entry of foreign direct investment in several sectors of the economy. The new policy provided for automatic approval of FDI up to 51% of foreign equity holding in 35 specified, high priority, capital intensive and high technology industries, as long as the foreign equity covered the foreign exchange requirements for imported capital goods. The FERA Act (1973) was substantially liberalised and former FERA companies with foreign equity below 40 percent were permitted to raise it to 51%. The use of foreign brands was permitted, "joint ventures" with Indian firms were cleared by RBI on a fast track, quantitative controls on producer goods imports were virtually abolished, import duties were reduced substantially, and foreign transactions on current account were freed from control (Khanna, 1997).

The basic philosophy behind these industrial policy reforms was to liberate the Indian Industry from the shackles of various government controls. It was considered that 'control raj' has led to inefficiency and a high cost structure in Indian industry. The thrust of reforms was to allow for more competition, by allowing free entry of firms into different sectors of the economy.

Competitive Scenario of Indian Industry in 1990s

More than a decade has passed since the industrial reforms were initiated in the Indian economy. The disastrous effects of the reforms which are quite visible in the industrial sector have left Indian firms vulnerable to the foreign competition.

With the withdrawal of entry barriers and control on size of investment, choice of technology etc, the weakness of the Indian firms in meeting the challenges from new entrants (both domestic and foreign, with large plant sizes, better product features and technology) came to the fore, since in the previous regime many business groups had broadly diversified without paying much attention to specific capabilities or strength to compete in the business. Due to increasing competition from foreign firms, the structure of Indian industry has undergone a change. Many of the business groups have restructured their business portfolios. There is a definite departure from over diversification- Indian firms have retained only those businesses in which they had capabilities and the long-term competitive advantage. Firms are trying to seek economies of scale, in plant sizes as well as marketing and distribution (Khanna, 1997).

The freedom given to multinational firms to enter a large segment of Indian industry has brought out a rush of large international oligopolies with deep pockets and aggressive competitive strategies. These MNCs are known to exercise an oligopolistic control over several industries worldwide and have succeeded in maintaining their dominance in several national markets through the polices of differentiation and branding (Khanna, 1999).

In the last 10 years, there has been a substantial rise in merger and acquisition activity in India. The opening up of Indian economy to the foreign capital along with the abolition of industrial licensing has provided a spurt to the merger activity. A study conducted by Khanna (1999) showed that number of mergers in India have risen sharply since the initiation of industrial deregulation. From a level, as low as 30-35 mergers in the late 1980s, the merger activity touched a peak of 430 merger announcements in 1995, and rose further to 552 mergers in 1997.

MNCs have also adopted this M &A route in order to enter Indian market or strengthen their position especially in consumer goods industries such as food and beverages, household appliances, pharmaceuticals, personal care products and automobiles. These products are highly sensitive to marketing networks and brand loyalties. Since building extensive marketing networks is a time consuming process, hence, MNCs try to tap the established marketing and distribution networks. As we see in the table given below (Kumar, 2000), 256 deals related to M & As by foreign MNCs or their controlled affiliates in India have taken place between March 1993 and Feb 2000. Most of the MNE related deals have involved acquisitions rather than mergers and their number is increasing. And these deals have been predominantly of a horizontal nature.

Table 3.5
MNCs Related M & As* in India

Year	Mergers	Acquisitions	Total
1993-94	4	9	13
1994-95	-	7	12
1995-96	-	12	12
1996-97	2	46	48
1997-98	4	61	65
1998-99	2	30	32
1999-2000	5	74	79
Total	17	239	256

* Note: Merger refers to deals where the identities of enterprises involved are merged. Acquisition refers to a deal in which the acquirer takes over the operations of a going concern.
Source: Kumar (2000).

The Indian Industry is gradually being dominated by these MNCs or their affiliates. The soft drink market is already dominated by Coca-Cola and Pepsi and the market for packaged food is coming to be dominated by firms such as Nestle, Cadbury-Schweppes, Pepsi foods etc. In the home appliances market (especially refrigerators, washing machines, room air conditioners) the hold of MNCs like whirlpool, LG, Electrolux etc has been increasing.

In many cases, where the foreign firm was jointly controlled and managed with an Indian business house, many MNCs have bought out their Indian partners. Eg. In case of automobile industry, Daewoo which had formed a joint venture with DCM group, Ford with Mahindra and Mahindra, Fiat with Premier Automobiles, General Motors with Hindustan Motors, and Mercedes-Benz with Telco, local joint venture partners have been eased out by their foreign partners completely. Gillette, which started in India by acquiring Indian Shaving Products, has taken over Wilkinson and Malhotra Co.s, thus creating a near monopoly position in the shaving products market (ibid).

Thus M & As, have increased the level of concentration in almost all the major industrial sectors in the last decade by reducing the number of active enterprises in market.

The change in the competitive scenario has been overshadowed by the entry of foreign firms in the Indian industrial sector. It has also undermined the bargaining power of Indian firms to negotiate acceptable terms in joint ventures with foreign firms.

What is more surprising is that the number of dominant indigenous enterprises which have been competing against TNCs in their respective fields, are now succumbing to TNCS. So rather than having a competitive oligopoly, Indian industry is increasingly producing a structure in which transnationals will have a dominant role. (Chandrasekhar, 1999)

If we see the growth of foreign companies in India from 1994 to 2002 in the table given below, then it is not impossible to conclude that Indian Industry in few years will be foreign controlled.

Table 3.6
Growth of Foreign Companies in India
(31.03.1994 to 31.03.2002)

As on	Number of Foreign Companies
31.03.1994	565
31.03.1995	619
31.03.1996	679
31.03.1997	772
31.03.1998	871
31.03.1999	956
31.03.2000	1045
31.03.2001	1141
31.03.2002	1285

Source: www.indiastat.com (Forty sixth annual report
Ministry of Finance and Company Affairs, Govt. of India & Past Issues)

It appears that policy makers didn't realise that India needed internal liberalisation, not external liberalisation. Like the 1980's change when creeping liberalisation had started taking place, this change was more pro-incumbents rather than pro-competition (broad-banding, automatic licensing, selective delicensing helped incumbents rather than newcomers or consumers. It was more pro-business than pro-consumer (Dani Rodrik[7]). India needed this kind of liberalisation for a longer period to help domestic firms become globally competitive before facing external liberalisation.

Exposing the firms to external liberalisation or freely letting in foreign firms would not have mattered if our domestic firms had already attained international scale or competitiveness in a wide range of sectors but such is not the case. It is, therefore, important to make sure that these firms should not resort to practices that will drive Indian firms out of the arena.

[7] in The Economic Times, November 2003.

Domestic Business Houses vs. Transnational Corporations (TNCs)

We have already discussed the structure of domestic business houses, so before comparing their competitiveness with TNCs, the present section briefly discusses their impact of TNCs on the host country.

TNCs are among the world's biggest economic institutions which occupy a unique place in the global economic system. They are highly concentrated structures, often large in size and have greater resources and marketing strength than national firms (UNCTAD, 97). Most governments, especially those of developing countries see foreign investment by TNCs as one of the keys to successful integration into the global economy. Effects to attract TNCs through liberalisation, tax concessions have been a dominant theme in developing policy of many developing countries over the part decade. It seems that policy makers didn't realise that there is a basic contradiction between the interest of the TNCs and that of host country and its enterprises.

1. TNCs are profit-motivated commercial entities with a number of monopolistic advantages-such as innovative ability, patent protection, internationally reputed brand names and most importantly the technological skill. These monopolistic advantages give them market power in the areas in which they specialise, and enable them to indulge in monopolistic and/or restrictive trade practices including that of discouraging the local enterprise from entering into competition, restricting output and selling at higher than reasonable prices (Kumar, 1987).
2. TNCs can also have certain implications for the balance of payments of the host country. A widely promoted assumption is that the entry of TNCs in the developing countries can help the host countries to meet the balance of payments problem by enhancing host country's export. But such is not the case, at least

in India, where TNCs have proved to be heavy losers of foreign exchange (Goyal, 1993).

3. Most importantly, TNCs are supposed to be the carriers of new and modern technologies that would help improve the technological needs of the developing countries. But now such is not the case, as TNCs are increasingly opting and restricting themselves to soft technology areas and are indeed avoiding capital investment. As observed in case of India, the process of takeovers and consolidation of control was quick in low technology, elite oriented consumer goods industry like beverage industry. As a consequence, the visibility of TNCs have become more pronounced but knowledge spillovers by them have become very limited (Chaudhari, 1995).

Are We Globally Competitive (Domestic Oligopolies vs Global Oligopolies)

Where do Indian Business Houses (which are a representative of Indian oligopoly) stand in front of TNCs (which are highly concentrated structures)?

To compare the size of domestic business houses with that of TNCs, sales[8] and fixed assets[9] of 20 Business Houses of India and 20 TNCs for the period 1992 to 2003 have been analysed (see tables 3.7 to 3.12 at the end of the chapter). While making the selection of these business houses and TNCs certain factors have been taken into account.

1. Sales and fixed assets have been chosen as they both together are important indicators of size but neither of them is a sufficient

[8] Sales: Income generated from main business activities like sale of goods and services, fiscal benefits, trading income. It also includes internal transfers but excludes expenses capitalised.

[9] Gross Fixed Assets- this includes own fixed assets such as plant and machinery, land and building, furniture and fixtures, etc, Gross fixed assets are net of revalued asset but excludes intangible assets.
Net Fixed Assets- Gross fixed assets less cumulative depreciation.

indicator in itself.[10]

2. The selection of Business Houses of India covers all the leading business houses (owned by Indians) in terms of their sales. These Business Houses are highly diversified and cannot be associated predominantly with a single industry. However, most of their avenues of operation coincide with the industries in which TNCs are operating. For example, Tatas are into automobiles, hotels, telecom etc.; Birlas are into cement, automobiles, petro-refining etc.; Videocon and BPL are into consumer electronics; and so on.

3. The selection of TNCs covers some of the leading TNCs of the world, in terms of their sales. These TNCs belong to different industries, such as, electronics and electrical equipments, food and beverages, pharmaceuticals, petroleum exploration, refining and distribution, and automobiles etc., and they have made their presence felt in the Indian market (choice to some extent has been affected by the availability of data).

4. All financial companies/corporations have been ruled out since the focus is on manufacturing sector only.

5. For comparing the growth of sales as well as fixed assets of the Indian Business Houses with that of TNCs, over a period of twelve years from 1992 to 2003, yearly averages (of sales and fixed assets) for both the groups have been taken.

Figures 1, 2, 3 and 4, given below, show the growth of sales and net fixed assets of the Indian Business Houses as well as that of TNCs over the period from 1992 to 2003.

---

[10] Companies with large assets can be classified as small companies in their initial years if sales is the criterion for selecting size. Similarly, a company which operates with leased assets and outsources jobs but has a large operation would be classified as small company of assets were used as a measure of size.

Figure 1

A Comparison of Sales of Indian Business Houses and TNCs (1992-2003)

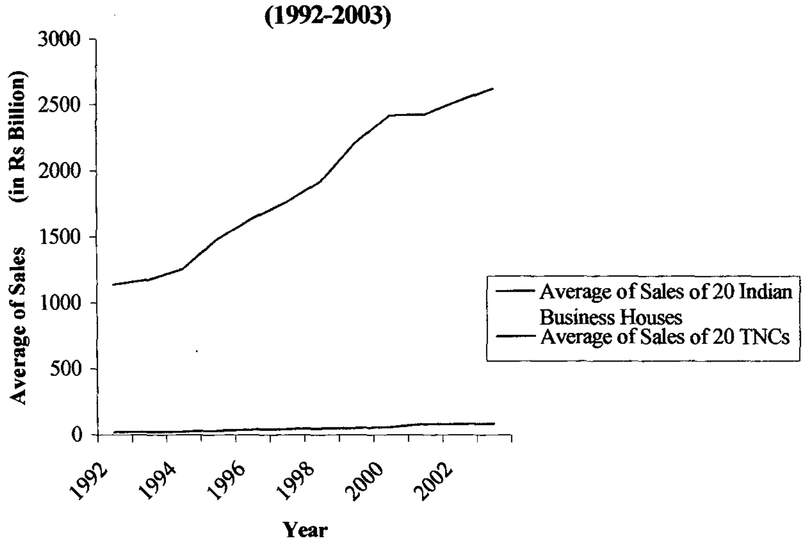


Figure 2

A Comparison of Fixed Assets of Indian Business Houses and TNCs (1992-2003)

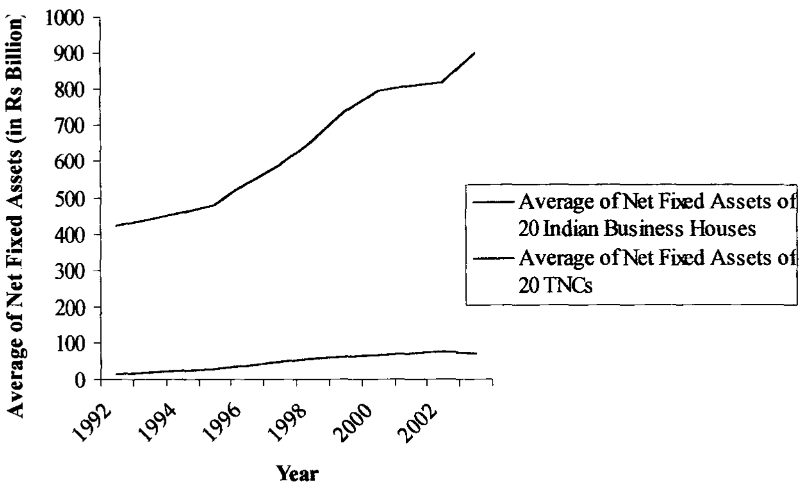


Figure 3

Growth of Sales and Fixed Assets of Indian Business Houses (1992-2003)

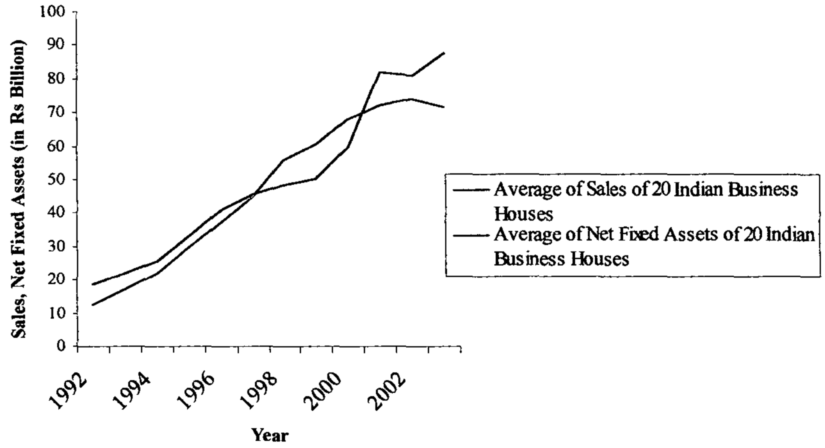
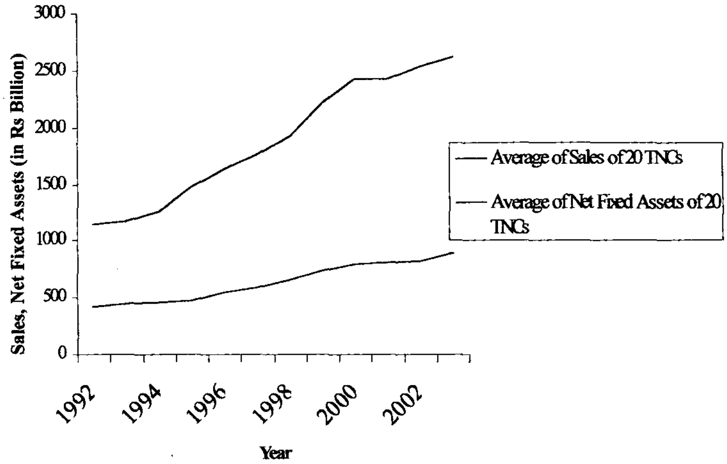


Figure 4

Growth of Sales and Fixed Assets of TNCs (1992-2003)



From figures we observe that:

1. There exists a huge disparity between the size of indigenous firms and TNCs,. The big business houses of India, which are representative of Indian oligopoly are pygmies in front of the large TNCs. These TNCs are highly concentrated structures and domestic business houses can't compete with them in terms of size and market share.

2. Although trend rates of growth of sales and fixed assets of the group of 20 Indian Business Houses (at 15% p. a. and 16.95% p.a. respectively) over the period 1992-2003 are significantly higher than the trend growth rates of sales and fixed assets of the 20 TNCs (which are 7.9 p.a. and 7.1 p.a.); the growth of Indian Business Houses has been on a very small base.

   While Net Fixed Assets (Average for 20 business houses of India) increased from Rs 12.85 bn 1992 to Rs 71.96 bn in 2003 (both at current prices), the corresponding increase for TNCs (average of 20 TNCs) was from a huge Rs 422.9 bn to Rs 899.6 bn. Similarly, while average sales of 20 Indian business houses increased from Rs.18.87 bn in 1992 to Rs.87.79 bn in 2003, for TNCs the corresponding increase was from Rs.1140.2 bn in 1992 to Rs.2628.7 bn in 2003.

Thus the gap between Indian business houses and TNCs is widening with time.

Need for Big Domestic Firms (Need for Domestic Oligopolies)

The opening of Indian Industry in 90s has led to increased competition between the Indian firms and the TNCs for the Indian market and gradually the dominance of foreign firms in Indian industry is increasing. Thus, the first priority for most Indian firms today is to maintain their hold on domestic market and become globally competitive.

As mentioned earlier, the process of late industrialization has made oligopolistic market structure technically inevitable in developing countries. Indian business houses are representative of this oligopoly and if this oligopoly is broken, it will lead to uneconomic scales of production. Therefore, we can't break these product oligopolies because firms need economies of scale to compete with these TNCs which we saw in last section, are quite large in size in comparison to the Indian business houses.

Thus large size is required by Indian firms to compete with these foreign oligopolies (TNCs). The rationale for fostering size is obvious, firstly to realise economies of scale and secondly, only large firms can internalise many of the functions in different markets for capital, skills and technology and even infrastructure. They could undertake the cost and risk of absorbing very complex technologies (without heavy reliance on FDI), further develop it by their own R & D, set up world-scale facilities and create their own brand names and distribution networks. Japan, South Korea, Taiwan followed this policy to promote their indigenous enterprises (Lall, 2004).

South Korea, which had a strong preference for promoting indigenous enterprises, followed this strategy by deliberately creating large private conglomerates, the *Chaebol*. The domestic market was not exposed to free trade, the entry of TNCs was restricted and quantitative and tariff measures were used over time to give infant industries freedom to develop their capabilities. The government undertook various measures to encourage export performance, vigorous domestic competition and deliberate intervention to rationalize the industrial structures.

No doubt the spread of gloablisation has made it more difficult and risky to take the path which was adopted by the countries like Japan, South Korea, Taiwan for promoting their industry. But the bottom line remains the same that there is need to foster the development of domestic enterprises (ibid).

Need for Government Intervention

Its quite right that government controls in India in the past did not always produce the desired results but that doesn't mean that government intervention should be eliminated all together. Withdrawal of all monopoly restraints has resulted in several markets becoming oligopolistic, with a reduction in competition. Almost all takeovers by foreign forms have tended to reduce the players in the specific industries.

India's policies of lifting crucial restrictions on the TNCs shows government indifference to the status of indigenous firms and its passive reliance on the TNCs for economic development. Few countries in the world would permit their dominant national players to be bought over by multinationals. None of the economically successful countries like Japan, Korea etc during their development stage provided the type of freedom to foreign enterprises which India is offering to them. In Japan, during the liberalisation phase, the policy planners did not open the investment doors for TNCs until they felt that the Japanese enterprises are strong enough to compete with foreign firms (Chaudhari, 1995).

Thus government support is necessary for the indigenous firms to grow vis-à-vis the TNCs But strengthening government capabilities should not mean returning to the old days of import substitution, it is important to learn from the past mistakes and the experiences of other countries. Sometimes government failures can be inevitable but they are not necessarily more costly than market failures and there is no doubt that government capabilities can be strengthened (Lall, 2004).

A strategic intervention on the part of government is required to take care of the negative features of the operations of the TNCs and to ensure that the country gains from their investment. There is need to regulate TNCs keeping in mind the needs and priorities of the country.

Government should realise that for industrial development, the basic role will have to be played by the indigenous sector. Therefore it should encourage the indigenous firms to grow but these interventions have to be selective. Measures should taken to ensure enough vigorous domestic competition/rivalry in a oligopolistic market structure which would enhance consumer welfare-in terms of increase in output and decline in the market price and would also keep a check on anti-competitive conduct by these firms.

The issue which needs to be addressed at this juncture is whether competition policy in India as an instrument of government intervention could fulfil this task.

Table 3.7

SALES OF TOP BUSINESS HOUSES* OF INDIA

(in Rs. Billion)

Sl No.	Business House	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
1	Bajaj Group	20.8	22.9	25.6	32.1	39.9	44.1	43.9	47.7	50.5	48.9	48.8	61.8
2	Birla Aditya Group	37	46	52.7	62.2	77.7	80.3	87.6	95.5	116	130.2	136.2	147
3	Birla B.K. Group	24.4	28.7	31.3	33	37.2	39.2	44.1	41.4	45.7	51.7	52.2	53.5
4	Birla C.K .Group	14.5	15.7	18.4	20.3	26.1	26.8	26	28.4	30.4	30.2	26.1	25.9
5	Birla K.K. Group	11.9	12.3	13.4	22.7	26.7	28	31.2	30.1	30.5	40.4	37.1	36.7
6	BPL Group	3.6	6.4	8.3	12.7	18.3	20.1	21.6	25.4	25.2	22.5	22.4	-
7	Escorts Group	10.5	9.7	11.1	15.1	18.5	15.9	14.3	15.7	18.3	17.1	11.9	10.2
8	Essar (Ruia) Group	3.1	4.1	7.6	7.2	5.8	17.9	23.4	20.3	23.3	24.5	-	16.7
9	Godrej Group	13.3	12.4	14.6	18.3	21.6	24.2	25	28	26.5	28.9	35	31.2
10	Larsen & Toubro Group	13.4	14.5	17.3	20.8	29.4	37.3	35.8	40.4	38.9	42.6	49.6	55.1
11	Mahindra & Mahindra	12.9	16	18.3	22.4	30.9	38.3	42.6	42.9	46.9	46.7	42.9	49.4
12	Om Prakash Jindal Group	6	7.7	9.2	15.3	21.7	23.4	27.8	24.6	40	56.4	61.6	60
13	Ranbaxy Group	3.2	4.4	5.9	7.2	9.4	10.5	11.7	10.9	15.5	16.2	18.1	26.2
14	Reliance (Ambani) Group	43.8	57.6	68.3	91.2	101.2	103.1	156.9	166.1	229.6	608	532	583.2
15	RPG Enterprises Group	17.5	23.2	27.2	34.7	46.2	46.8	46.7	52.7	54.8	47.5	34.6	33.3
16	TVS Iyengar Group	10.6	12.2	12.1	17.6	23.6	34.2	36.1	39.2	46.2	50.7	53	67.4
17	Tata Group	92.6	104.4	122.8	159.4	206	234	215.8	206.4	246.9	257.5	228.3	260.4
18	Thapar Group	24	27.4	32.2	41.7	50	50.1	35.5	44.7	47.5	53.9	53.1	52.6
19	UB Group	6.4	7.6	7.9	14.3	6.3	17	19.7	17.5	20.5	23.1	24.4	24.5
20	Videocon Group	7.9	9.3	12.1	15.4	22.1	23.7	27.2	33	43	47.2	-	72.9

Note: * = Data for each Business House have been compiled from the figures for individual companies owned by the Business Houses; the list of companies taken into account is given in the Annexure- I.
Source: CMIE

Table 3.8
SALES OF TNCs*
(in Rs. Billion)

Sl No.	Corporation	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
1	Cadbury Schweppes Co	-	-	-	-	-	-	-	294.6	310.6	386.3	409.2	517.3
2	Canon Inc	416.8	514.5	659.4	702.5	784.6	788.0	1026.5	1113.6	1105.5	1049.2	1179.4	1352.3
3	Coca Cola Co	398.5	436.0	505.5	602.1	663.9	698.8	790.9	857.9	931.9	953.8	938.7	953.0
4	Exxon-Mobil Corp**	3546.2	3488.3	3576.5	4074.2	4153.5	4471.6	4854.9	6971.8	9410.1	8941.9	8612.2	9670.5
5	Mobil Corp	1964.7	1992.0	2097.5	2455.2	2854.2	2390.0	2250.7	-	-	-	-	-
6	General Electric Co	1750.1	1897.9	1862.0	2341.5	2811.6	3375.0	4228.0	4835.6	5929.3	5989.9	6287.1	6026.5
7	General Motors Corp	4058.1	4191.0	4779.1	5482.5	5609.0	6623.7	6541.9	7652.1	8432.5	8450.7	8987.7	8418.0
8	Gillette Co	156.3	169.4	248.1	294.4	340.8	375.4	387.0	390.0	420.3	424.4	404.4	417.5
9	IBM Corp	1976.9	2010.8	2012.7	2405.1	2694.5	2917.8	3437.1	3795.7	4033.5	4091.8	3904.2	4043.4
10	Johnson & Johnson	423.0	442.3	493.0	628.9	766.8	840.0	997.1	1191.6	1361.3	1573.8	1742.7	1896.9
11	Lafarge S.A.	-	-	-	-	-	260.2	-	-	525.3	581.8	736.5	776.0
12	McDonalds Corp	217.6	232.1	260.6	327.8	379.9	423.7	521.7	576.3	648.7	705.8	741.4	776.0
13	Motorola Inc	-	533.3	395.6	903.2	994.0	1107.7	1316.8	1434.2	1713.0	1430.7	1280.5	1225.3
14	Nestle S.A.	1177.0	1229.7	1529.2	1629.0	1519.4	1795.3	2187.6	2023.5	2265.7	2413.1	3090.6	3212.9
15	Pepsico Inc	671.2	784.3	888.6	635.6	720.7	776.9	938.2	1083.3	1018.7	1120.7	1208.3	1220.7
16	Pfizer	220.7	222.7	248.1	334.5	347.9	408.9	976.0	1174.2	1343.0	1535.6	1554.9	2046.6
17	Philips Electronics	1020.6	950.5	1058.2	1341.3	1452.0	1245.2	1426.2	1451.6	1626.2	1373.5	1607.9	1656.4
18	Procter & Gamble	931.8	953.6	951.4	1117.2	1270.9	1382.7	1565.0	1650.9	1822.6	1869.4	1935.2	1965.0
19	Shell Oil Co	2966.9	2986.4	2976.7	3676.2	4554.7	4757.8	3954.6	4567.0	-	-	-	-
20	Seagram Co	-	-	-	324.5	-	382.9	395.5	533.0	712.6	-	-	-

Note- 1: * = Twenty leading TNCs from various industries have been selected based on availability of data.
2: ** = Figures till 1998 represent the Net Fixed Assets of Exxon Corporation only, Exxon and Mobil were merged in 1998.
3: Nominal exchange rates of $US vis-à-vis Rs for different years have been used.

Source: 1. World Investment Report (UNCTAD),various issues
2. http://edgarscan.pwcglobal.com/EdgarScan

Table 3.9

NET FIXED ASSETS OF TOP BUSINESS HOUSES* OF INDIA

(in Rs. Billion)

Sl No.	Business House	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
1	Bajaj Group	6.5	6.7	6.5	8.1	10.9	11.8	14.3	17.4	20.1	23.9	25.2	25.25
2	Birla Aditya Group	22.2	35.6	43.2	52.8	65.3	81.2	98.5	115.3	112.3	114.8	123.2	120.61
3	Birla B.K. Group	13.7	15.1	17.9	24.4	30.8	36.1	36.4	34.8	33.7	34.1	30.5	29.03
4	Birla C.K .Group	6.0	7.1	7.2	7.4	8.0	9.2	12.3	13.9	13.3	12.9	13.1	12.69
5	Birla K.K. Group	13.5	17.8	20.0	20.8	22.3	24.4	29.5	37.3	36.9	35.8	32.0	31.11
6	BPL Group	1.0	2.9	3.3	4.9	4.9	11.1	11.6	16.0	14.1	14.7	19.1	13.04
7	Escorts Group	3.0	3.1	3.5	3.9	8.1	12.6	12.5	14.6	15.1	16.4	12.7	15.06
8	Essar (Ruia) Group	12.4	27.6	39.4	76.5	94.4	97.1	127.7	139.2	147.1	138.2	147.5	159.67
9	Godrej Group	1.7	3.1	3.4	4.9	6.5	7.3	8.1	8.2	8.6	8.1	8.9	9
10	Larsen & Toubro Group	8.0	11.0	14.5	19.0	27.4	37.1	47.7	59.3	62.4	61.6	59.4	52.2
11	Mahindra & Mahindra	3.9	4.1	3.8	4.9	7.7	10.8	12.8	13.4	17.8	20.5	20.7	19.76
12	Om Prakash Jindal Group	2.5	4.4	6.7	13.6	26.1	44.0	62.6	75.6	89.1	93.2	101.8	83.53
13	Ranbaxy Group	1.2	1.6	2.2	3.3	4.8	5.5	6.5	6.7	6.8	6.9	6.3	6.44
14	Reliance (Ambani) Group	60.8	65.1	78.4	125.6	163.4	216.2	318.3	388.8	399.9	441.6	475.5	448.32
15	RPG Enterprises Group	12.6	17.4	38.9	45.9	56.2	62.2	64.5	65.5	68.4	65.0	64.3	61.98
16	TVS Iyengar Group	3.6	4.2	4.9	7.3	12.1	15.2	18.9	23.7	21.8	25.0	22.6	23.08
17	Tata Group	68.1	96.4	122.5	138.3	152.0	166.0	192.0	218.2	233.5	253.4	254.2	244.05
18	Thapar Group	10.7	13.8	16.1	19.5	27.9	30.9	22.6	33.5	30.7	41.3	36.8	41.44
19	UB Group	3.3	3.6	3.1	4.7	7.4	8.6	8.1	8.2	8.3	9.8	8.0	9.05
20	Videocon Group	2.5	3.5	6.7	11.3	13.6	16.6	17.2	22.1	25.3	27.9	-	33.85

Note: * = Data for each Business House have been compiled from the figures for individual companies owned by the Business Houses; the list of companies taken into account is given in the Annexure -I.
Source: CMIE

Table 3.10
NET FIXED ASSETS OF TNCs*
(in Rs. Billion)

Sl No.	Corporation	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
1	Cadbury Schweppes Co	-	-	-	115.7	237.3	253.2	253.2	269.6	329.0	309.5	434.4	499.3
2	Canon Inc	-	-	-	-	219.1	223.1	222.7	246.4	316.3	312.0	332.1	338.6
3	Coca Cola Co	49.0	116.1	125.6	143.8	124.3	137.5	151.5	182.0	187.3	209.8	267.74	276.82
4	Exxon-Mobil Corp**	1891.1	1941.8	1990.8	2187.6	2364.3	2468.1	2793.4	4073.0	4102.1	4273.0	4283.9	4760.4
5	Mobil Corp	766.3	784.3	800.7	829.6	972.7	910.7	1039.1	-	-	-	-	-
6	General Electric Co	622.2	661.9	-	856.3	1018.9	1200.6	1501.9	1776.5	1827.2	2007.7	2223.6	2418.8
7	General Motors Corp***	-	1082.3	1068.5	856.3	933.7	1260.1	1354.7	1416.9	1548.6	1735.9	1629.1	1733.5
8	Gillette Co	30.7	37.6	44.0	53.5	88.8	115.2	143.0	-	159.9	166.9	158.8	163.4
9	IBM Corp	659.0	549.0	521.2	551.9	617.7	680.2	824.6	758.3	762.9	786.9	653.5	-
10	Johnson & Johnson	125.7	138.0	153.9	170.6	198.8	215.6	265.0	290.3	338.0	367.2	394.8	444.7
11	Lafarge S.A.	-	-	-	-	-	-	-	-	365.0	561.0	569.0	510.1
12	McDonalds Corp	-	-	336.0	428.2	507.7	553.8	673.1	706.3	776.6	820.3	839.5	903.1
13	Motorola Inc	137.9	172.5	219.8	311.1	344.4	364.3	420.7	-	484.2	462.6	276.8	231.4
14	Nestle S.A.	-	867.1	856.3	687.2	849.1	931.9	1086.6	1140.6	1248.5	665.6	762.8	903.1
15	Pepsico Inc	226.8	276.1	307.7	327.8	213.0	230.5	307.1	225.3	296.9	324.3	331.3	354.0
16	Pfizer	70.5	81.6	94.2	113.7	120.7	137.5	185.1	372.6	429.4	462.6	485.6	825.9
17	Philips Electronics	-	-	-	-	-	-	-	488.2	464.6	324.8	299.2	-
18	Procter & Gamble	-	294.88	-	368.0	394.1	420.0	509.0	546.0	593.8	634.3	594.5	635.3
19	Shell Oil Co	609.9	596.03	596.6	648.9	706.5	620.7	479.6	442.0	-	-	-	-
20	Seagram Co	-	-	-	40.1	103.0	92.9	113.6	134.3	137.0	-	-	-

Note 1: * = Twenty leading TNCs from various industries (see Annexure-II) have been selected based on availability of data; ** = Figures till 1998 represent the Net Fixed Assets of Exxon Corporation only, Exxon and Mobil were merged in 1998; *** = Figures for 1993 to 1996 have been taken from 10-Q3 reports (Quarterly Reports) filed by the GM Corp at the US SEC. **Note 2:** Figures for each year have been converted to Rupees at the nominal exchange rate (of each Currency) for that year. **Note 3:** Nominal exchange rate of CHF for 2003 has been used for all the years for Nestle S.A.

Source: 1.10-K (annual) reports filed by the Corporations at the US Securities Exchange Commission (SEC), extracted by Edgar Scan from the Pricewaterhouse Coopers Global Technology Centre and given at the website http://edgarscan.pwcglobal.com/EdgarScan; 2. Annual Reports of the Corporations for various years; 3. Data about Exchange Rates of foreign currencies vis-à-vis Rupee have been taken from Institute for Studies in Industrial Development's Research Reference CD (Annexure-III).

Table 3.11
A Comparison of Sales of Indian Business Houses and TNCs
(1992 - 2003)

(in Rs Billion)

Year	Average of Sales of 20 Indian Business Houses	Average of Sales of 20 TNCs
1992	18.87	1140.2
1993	22.12	1176.2
1994	25.81	1255.8
1995	33.18	1481.2
1996	40.93	1635.4
1997	45.74	1762.2
1998	48.64	1920.8
1999	50.54	2212.2
2000	59.81	2422.8
2001	82.21	2429.2
2002	81.51	2533.1
2003	87.79	2628.7

Note: For calculating average of Sales of the TNCs, the missing data have been interpolated or extrapolated by using the trend rate of growth.

Table 3.12
A Comparison of Fixed Assets of Indian Business Houses and TNCs
(1992 - 2003)

(in Rs Billion)

Year	Average of Net Fixed Assets of 20 Indian Business Houses	Average of Net Fixed Assets of 20 TNCs
1992	12.85	422.9
1993	17.2	439.7
1994	22.1	458.6
1995	29.85	479.2
1996	37.47	539.3
1997	45.18	587.6
1998	56.1	659.5
1999	60.58	737
2000	68.25	798.1
2001	72.26	811.1
2002	74.47	820
2003	71.96	899.6

Note:For calculating average of Fixed Assets of the TNCs, the missing data have been interpolated or extrapolated by using the trend rate of growth.

Chapter IV

COMPETITION POLICY AND LAW IN INDIA

This chapter deals with competition policy in India. The adoption of a competition policy/law has no doubt become really important in this liberal FDI and industrial policy regime as the large firms especially TNCs are indulging in new forms of anti-competitive practices and rent-seeking activities. The chapter is divided into three sections: the origin of competition law in India (MRTP Act, 1969), the critical review of the current law "Competition Act-2002", and the Competition Act of India in the context of WTO.

Origin of Competition Law in India

The origin of anti-monopoly legislation in India dates back to the establishment of the Monopolies and Restrictive Trade Practices Act, 1969 (MRTP Act). The genesis of the act was traceable to the directive principles of the state policy in articles 38 and 39 of the constitution of India which stated, that the state shall, in particular, direct its policy towards securing the following aims:

1. The ownership and control of material resources of the community are so distributed as best to serve the common good; and
2. The operation of the economic system does not result in the concentration of wealth and means of production to the common detriment (CUTS, 2002).

The Preamble of the MRTP Act read as:

"An act to provide 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 restricted trade practices and for matters connected therewith or incidental there to." Thus the thrust of the MRTP Act was directed towards these tenets only. The prohibition of unfair trade practices was also included in one of the amendments of the act.

In 1991, when the country was introduced to various reforms many amendments were made to the act also. Most of the provisions of the MRTP Act, which dealt with concentration of economic power, were deleted. The threshold limits with regard to assets for defining MRTP or dominant undertakings were removed (prior to 1991, all firms and inter-connected undertakings with assets above a certain size, i.e., Rs.100 crore, had been classified as MRTP units).Along with it, the provisions related to additional investment approval for large and/or dominant firms, the requirement for approval for mergers, amalgamations and take-overs involving such firms were also removed. A section of the Act, requiring government approval for the acquisition or transfer of shares in excess of 25 percent of a firm's equity was simultaneously moved to the Companies Act and made applicable only to acquisition by 'dominant firms', as defined in the MRTP Act (those with a market share of one-quarter or more) (ibid.).

Its thrust was left on curbing monopolistic, restrictive and unfair trade practices with a view to preserve competition and safeguard the interests of consumers by providing them protection against false or misleading advertisements and/or deceptive trade practices.

In the last decade, many changes have taken place in the economic environment and structure of markets in India. There has been a wave of mergers and acquisitions, involving foreign firms in most cases which have led to rise in anti-competitive practices. The regulation of these activities was beyond the scope of the amended act and its ability to check monopolistic, restricted or unfair trade practices so as to promote consumer welfare was also limited.

Thus, Competition Policy in India was in a state of flux since MRTPC was not seen as an agency which had the capability of tackling competition related problems. It was considered obsolete in certain respects in the light of international economic development relating more particularly to competition laws. All these factors led to a desire for a new competition law in India.

Current Law: 'Competition Act-2002'

The new Competition Act had its genesis in the late 1990s, when the government decided that a comprehensive and effective competition law was required for a changed domestic and global economy as a part of second generation reforms. At about the same time, the relationship between trade and competition policy was mooted as an area which could be relevant for the WTO. Responding to these twin pressures, the Competition Bill was formally introduced in Parliament in August 2001. The so-called resulting 'Competition Act'- received the Presidential assent in January 2003.

The new competition act seems to promote and sustain competition in markets by preventing anti-competitive practices. Its "an act to provide, keeping in view of the economic development of the country, for the establishment of a commission to prevent practices having 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 there with or incidental thereto" (Government of India, 2003).

Thus there is definite departure from restricting monopolies to promoting fair competition in the competition policy of India. The new competition policy emphasizes the need for greater competition and sketches out the policies and laws needed to tackle the factors that come in the way of competition in the market place and the apex body under the Competition Act which has been vested with this responsibility, is known as Competition Commission of India (CCI) the successor to the MRTP Commission (MRTPC).

The major areas covered by the act are: agreements among enterprises, abuse of dominance and mergers.

Anti-Competitive Agreements

All those agreements between firms, which may have the potential of restricting competition. The Act prohibits agreements that "cause an appreciable adverse effect on competition within India." These are:

Horizontal Agreements: (agreements between rival sellers of similar products) involving:

1. Agreements regarding prices (Price-fixing)-these include all agreements that directly or indirectly fix the purchase or sale prices.
2. Agreements regarding output-include agreements aimed at limiting or controlling production, supply, markets, technical development or investment.
3. Agreements regarding bids (bid-rigging)-agreements between enterprises or persons engaged in identical or similar production or trading of goods or provision of services, which has the effect of eliminating or reducing competition for bids or adversely affecting or manipulating the process of bidding.
4. Agreements regarding market-sharing- these include agreements for sharing of markets or sources of production/supply by territory, type, or any other way.

Vertical Agreements: (refer to those between firms at different stages of the production or distribution chain, and) include:

1. Tie-in Arrangement- any agreement requiring purchaser of goods, as a condition of purchase, to purchase some other goods.
2. Exclusive supply agreement- any agreement restricting in any manner the purchaser in the course of his trade from acquiring or otherwise dealing in any goods other than those of the seller or any other person.
3. Exclusive distribution agreement- includes any agreement to limit, restrict or with hold the output or supply of any goods or allocate any area or market for the disposal or sale of the goods.
4. Refusal to deal- any agreement which restricts, or is likely to restrict, by any method the person or classes of persons to whom goods are sold or from whom goods are bought.
5. Resale price maintenance- includes any agreement to sell goods on condition that the prices to be charged on the resale by the purchaser shall be the prices stipulated by the seller unless it is clearly stated that prices lower than those prices may be charged.

A basic distinction which needs to be made here is whether a certain practice is deemed to be 'per se'[11] illegal or is to be evaluated under a so called 'rule of reason approach'.[12] Horizontal agreements which are particularly anti-competitive are subjected to 'per se' rule whereas vertical agreements are generally treated on a 'rule of reason' basis.

---

[11] 'Per Se' Rule- it means that certain agreements are presumed to have a appreciable adverse effect on competition and are declared illegal without the need of applying the 'rule of reason' test.

[12] Rule of Reason- this approach considers offsetting benefits of an anti-competition practices before assuming it to be illegal.

Abuse of Dominance

'Dominance' is defined as the position of strength enjoyed by an enterprise in the 'relevant market'[13] in India, which enables it to operate independently of competitive forces prevailing in the relevant market or affects its competitors or consumer or the relevant markets in its favour. While market dominance is not a satisfactory condition for assuming abuse, it is a necessary prerequisite. It is self-explanatory but necessary to point out that a firm must occupy a position of dominance in the market for being found guilty of abusing that dominance.

In determining the nature of dominant position enjoyed by an enterprise, the Commission would be required to look at factors including market share, magnitude of enterprise, the extent of vertical integration and consumer dependence, whether the monopoly was gained by operation of statute or otherwise, entry barriers, countervailing buying power and social obligation and cause.

Dominant position is abused when an enterprise imposes unfair or discriminatory conditions in purchase or sale of goods or services, or in the price in purchase or sale (including 'predatory price'[14]) of goods or services. There is also abuse of dominant position when an enterprise limit or restricts production of goods or services or technical or scientific development, acts in a manner which denies market-access, prevails upon contracting parties to be contractually bound by acts which are not part of the intent of the parties as well as by the use of dominant position

[13] Relevant Market-means the market which may be determined by the commission with reference to the relevant product-market (a market comprising all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the product or services, their prices and intended use (or the relevant geographic market (comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogeneous) or with reference to both the markets.

[14] Predatory Pricing- means the sale of goods or provision of services, at a price which is below the cost, as may be determined by regulations, of production of the goods or provision of services, with a view to reduce competition or eliminate the competitors.

in one relevant market to enter or protect another relevant market.

Combinations

The acquisition of enterprises by persons, the acquiring of control by enterprises, and the merger or amalgamation of enterprises are considered as combinations. A combination is discussed and defined on several levels, including any acquisition where the parties to the acquisition (the acquirer and the enterprise) have assets in India worth more than Rs 1,000 crore or turnover in excess of Rs 3000 crore or within or outside India, in the aggregate, assets worth more than $500 million or turnover in excess of $ 1,500 million.

Many factors have been taken into account in determining the affects of an existing or proposed combination. Criteria such as 'actual and potential level of competition through imports in the market', 'likelihood that the combination would result in the removal of vigorous and effective competitor or competitors in the market', 'extent of effective competition likely to sustain in a market', merit a mention.

The criterion for such clearance is "whether such a combination has caused or is likely to cause an appreciable adverse effect on competition in India."

The new Act which replaces the 1969 MRTP act, improves upon it in many ways. Unlike the MRTP Act, crucial terms like cartel, consumer, predatory pricing, goods etc. are now clearly defined. Also the firms violating the new law could be fined up to 10% of their turnover, as against the modest fines provided for in the MRTPA.

The scope of operation of the competition Act is not confined to transactions strictly within the boundaries of India. CCI can inquire into agreements taking place outside India, if they have or are likely to have an appreciable adverse effect on competition in the relevant market. For example, as following the merger of parent companies abroad, the Indian affiliates of Glaxo, Wellcome and SmithKline created a company with a combined market share of 73.8%. Such M & As overseas could have possible anti-trust implications for India.

Critical Review

No doubt the Competition Act has several progressive features as compared to the MRTPA but the overall content of the act is full of inconsistencies and loopholes. The act is quite inadequate both in terms of dealing with the actual anti-competitive behaviour of firms and the structures that lead to such behaviour (Chandrasekhar, 2003).

- The new Act does not restrict the size of the firms. No doubt, as mentioned earlier, large size is required by domestic firms in reaping enough economies of scale so as to become globally competitive. But the whole exercise of promoting size has lost its meaning as the act does not distinct between domestic and foreign firms. By providing foreign firms the same level field, it would only lead to increase in anti-competitive practices by them and the indigenous industry being dominated by foreign oligopolies in few years.
- In case of M & As also, by keeping a high threshold limit for regulation so as to help domestic firms consolidate, would have been a right step, had there been a difference in threshold limits for domestic and foreign firms. Already due to absence of any antitrust policy in the last decade a number of foreign affiliates have been able to consolidate their market shares in the country mainly due to M & As. The balance could be effectively maintained by reducing the thresholds for international firms, while raising those for domestic firms. Also mergers involving domestic firms with foreign

shareholding should be subjected to a stricter rule.

- Also for regulation of mergers, its asset size alone and not size together with market share which will be taken into account but as mentioned before, to indicate the size of the firm the asset size is not a sufficient indicator by itself (ibid.).

- There is no provision for the regulation of those mergers and acquisitions that do not fall within the threshold size given for regulation of 'combination' yet have the potential to affect competition adversely. For example, MNCS, operating in India generally acquire smaller and often closely held enterprises in large numbers, to establish their presence or to strengthen the scope and coverage of their operations. In the last decade, the bulk of acquisitions by MNCs have involved relatively small amounts so as not to attract any regulatory provisions (Kumar, 2000). Thus there should be some window whereby the commission could regulate such M & As as well.

- The multifarious criteria (13 each for determining dominance and the anti-competitiveness of mergers) are quite subjective, contradictory or vague, and will be open to varying interpretations leading to inconsistent verdict (Bhattacharjea, 2001).

- The Act, under clause 52, gives wide discretion, without much guidelines, to the central government as far as exemptions from the Competition Act are concerned. The government will have the right to exempt any class of enterprises, all in the name of 'public interest' or performing 'sovereign functions'. This power has a potential to be misused since government can exercise it arbitrarily for extracting political favours. Thus, there is a apprehension that autonomy of the commission will be comprised. (CUTS, 2001).

- An amendment to section '3' excludes efficiency enhancing joint ventures from the prohibition of 'horizontal anti-competitive agreements' (i.e. those between competitors). This superficially resembles similar provisions in other jurisdictions like EU and US where 'block exemptions' for joint ventures devoted to R and D are given or 'rule of reason' approach is allowed. In contrast, the new exemption in the Indian competition Act is too broad, in that it is neither limited to R & D, nor imposes any other conditions to protect competition. Thus the joint venture exclusion will be open to abuse (Bhattacharjea, 2003).

- On the subject of the abuse of dominance is the clause: "meet the competition" so as to exclude from its purview unfair or discriminatory conditions on pricing if they are adopted to match the rival offer. The problem is that it covers predatory pricing, which will legitimise predatory pricing by firms with 'deep pockets': the financial resources to incur losses in order to drive out more efficient producers. Also, a publicly announced commitment by a firm 'to meet the competition' is actually anti-competitive (ibid).

- Competition abuses due to intellectual property rights are not addressed at all. Despite the increasing importance of intellectual right issues, the act does not adequately deal with them.

It appears that while formulating the new competition law, the policy makers did not seem to believe that creating globally competitive domestic firms is a legitimate objective of Competition Policy. The premise seems to be that unbridled competition is best for an economy. If Indian firms can make up to that level, it is good and if not, then they deserve a burial (Ram Mohan, 2000).

Also, there is enough scope left in the act for firms to indulge in anti-competitive practices, so it is not very likely that the interest of consumers, an important tenet on which the act is based will also be protected.

Thus a balance which a developing country like India needed i.e. to create globally competitive domestic firms and to ensure enough competition between the domestic producers so as to protect the consumers from anti-competitive behaviour by firms, cannot be contributed by this new competition law.

Competition Act of India in the Context of WTO

The question which arises here is that given the multilateral framework of Competition Policy in the WTO, how complaint India's new Competition Act is and will it be able to combat the challenges lying ahead?

On one of the core principles of WTO agreement on competition i.e. 'national treatment' (non-discrimination between domestic and foreign suppliers), India pointed out that since developing countries lack the resources to prosecute the anti-competitive practices of firms located abroad, domestic firms would in practice bear the brunt of a 'non-discriminatory' competition law.

But surprisingly, our Competition Act is silent on the issue of non-discrimination. It doesn't distinguishes between domestic and foreign firms and rather than regulating the presence of international firms in the domestic market, it gives them the opportunity to grow further.

Also, the Competition Act contains what amounts to per se prohibition of exactly the kind of 'hard core cartels' (horizontal agreements involving price-fixing, output restrictions, market sharing, or bid-rigging, give rise to what are internationally known as 'hard-core' cartels) targeted by EU, the main proponent of competition policy in the WTO. Thus, the Competition Act does not give the requisite flexibility in case of cartels which developed nations, including the EU, gave to their firms (on the basis of rule of reason approach) during their development process.

Some more amendments which will work in favour of foreign firms are: for example-allowing an 'efficiency defence' without the conditions that would be imposed in their home jurisdictions; or 'meet the competition' defence even in cases of predatory pricing, which will help firms with financial deep pockets.

Thus, the Competition Act being already WTO-compliant by ensuring 'national treatment' and per se 'prohibition of hard core cartels', India will have no bargaining chips, but to bind over these provisions in a WTO agreement. India therefore, should resist a multilateral agreement on competition policy by all means.

It is clear from the foregoing analysis that the competition act is riddled with many loopholes and inconsistencies in order to tackle both domestic and international issues. Thus, the act really needs several rounds of amendments and clarificatory guidelines to create greater legal certainty. Also, there is a strong case to give exemptions to small firms participating in anti-competitive agreements in tradable sectors as they have a competitive disadvantage relative to larger foreign rivals. Given the international scenario, selective exemptions might be required even for the large-scale industries sector that should be the prime target of Competition Policy. And in order to limit the effects of political patronage in choosing them, let the rules be written to exempt defensive cartelisation by only those domestic firms which are facing international competition without significant tariff protection, and are either dealing with highly concentrated buyers or sellers, or holding a price umbrella over small companies and ancillary suppliers (Bhattacharjea, 2003).

Thus, there is need to harmonise industrial policy with the Competition Policy in order to strengthen the competitiveness of Indian industry. Through Competition Policy it should be ensured that the India has a level playing field with foreign competitors. It is not about giving preferential treatment to domestic industry but about creating a reasonably level playing field (Ram Mohan, 2000).

Therefore, the new Competition Act should be vigorously enforced against mergers and cartels involving foreign firms, while going slow on Indian firms which need time to restructure in the wake of deregulation and import liberalisation. Thus for time being the selectivity approach is required for the implementation of competition policy.

Chapter V

NEED FOR ANTITRUST POLICY: A CASE STUDY OF CEMENT INDUSTRY IN INDIA

This chapter emphasizes the need for antitrust policy by examining the developments in the cement industry in India.

As discussed earlier, oligopolistic market structures are inevitable in developing countries. Therefore unfettered competition, if initially ensured also, would soon lead to oligopolisation, which gives scope for collusive and anti-competitive practices by large firms at the expense of consumers (Chandrasekhar).[15]

A fitting example of this could be seen from the experience of cement industry in India, which has been relatively oligopolistic. The partial decontrol (1982) and full decontrol (1989) of the industry changed its structure from oligopolistic to a relatively competitive one. But the liberalisation that swept during 1990s has started fostering oligopolies again which could be seen from the recent consolidation process taking place in the cement industry.

As has been mentioned in chapter III, for reasons of economic efficiency and international competitiveness, it is desirable to have large domestic firms in Indian industry. However, these large firms must be controlled so that they do not indulge in collusive and anti-competitive practices. Few large firms should not be given free reign in the market, hence state intervention and anti-trust policy is required in order to discipline them.

[15] in Frontline, dated 16 February 2001

Structure and Pricing Policy in Cement Industry

India is the 2nd largest producer of cement in the world after China with cement production at 111 mn tonnes during 2002-03. The industry is highly fragmented in nature with around 54 companies controlling a total capacity of 140 million tonnes. The concentration of limestone reserves in certain regions, high transportation costs of cement and low entry barriers resulted in fragmentation of the industry, with several small players operating in niche regional markets.

Since independence of the country until date, the cement industry has crossed various phases from the point of view of government control on price and distribution of cement. The post independence experience of cement industry could be divided into 3 phases:

(1) Controlled regime (1947-82)- when state totally dominated the market i.e. it controlled the capacity, distribution and price-fixation.

(2) Partial Decontrol Regime (1982-88)- When there was partial decontrol of product and prices i.e. when 33.3 percent of the produce of the industry, was allowed to be sold in the market at market determined prices.

(3) Full decontrol (1989 onwards)- when there was full decontrol of products and prices in the cement industry.

Until 1982, mainly oligopolistic and monopolistic characteristics dominated this industry but removal of controls gradually turned the industry into a more competitive one.

Controlled Regime (1947-82)

The cement industry has been subjected to government intervention on many fronts, such as, production, location, distribution and pricing. Through industrial licensing policy, the government sought a fair regional diversification of cement factories, and by adopting cement distribution policy; the government intended to ensure equitable distribution and availability of cement at fair prices. Price control policy was adopted taking into account the oligopolistic market structure of the cement industry.

In 1956, the government entrusted state trading corporation (STC) with a monopoly right over distribution of both domestically produced and imported cement in order to ensure not only its availability but also equitable distribution. Various Tariff Commissions were formed to recommend a price structure for the industry. In line with their recommendations, the government followed different pricing schemes.

A three-tier retention price scheme was introduced in 1958 based on different retention prices for low cost, medium cost and high cost units as production costs of the units differed due to the absence of homogeneity in process technology, labour employment, age of the plants and raw material availability (NCAER, 1979).

In 1969, the government replaced the three-tier scheme to a uniform price scheme of Rs 100 per tonne. The logic behind this scheme was that the scheme had a built in provision to encourage efficiency, cost economies and increase productivity. Since the uniform price taxed the decreasing return units and subsidised those operating under increasing returns, it urged high cost units to seek economies and provided a measure of reward to those units which were actually able to achieve them. But this scheme was again replaced by three-tier scheme in 1979 (Madhubala, 2003).

During this phase, a major share of the installed capacity was controlled by two groups, ACC and Birla, which provided an oligopolistic structure to the industry.

Partially Decontrolled Regime (1982-89)

A slow movement towards liberalisation of the industry started during early 1970s. The proponents of the liberalisation of the industry argued that the regulation of prices and distribution has resulted in the black-marketing, profiteering and low capacity utilization of cement. Thus the industry was partially decontrolled in 1982.

Table 5.1

Capacity and Production of Cement in India (1980-81 to 2002-03)

Year	Installed Capacity	Production	Capacity Utilisation	Growth in Production
	(in Mn Tonnes)	(in Mn Tonnes)	(in %)	(in %)
1980-81	27.92	18.66	67	-
1981-82	29.26	21.1	72	13.1
1982-83	34.39	23.3	68	10.4
1983-84	37.04	27	73	15.9
1984-85	42	30.13	72	11.6
1985-86	44.39	33.13	75	10.0
1986-87	54.4	36.4	67	9.9
1987-88	57.47	39.37	69	8.2
1988-89	58.97	44.08	75	12.0
1989-90	61.55	45.41	74	3.0
1990-91	64.36	48.9	76	7.7
1991-92	66.56	53.61	81	9.6
1992-93	70.19	54.08	77	0.9
1993-94	76.88	57.96	75	7.2
1994-95	83.79	62.35	74	7.6
1995-96	95.76	69.63	73	11.7
1996-97	105.25	76.22	72	9.5
1997-98	110.51	83.36	75	9.4
1998-99	118.97	87.91	74	5.5
1999-00	119.1	100.45	84	14.3
2000-01	130.71	100.11	77	-0.3
2001-02	-	-	-	-
2002-03	140.07	111.35	79	-

Source: www.indiastat.com and Cement Manufactures Association (CMA)

The industry quickly responded to the partial decontrol and doubled its capacity from 29 mt to 61 mt in just eight years (Shown in table 5.1 above). Earlier, during the price control regime, the incumbent firms had managed to pre-empt a significant share of the market by securing licenses for investment and production (the business groups had been reluctant in expanding in existing areas or investing in new areas where profits were relatively low). Thus, the industry which had been supply-constrained showed a significant upturn as price controls were lifted. It led to expansion of existing plants by the incumbent firms and also set out newly established plants promoted by prominent business houses [e.g. Gujarat Ambuja Cements] (Pradhan, 1992).

Under this new regime, existing units were required to sell quantities of cement equalling 66.6% of their capacity as 'controlled or 'levy' cement (50% in case of sick units). Production more than levy cement was open for sale in free market.

The dual pricing system was introduced with the objective of reducing regional imbalances over time and providing cement to consumer at fair prices and also to clear the way for modernisation and expansion of industry at a much faster pace.

During this period, not only the number of entrants and the installed capacity were increasing, the prices were also increasing (see table 5.2 given below).

Table-5.2

Prices of Cement in India (1961 to 1988)

Period	Price per tonne of Cement (in Rs)
1961-1969	**Three Tier System**
1/11/1961 to 31/5/1963	69.50/72.50/75.00
1/6/1963 to 30/6/1964	72.50/75.25/77.75
1/7/1964 to 31/5/1965	73.50/76.50/79.00
1/6/1965 to31/12/1966	77.50/80.50/83:00
1/1/1967 to 15/4/1969	90.50/93.50/96.50
1969-1979	**Uniform Pricing System**
16/4/1969 to 14/9/1973	110
15/9/1973 to 1/8/1974	110
2/8/1974 to 14/9/1974	134
15/9/1974 to 30/9/1975	139.15
1/10/1975 to 30/6/1976	157.75
1/7/1976 to 30/10/1976	161.40
1/11/1976 to 30/9/1977	159.55
1/10/1977 to 2/7/1978	161.12
3/7/1978 to 6/12/1978	165.82
7/12/1978 to 2/5/1979	168.91
1979-1982	**Three Tier System**
3/5/1979	188/205/220
3/5/1980	198/218.65/233.65
3/5/1981	233.39/253.39/268.39
1982-1988	**Uniform Pricing System for Levy Cement after Partial Decontrol**
28/2/1982	335
18/7/1984	375
15/12/1986	399.50
7/9/1988	446.40

Source: Madhubala (2003)

The partial decontrol years witnessed the transformation of the industry from the relative oligopolistic to relatively competitive one.

Fully Decontrolled Regime (1989 onwards)

In February 1989, government announced the full decontrol of cement industry. With this, the industry was left to fend for itself on all the fronts including the generation of demand. All units were left to sell their output at whatever price the market would bear.

During this period the capacity was created with such a zeal that large surplus emerged in the market leading to cut-throat competition and negative returns to the industry, just in few years of the opening up.

As evident from the table given below, decontrol has changed the structure of the industry from supply constrained to demand constrained.

Table-5.3
Total Demand for Cement in India
(1980-81 to 1998-99)

Year	Total Demand (in MnT)	Production (in MnT)
1980-81	28	18.7
1981-82	30.2	21.1
1982-83	32.6	23.3
1983-84	35.3	27
1984-85	37	30.2
1985-86	38.5	33.1
1986-87	38	36.4
1987-88	39	37.4
1988-89	42	41.7
1989-90	43	42.9
1990-91	45.8	45.8
1991-92	50.5	50.6
1992-93	49.9	50.7
1993-94	52.9	54.1
1994-95	56.6	58.3
1995-96	62.9	64.5
1996-97	68.3	70
1997-98	73.9	76.7
1998-99	79.8	81.7

Note: Due to difference in source, figures for Production of Cement in this table differ for some years from the previous table.
Source: Industrial Data Book, CIER (www.indiastat.com)

Determination of Prices

Regional demand-supply situation in market plays an important role in determining prices. The other determining factor is cartels operating in the state. As seen from table 5.4 below, the prices vary across Delhi, Mumbai, Kolkata and Chennai (which are representative of northern, western, eastern and southern regions in India). One of the reasons for high prices in southern states in last few years is, that since these states feed themselves and are hard to penetrate, the cartels are strongest here. Whereas in northern states (e.g. Delhi) prices are comparatively lower as cartels are not that strong because of the dispatches from other states enjoying excess surplus especially Rajasthan.

Due to chronic oversupply situation in most years and across regions there has been a slide in cement prices except for 1997 and 2001 when cement prices rose-on account of producers agreements to restrict-supply.

Table-5.4
Prices of Cement in India

(Rs per 50 Kg Bag)

Month/Year	Delhi	Mumbai	Kolkata	Chennai
Dec 1989	72	84	84	71
April 1990	93	91	93	83
April 1993	137	133	128	132
April 1997	137	163	132	151
June 2000	128	147	130	133
Jan 2001	155	182	165	190
Feb 2002	138	160	144	153

Source: Madhubala (2003);
CMIE, "Monthly Review of Indian Economy", Various Issues

The survival pangs of an industry have never been so pronounced as being witnessed in the cement industry in the past few years. The globalisation, set in motion in 1991, has seen the industry going through a process of adjustment and readjustment to compete in the new environment. Two trends are noticeable in the kind of restructuring taking place in Indian Cement Industry:

1. consolidation of production and market share by large domestic players.
2. gradual foothold of MNCs giants in India. (Nath & Bose, 2002)

The cement industry has been witnessing consolidation since 1995 but its pace fastened after 1997-98. The larger and stronger players in the industry for growing in the future, seem to be consolidating their positions by focussing on internal controls and adding capacities through the acquisition route rather than by setting up greenfield ventures. The weaker and smaller players have become the prime acquisition targets for these companies given the recessionary trend.

It is to be noted that such consolidation has been a global phenomenon when giant foreign companies started their production basis in less developed countries. After snapping up most Asian capacities in the Asian economic crash of 1997 (the cement industries in both Malaysia and Philippines is 100% multinational owned), Indian cement industry became the great hunting ground for most MNCs in Asia. Multinationals like Lafarge, Cement Francais, the Big Daddy, Blue Circle and the Holders Bank are in race for alliances since Indian cement industry is expected to continue to grow. Lafarge S.A, the largest player globally, has already acquired interests in India. And with the acquisition of cement business of Tisco and Raymond, it has become the sixth largest player in the country with a capacity of 4.5 mt per annum, giving it a market share of 3.6%.[16] But for time-being, the mega-acquistion of 16 mtn of L&Ts cement business by Grasim in June 2003 has marked the beginning of the final wave of consolidation process in the cement industry. Grasim after the acquisition of L&T has become the largest cement company in India with a combined capacity of 30 million tonnes.[17]

[16] In Business World, July 2003
[17] In Frontline, dated August 16-29, 2003

Table 5.5
Market Share of Top 10 Players
(1991-92 to 2002-03)

(Percent)

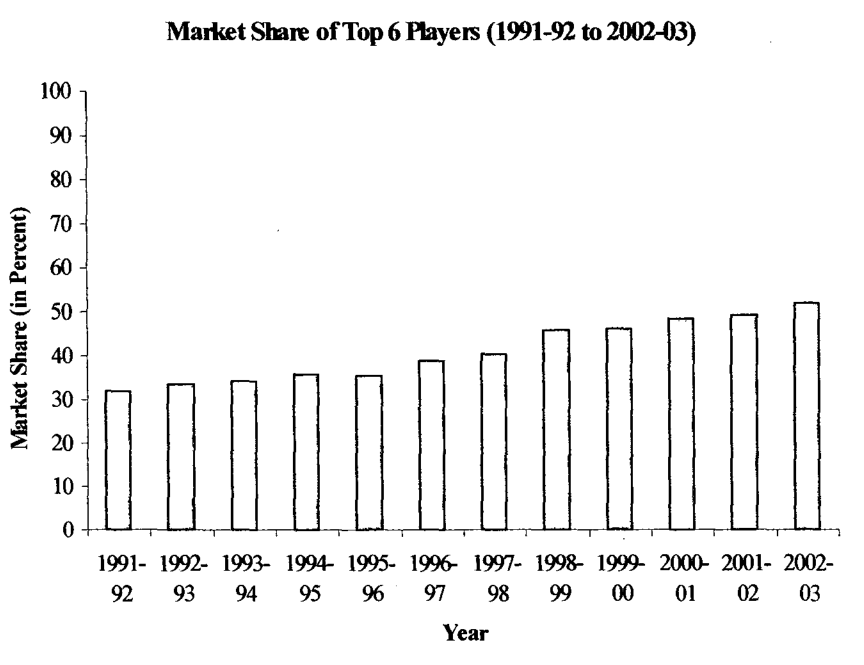
Sl No.	Company	1991-92	1992-93	1993-94	1994-95	1995-96	1996-97	1997-98	1998-99	1999-00	2000-01	2001-02	2002-03
1	ACC	15.1	15..9	16.1	16.3	14.6	13.6	12.5	12.8	11.6	11.9	12.6	-
2	Gujarat Ambuja	1.9	1.9	1.7	2.4	2.7	4.4	5.3	5.2	5.9	5.8	6.3	20.3*
3	Larsen and Toubro	3	2.7	2.9	4.1	5.1	6.7	7.6	8.9	9.2	9.9	10.3	-
4	Grasim Industries	2.7	3.6	4.1	3.8	4.7	5.3	5.5	7.2	8.4	9.8	10.3	21.5**
5	India Cements	4.3	4.7	4.8	4.7	4.6	4.4	4.9	7.2	6.6	6.5	5.1	6.3
6	Century Textiles	4.8	4.6	4.8	4.4	3.8	4.5	4.6	4.5	4.4	4.7	4.6	3.9
7	Birla Corporation	5.3	4.9	5.6	5	5.1	4.3	4.1	3.4	3.6	3.7	3.8	4.1
8	Lafarge	-	-	-	-	-	-	-	-	0.3	2.2	3.4	3.6
9	Madras Cements	2	2.2	2.3	2.4	2.5	2.4	2.8	2.8	2.3	2.6	2.9	3.6
10	J.K. Synthetics	3.7	3.9	3.8	3.6	3.8	3.1	2.7	2.6	2.5	2.5	2.8	2.8

Note: 1. * = Represents the market share of the merged entity ACC-Gujarat Ambuja
2. ** = Represents the market share of the merged entity Grasim- L&T

Source: CMIE, "Market and Market Shares", Various Issues

Table 5.5 shows the market share of ten large players. The top 10 players control 66% of the market share, signifying definite improvement in pricing power. The rest of the market is being shared by around 44 players. This consolidation at the top level which would enable the top companies to enjoy 'pricing power' is reflective of oligopolistic tendencies in the cement industry.

Gujarat Ambuja-ACC and Grasim-L&T control approximately 45% of the market share which implies that a duopoly has emerged in the cement business. Prices will depend on a large extent on how responsibly these bigger players behave.



The graph above shows that:

1. The market share of the top six players rose from 31.8% in 1991-92 to 52% in 2002-03. Thus, there is concentration at the top with these six companies accounting for major bulk in concentration.

2. But the market pie is being shared by two domestic giants, Grasim and L&T (21.5%) and Gujarat Ambuja ACC (20.3%).

It seems that the consolidation which is taking place in the Indian cement industry would enable the large firms to exercise control over prices to a greater extent.

Thus, it is evident from the example of cement industry that in an oligopolistic market structure, opening up may improve efficiency in the short run. And, as new competitors enter the market, individual output and profits may decline. But, in the long run, the competitive pressure on firms can get reduced ultimately leading to collusive and anti-competitive behaviour by them.

In view of the entry of global cement majors into the Indian market and their gradually increasing share in the same, it is desirable that the Indian cement firms should consolidate for reaping economies of scale and gaining cost-competitiveness. However, the consolidation of Indian firms should not be aimed at exercising greater control over prices. Checks and controls are required to discipline the behaviour of these firms which could be harmful for consumers, and this is possible only through state intervention and anti trust policy.

CONCLUDING REMARKS

The study concludes with some suggestions as well as some notes of caution.

- Developing countries do need a competition policy in this changing global environment. But every country should be able to determine for itself whether it needs a competition policy and if so, what type of competition policy is appropriate. It should also have the flexibility and freedom to provide for certain exemptions and exceptions to its competition policy and law having regard to its specific needs and circumstances. Further, while formulating any policy with regard to competition, the developing countries should distinguish between national and international capital. Unless any country has adequate national capital, it can neither be industrially competitive nor can it reap the linkage effects which are necessary for economic development.

- Unfettered competition may not be appropriate for a developing country given its structural constraints. Therefore, competition policy in developing countries should be seen in a broader context than in the developed countries. It should be seen from a perspective of long-term economic development. It should complement other national objectives, such as, those envisaged in the industrial policy, so that local firms of developing countries could compete with the multinational corporations.

- In the international context, it is suggested that multilateral competition rules can be helpful for developing countries in order to tackle issues related to cross-border mergers and anti-competitive practices by TNCs. But the study concludes that the WTO is a wrong forum to develop a collaborative effort on competition policy. The problem with the proposed agenda is that it is likely to be dominated by market access issues rather than the international anti-trust issues. Also, many developing countries have small markets and nascent industries, and they face substantial asymmetries in terms of size of firms, market information and technologies, and may need to protect their domestic industries from being dominated by multinationals. In some circumstances, encouraging short-term cartels to promote domestic firms become internationally competitive might be appropriate. Neither of these avenues will be open to developing countries because a WTO agreement would be based on the non-discriminatory principle.

  It has been proposed that a multilateral competition body (not located at WTO) be constituted to address some of the substantive issues with regard to the dominance of global corporations and global mergers and acquisitions (something, that is not on the table in the WTO negotiations).

- By comparing the size of India's domestic business houses with that of the TNCs, the need for competitive and large domestic firms has been emphasized. The freedom given to foreign firms to enter a large segment of Indian industry has led to a rush of large international oligopolies (with large sizes, better product features and better technology), which are gradually dominating the domestic industry. It is therefore important to make sure that these foreign firms should not resort to practices that could drive Indian firms out of the arena.

Thus, a strategic intervention on the part of the government is required to encourage indigenous firms to grow, which face many disadvantages in comparison to developed country firms. But these interventions have to be such that the big domestic firms do not get much scope to indulge in anti-competitive practices that harm the interests of consumers.

- An anti-trust policy, which could give scope for creation of globally competitive domestic firms and at the same time protect the consumers from anti-competitive behaviour by firms, is needed in a developing country like India.

  But the new Competition Act completely ignores this need. By providing 'national treatment' to foreign firms, it appears that this Act has been enacted keeping in mind government's WTO commitments.

- Last but not the least, India needs a competition policy which can harmonise with its industrial policy in order to strengthen the competitiveness of Indian industry.

ANNEXURE -I

The individual companies taken into account for calculating Sales and Net Fixed Assets of Indian Business Houses are as given below.

Bajaj Group

Bajaj Auto Finance Ltd.
Bajaj Auto Holdings Ltd.
Bajaj Auto Ltd.
Bajaj Consumer Care Ltd.
Bajaj Electricals Ltd.
Bajaj Hindusthan Ltd.
Bajaj Leasing & Finance Ltd.
Bajaj Plastics Ltd.
Hercules Hoists Ltd.
Hindustan Housing Co. Ltd.
I S P L Industries Ltd.
Kaycee Industries Ltd.
Maharashtra Scooters Ltd.
Mukand Engineers Ltd.
Mukand Global Finance Ltd.
Mukand Ltd.

BPL Group

B P L Display Devices Ltd.
B P L Engineering Ltd.
B P L Ltd.
B P L Mobile Communications Ltd.
B P L Soft Energy Systems Ltd.
B S Appliances Ltd.
B S Refrigerators Ltd.
B S T Ltd.

Birla Aditya Group

Annapurna Foils Ltd. [Merged]
B T A Cellcom Ltd.
Bihar Caustic & Chemicals Ltd.
Birla Financial Corpn. Ltd.
Birla Global Asset Finance Co. Ltd.
Birla Global Finance Ltd.
Birla Securities Ltd.
Birla Sun Life Securities Ltd.
Birla Technologies Ltd.
Dharani Cements Ltd. [Merged]
Essel Mining & Inds. Ltd.
Grasim Industries Ltd.
H G I Industries Ltd.
Hindalco Industries Ltd.
Idea Cellular Ltd.
Indal Exports Ltd.
Indian Aluminium Co. Ltd.
Indian Rayon & Inds. Ltd.
Indo Gulf Corpn. Ltd. [Merged]
Indo Gulf Fertilisers Ltd.
Laxmi Asbestos Products Ltd.
Laxminarayan Investment Ltd.
Minerals & Minerals Ltd.
Orissa Extrusions Ltd.
P S I Data Systems Ltd.
Samruddhi Swastik Trading & Investments Ltd.
Shree Digvijay Cement Co. Ltd.
Tanfac Industries Ltd.

Birla B.K. Group

Assam Cotton Mills Ltd.
Bharat Commerce & Inds. Ltd.
Bharat General & Textile Inds. Ltd. [Merged]
Birla Century Finance Ltd. [Merged]
Century Enka Ltd.
Century Textiles & Inds. Ltd.
E C E Industries Ltd.
Hindustan Everest Tools Ltd.
Hindusthan Heavy Chemicals Ltd. [Merged]
Jay Shree Tea & Inds. Ltd.
K I C M Investment Ltd. [Merged]
Kesoram Industries Ltd.
Kesoram Textile Mills Ltd.
Mangalam Cement Ltd.
Mangalam Timber Products Ltd.
Manjushree Plantations Ltd.
North Tukvar Tea Co. Ltd.
Rajashree Polyfil Ltd. [Merged]
Shiva'S Group Ltd.
Sungma Tea Co. Ltd. [Merged]
Vidula Chemicals & Mfg. Inds. Ltd.

Birla C.K.Group

Air Conditioning Corpn. Ltd.
Birla Finance Ltd.
Birlasoft Ltd.
Gmmco Ltd.
H M Export Ltd.
Hindustan Motors Ltd.

Hukumchand Jute & Inds. Ltd. [Merged]
Malabar Building Products Ltd.
National Engineering Inds. Ltd.
Sirpur Paper Mills Ltd.
Hyderabad Industries Ltd.
National Bearing Co. (Jaipur) Ltd.
Orient Paper & Inds. Ltd.

Birla K.K. Group

Chambal Fertilisers & Chemicals Ltd.
Gobind Sugar Mills Ltd.
Hindustan Times Ltd.
Macfarlane & Company Ltd.
Oudh Sugar Mills Ltd.
Ronson Traders Ltd.
Searchlight Publishing House Ltd.
Sutlej Industries Ltd.
Upper Ganges Sugar & Inds. Ltd.
Zuari Industries Ltd.
Darbhanga Marketing Co. Ltd.
High Quality Steels Ltd.
India Steamship Co. Ltd.
New India Sugar Mills Ltd.
Paradeep Phosphates Ltd.
S C M Investment & Trading Co. Ltd.
Sri Vishnu Cement Ltd.
Texmaco Ltd.
Uttar Pradesh Trading Co. Ltd.
Zuari Leasing & Finance Corpn. Ltd. [Merged]

Escorts Group

An-Gip Leather (India) Ltd.
Escorts Auto Components Ltd.
Escorts Construction Equipment Ltd.
Escorts Hospital & Research Centre Ltd.
Escorts Pistons Ltd. [Merged]
Escorts Tractors Ltd. [Merged]
Escotel Mobile Communications Ltd.
Escorts Asset Management Ltd.
Escorts Automotives Ltd.
Escorts Finance Ltd.
Escorts Ltd.
Escorts Securities Ltd.
Escosoft Technologies Ltd.
Goetze (India) Ltd.

Essar (Ruia) Group

Aircel Digilink India Ltd.
Essar Oil Ltd.
Essar Shipping Ltd.
Essar Teleholdings Ltd.
Siva Compulink Ltd.
Vadinar Oil Terminal Ltd.
Essar Investments Ltd.
Essar Power Ltd.
Essar Steel Ltd.
India Securities Ltd.
South India Shipping Corpn. Ltd. [Merged]

Godrej Group

Fiskars India Ltd.
Godrej & Boyce Mfg. Co. Ltd.
Godrej Appliances Ltd.
Godrej Consumer Products Ltd.
Godrej Industries Ltd.
Godrej Properties & Investments Ltd.
Godrej Sara Lee Ltd.
Goldmohur Foods & Feeds Ltd.
Sahyadri Aerosols Ltd.
Geometric Software Solutions Co. Ltd.
Godrej Agrovet Ltd.
Godrej Capital Ltd. [Merged]
Godrej Foods Ltd.
Godrej Plant Biotech Ltd. [Merged]
Godrej Remote Services Ltd.
Godrej Telecom Ltd. [Merged]
Mercury Manufacturing Co. Ltd.
Vora Soaps Ltd.

Larsen & Toubro Group

Audco India Ltd.
Ewac Alloys Ltd.
India Infrastructure Developers Ltd.
L & T Holdings Ltd.
L & T Transportation Infrastructure Ltd.
L & T-Komatsu Ltd.
L & T-Sargent & Lundy Ltd.
Bhilai Power Supply Co. Ltd.
H P L Cogeneration Ltd.
L & T Finance Ltd.
L & T Infocity Ltd.
L & T Western India Tollbridge Ltd.
L & T-Niro Ltd.
L T M Ltd.

Larsen & Toubro Infotech Ltd.
Narmada Cement Co. Ltd.
Tractor Engineers Ltd.
Larsen & Toubro Ltd.
Narmada Infrastructure Construction Ent. Ltd.

Mahindra & Mahindra Group

Automartindia Ltd.
E-Mahindra Solutions Ltd. [Merged]
Mahindra & Mahindra Ltd.
Mahindra Ashtech Ltd.
Mahindra Engineering & Chemical Products Ltd.
Mahindra Gujarat Tractor Ltd.
Mahindra Hotels & Resorts Ltd.
Mahindra Infrastructural Projects Ltd.
Mahindra Logisoft Business Solutions Ltd.
Mahindra Shubhlabh Services Ltd.
Mahindra Ugine Steel Co. Ltd.
Roplas (India) Ltd.
Ceekay Daikin Ltd.
Mahindra & Mahindra Financial Services Ltd.
Mahindra Acres Consulting Engineers Ltd.
Mahindra Consulting Ltd.
Mahindra Gesco Developers Ltd.
Mahindra Holidays & Resorts India Ltd.
Mahindra Info. Tech. Services Ltd. [Merged]
Mahindra Intertrade Ltd.
Mahindra Realty & Infrastructure Devp. Ltd.
Mahindra Steel Service Centre Ltd.
Mahindra-British Telecom Ltd.
Siro Plast Ltd.

Om Prakash Jindal Group

Brahmputra Capital & Financial Services Ltd.
Jindal Holdings Ltd.
Jindal Steel & Alloys Ltd.
Jindal Strips Ltd.
Jindal Vijayanagar Steel Ltd.
Shalimar Paints Ltd.
Jindal Ferro Alloys Ltd. [Merged]
Jindal Iron & Steel Co. Ltd.
Jindal Steel & Power Ltd.
Jindal Thermal Power Co. Ltd.
Saw Pipes Ltd.

Ranbaxy Group

Croslands Research Laboratories Ltd. [Merged]
Fine Drugs & Chemicals Ltd.
Fortis Securities Ltd.
Ranbaxy Fine Chemicals Ltd.
Solus Pharmaceuticals Ltd.
Vorin Laboratories Ltd. [Merged]
Empire Finance Co. Ltd. [Merged]
Fortis Financial Services Ltd.
Ranbaxy Drugs Ltd.
Ranbaxy Laboratories Ltd.
Vidyut Investments Ltd.

Reliance Group [Ambani]

B S E S Andhra Power Ltd. [Merged]
B S E S Infrastructure Ltd.
Central India Polyesters Ltd.
Indian Petrochemicals Corpn. Ltd.
Reliance Capital Asset Management Ltd.
Reliance Energy Ltd.
Reliance Industrial Infrastructure Ltd.
Reliance Industries Ltd.
Reliance Petroleum Ltd. [Merged]
Reliance Telecom Ltd.
Reliance Ventures Ltd.
Tamil Nadu Inds. Captive Power Co. Ltd.
Varun Mercantile Ltd.
B S E S Infrastructure Finance Ltd. [Merged]
B S E S Kerala Power Ltd.
India Polyfibres Ltd.
Orissa Polyfibres Ltd.
Reliance Capital Ltd.
Reliance Enterprises Ltd.
Reliance Industrial Investments & Holdings Ltd.
Reliance Logistics Ltd.
Reliance Ports & Terminals Ltd.
Reliance Utilities & Power Ltd.
S T-B S E S Coal Washeries Ltd.
Utility Powertech Ltd.

RPG Enterprises Group

Anusha Air Travels Ltd.
Balagarh Power Co. Ltd.
Blue Niles Holdings Ltd.
C F L Capital Financial Services Ltd.
Asian Cables & Inds. Ltd. [Merged]
Bespoke Finvest Ltd.
C E S C Ltd.
Carbon & Chemicals India Ltd. [Merged]

Ceat Holdings Ltd.
Ceat Ventures Ltd.
Concepta Cables Ltd. [Merged]
Gramco Music Publishing Ltd. [Merged]
Harrisons Aquaculture Ltd. [Merged]
Harrisons Malayalam Ltd.
Instant Trading & Investment Co. Ltd.
K E C International Ltd.
Meteoric Industrial Finance Co. Ltd.
Phillips Carbon Black Ltd.
R P G Cellular Services Ltd.
R P G Life Sciences Ltd.
R P G Telephone Ltd.
Raychem Rpg Ltd.
Sentinel Tea & Exports Ltd.
Spencer International Hotels Ltd.
Sprint R P G India Ltd.
Upcom Cables Ltd. [Merged]
Ceat Ltd.
Cescon Ltd.
F G P Ltd.
Harrisons Agro-Products Ltd.
Harrisons Malayalam Financial Services Ltd.
Harrisons Universal Flowers Ltd.
Jubilee Investments & Industries Ltd.
K T L Industrial Finance Co. Ltd.
Music World Entertainment Ltd.
R P G Cables Ltd.
R P G Communications Holding Ltd.
R P G Music International Ltd. [Merged]
R P G Transmission Ltd.
Saregama India Ltd.
Spencer & Co. Ltd.
Spentex Industries Ltd.
Transmission Holdings Ltd. [Merged]

T.V.S. Iyengar Group

Anusha Investments Ltd.
Brakes India Ltd.
Fidelity Finance Ltd.
Harita Finance Ltd. [Merged]
Harita-Grammer Ltd. [Merged]
India Equipment Leasing Ltd. [Merged]
India Nippon Electricals Ltd.
Lakshmi General Finance Ltd.
Lucas-Tvs Ltd.
Sundaram Brake Linings Ltd.
Sundaram Finance Services Ltd. [Merged]
Sundaram Textiles Ltd.
Sundram Fasteners Invst. Ltd.
Sundram Infosel Ltd.
Swastik Rubber Products Ltd.
T V S Electronics Ltd.
T V S Finance & Services Ltd.
T V S Interconnect Systems Ltd.
T V S Lakshmi Credit Ltd. [Merged]
T V S Sewing Needles Ltd.
T V Sundram Iyengar & Sons Ltd.
Turbo Energy Ltd.
Axles India Ltd.
Equatorial International Ltd.
Fidelity Industries Ltd.
Harita Seating Systems Ltd.
I C L Foundries Ltd. [Merged]
India Motor Parts & Accessories Ltd.
Lakshmi Auto Components Ltd.
Lucas Indian Service Ltd.
Southern Roadways Ltd.
Sundaram Finance Ltd.
Sundaram Industries Ltd.
Sundaram-Clayton Ltd.
Sundram Fasteners Ltd.
Sundram Telematics Ltd. [Merged]
T V S Autolec Ltd. [Merged]
T V S Electronics Ltd. [Merged]
T V S Infotech Ltd.
T V S Investments Ltd.
T V S Motor Co. Ltd.
T V S Srichakra Ltd.
Tribology India Ltd.
Wheels India Ltd.

Tata Group

Almora Magnesite Ltd.
Asia Pacific Hotels Ltd.
Automotive Stampings & Assemblies Ltd.
Benares Hotels Ltd.
Cameo Investment & Finance Ltd.
Concept Marketing & Advertising Ltd.
Coromandel Garments Ltd.
Covelong Beach Hotel (India) Ltd. [Merged]
H V Axles Ltd.
Hyderabad Allwyn Ltd. [Merged]
Indian Resort Hotels Ltd.
Jamshedpur Power Co. Ltd. [Merged]
Kalimati Investment Co. Ltd.
Nelco Ltd.
Andhra Valley Power Supply Co. Ltd. [Merged]
Asian Coffee Ltd. [Merged]
Bambino Investment & Trading Co. Ltd.
C M C Ltd.
Chemical Terminal Trombay Ltd.
Conscofe Investments Ltd. [Merged]
Coromandel Hotels Ltd. [Merged]
Ewart Investments Ltd.
Henkel Switchgear Ltd.
Indian Hotels Co. Ltd.
J B M Sungwoo Ltd.
K T C Hotels Ltd.
Minicar (India) Ltd.

Nelito Systems Ltd.
Niskalp Investments & Trdg. Co. Ltd.
Northern India Hotels Ltd.
Oriental Hotels Ltd.
Piem Hotels Ltd.
Precious Trading & Investments Ltd.
Rallis Finance & Investments Co. Ltd. [Merged]
Rallis Industrial Chemicals Ltd. [Merged]
Sheba Properties Ltd.
Stewarts & Lloyds Of India Ltd.
T R F Ltd.
Taj Trade & Transport Co. Ltd.
Tata Auto Plastic Systems Ltd.
Tata Ceramics Ltd.
Tata Coffee Ltd.
Tata Elxsi Ltd.
Tata Finance Merchant Bankers Ltd.
Tata Housing Devp. Co. Ltd.
Tata Industries Ltd.
Tata International Ltd.
Tata Iron & Steel Co. Ltd.
Tata Metaliks Ltd.
Tata Petrodyne Ltd.
Tata Power Co. Ltd.
Tata Refractories Ltd.
Tata S S L Ltd. [Merged]
Tata Share Registry Ltd.
Tata Sponge Iron Ltd.
Tata Technodyne Ltd. [Merged]
Tata Telecom Ltd.
Tata Tetley Ltd.
Tayo Rolls Ltd.
Telco Dadajee Dhackjee Ltd.
Tinplate Co. Of India Ltd.
Trent Brands Ltd.
Veerarajendra Estates Ltd. [Merged]
Virat Investment Co. Ltd. [Merged]
Voltas Ltd.
Wellman Incandescent India Ltd.

Nilachal Refractories Ltd.
Noorjahan Hotels Ltd.
Orient Holdings Ltd. [Merged]
Piem Holdings Ltd. [Merged]
Piem Investment & Finance Ltd. [Merged]
Ralchem Ltd. [Merged]
Rallis India Ltd.
Sabras Investment & Trading Co. Ltd. [Merged]
Siris India Ltd. [Merged]
Svadeshi Mills Co. Ltd.
Taj Investment & Finance Co. Ltd.
Tata Advanced Materials Ltd.
Tata B P Lubricants India Ltd. [Merged]
Tata Chemicals Ltd.
Tata Construction & Projects Ltd.
Tata Finance Ltd.
Tata Honeywell Ltd.
Tata Hydro-Electric Power Supply Co. Ltd.
Tata Infotech Ltd.
Tata Investment Corpn. Ltd.
Tata Korf Engg. Services Ltd.
Tata Motors Ltd.
Tata Pigments Ltd.
Tata Projects Ltd.
Tata Ryerson Ltd.
Tata Services Ltd.
Tata Sons Ltd.
Tata Tea Ltd.
Tata Technologies Ltd.
Tata Teleservices (Maharashtra) Ltd.
Tata Toyo Radiator Ltd.
Telco Construction Equipment Co. Ltd.
Telco Dealers Leasing & Finance Co. Ltd.
Titan Industries Ltd.
Trent Ltd.
Videsh Sanchar Nigam Ltd.
Voltas International Ltd. [Merged]
Voltas Systems Ltd. [Merged]

<u>**Thapar Group**</u>

A P R Packaging Ltd.
Bharat Starch Inds. Ltd.
Bilt Industrial Packaging Co. Ltd.
C G-P P I Adhesive Products Ltd.
Crompton Greaves Ltd.
Dee Greaves Ltd.
Greaves Cotton Ltd.
J C T Electronics Ltd.
Janpath Investments & Holdings Ltd.
Karam Chand Thapar & Bros. Ltd.
Pioneer Ltd.
Saptarishi Agro Inds. Ltd.

Ballarpur Industries Ltd.
Bilt Graphic Papers Ltd. [Merged]
Bilt Paper Holdings Ltd.
C T R Manufacturing Inds. Ltd.
Cynera Investments & Holdings Ltd.
English Indian Clays Ltd.
Greaves Leasing Finance Ltd.
J C T Ltd.
Karam Chand Thapar & Bros. (Coal Sales) Ltd.
Kersons Manufacturing Co. Of India Ltd.
Polytex Fibres Trading Ltd.
Waterbase Ltd.

<u>**UB Group**</u>

Associated Breweries & Distilleries Ltd.
Castle Breweries Ltd.
Inertia Industries Ltd.

B D A Ltd.
Herbertsons Ltd.
Mangalore Breweries & Distilleries Ltd.

Mangalore Chemicals & Fertilizers Ltd.
Mcdowell & Co. Ltd. [Merged]
Mysore Wine Products Ltd. [Merged]
U B General Invst. Ltd.
United Breweries (Holdings) Ltd.
United Van Der Horst Ltd.
W I E Estate Devp. Ltd.
Mcdowell & Co. Ltd.
Mcdowell Properties Ltd. [Merged]
U B Engineering Ltd.
U B Global Corpn. Ltd.
United Breweries Ltd.
Vitari Distilleries Ltd. [Merged]

Videocon Group

Videocon Appliances Ltd.
Videocon Industries Ltd.
Videocon Narmada Electronics Ltd. [Merged]
Videocon Communications Ltd.
Videocon International Ltd.

ANNEXURE-II

Sl. No.	Corporation	Industry
1	Cadbury Schweppes Co	Food and Beverages
2	Canon Inc	Electrical and Electronic Equipment
3	Coca Cola Co	Food and Beverages
4	Exxon-Mobil Corp	Petroleum Refining
5	Mobil Corp	Petroleum Refining
6	General Electric Co	Electrical and Electronic Equipment
7	General Motors Corp	Motor Vehicles
8	Gillette Co	Drugs, Cosmetics and Health
9	IBM Corp	Electrical and Electronic Equipment
10	Johnson & Johnson	Pharmaceuticals
11	Lafarge S.A.	Construction, Cement
12	McDonalds Corp	Restaurants
13	Motorola Inc	Telecommunications
14	Nestle S.A.	Food and Beverages
15	Pepsico Inc	Diversified
16	Pfizer	Pharmaceuticals
17	Philips Electronics	Electrical and Electronic Equipment
18	Procter & Gamble	Diversified
19	Shell Oil Co	Petroleum expl./ref./distribution
20	Seagram Co	Beverages

Note: Industry classification for corporations follow the United States Standard Industrial Classification as used by the United States Security Exchange Commission (SEC).

ANNEXURE III

EXCHANGE RATE OF RUPEE VIS-À-VIS SELECTED CURRENCIES OF THE WORLD

Year	US Dollar	Pound Sterling	Yen	Euro#	Korean Won
1992-93	30.649	51.686	0.246		0.039
1993-94	31.366	47.206	0.291		0.039
1994-95	31.399	48.821	0.316		0.039
1995-96	33.450	52.353	0.348		0.043
1996-97	35.500	56.365	0.316		0.043
1997-98	37.165	61.024	0.303		0.035
1998-99	42.071	69.551	0.331		0.033
1999-2000	43.333	69.851	0.391	44.791	0.037
2000-01	45.684	67.552	0.414	41.483	0.039
2001-02	47.692	68.319	0.382	42.181	0.037

Note: # = Euro currency came into existence with effect from January 1, 1999.

Source: Reserve Bank of India (compiled by Institute for Studies in Industrial Development, New Delhi in a Research Reference CD).

BIBLIOGRAPHY

1. Adhikari, R. and M.K. John (2003), "What type of competition policy and law should a developing country have?", Symposium on Competition Policy and Pro-poor Development, Consumer Unity and Trust Society (CUTS), Jaipur.
2. Arun, T. G. (2003), "Regulation and Competition: Emerging Issues in an Indian Perspective", Centre for Regulation and Competition, Working Paper Series No. 39, University of Manchester, U.K.
3. Baker, Jonathan B. (1999), "Policy Watch: Developments in Antitrust Economics", *Journal of Economic Perspectives*, vol.13, no. 1.
4. Beena, P. L. (1998), *Mergers and Amalgamations: An Analysis of the Changing Structure of Indian Oligopoly*, Ph.D Dissertation, Centre for Economic Studies and Planning, Jawaharlal Nehru University, New Delhi.
5. Best, M.H, (1990), "Industrial policy and antitrust in Japan" in *The New Competition: Institutions of Industrial Restructuring*, Cambridge, Polity Press.
6. Bhanu, V. (1995), "Liberalisation and Performance of Cement Industry", *Economic and Political Weekly*, August 26, vol. 30, no. 34.
7. Bhattacharjea, Aditya (2003), "India's Competition Policy: An Assessment", *Economic and Political Weekly*, August 23, vol.38.
8. _______ (2002), "Predation, Protection and the Public Interest", *Economic and Political Weekly*, December 2, vol.35.
9. _______ (2001), "Competition Policy: India and the WTO",

Economic and Political Weekly, December 22, vol. 36, no. 51.

10. Chakravarthy, S. (2002), *Competition regimes around the world*, Monograph on Investment and Competition Policy #3, Consumer Unity and Trust Society (CUTS), Jaipur.

11. _______ (2001), *New Indian Competition Law on the Anvil*, Rajiv Gandhi Institute for Contemporary Studies (RGICS) working paper series, No. 22.

12. _______ (1999), "Role of competition policy in economic development and the Indian experience", *Finance India*, vol 13, no. 3.

13. Chandra, N.K. (1976), *The Retarded Economies*, Oxford University Press, New Delhi.

14. Chandrasekhar, C.P. (2003), "Competition Bill: the end to Indian anti-trust," January 02, Downloaded from www.macroscan.org.

15. _______ (1999), "Firms, Markets and the State", in *Economy and Organisation: Indian institutions under the neo-liberal regime*, Amiya Kumar Bagchi (ed), Sage Publications, New Delhi.

16. _______ (1998), "Aspects of Growth and Structural Change in Indian Industry", *Economic and Political Weekly*, Special Number, November.

17. Chattopadhay, P. (2001), "Indian Industry: New Strategic Options", *Economic and Political Weekly*, January 27.

18. Chaudhari, Sudip (1995), "Government and Transnationals: New Economic Policies Since 1991", *Economic and Political Weekly*, May 6, pp. 999-1011.

19. Choudry, Aziz (2001), "Proposed WTO competition policy agreement: another corporate steal", Downloaded from www.arena.org.nz/cancun

20. Consumer Unity and Trust Society (CUTS) (2002), "Reorienting Competition Policy and Law in India", Centre for International Trade, Economics & Environment (CITEE), Jaipur, India.

21. _______ (CUTS) (2001), "Competition Bill of India, 2001: A Right step in Right Direction", September.

22. Corporate Studies Group (1983), "Functioning of Industrial Licensing: A Report", Indian Institute of Public Administration (IIPA), New Delhi.

23. CRISIL (2001), "Cement Industry in India", Crisil Advisory Services (CAS) Corporate Group, May.

24. Evenett, S.J. and J.L Clarke (2003), "A Multilateral framework for Competition Policy", Downloaded from www.unctad.org.

25. Evenett, S.J., M. Levestein and V. Suslow (2001), "International Cartel Enforcement: Lesson from the 1990s", *World Economy*, vol. 24, no. 9.

26. Ghose, A. (1974), "Investment Behaviour in Monopoly Houses", *Economic and Political Weekly*, Oct. 26, Nov. 2, Nov.9, vol. 9, no.s 43, 44 and 45-46.

27. _______ (1974), "Joint Sector and Control of Indian Monopoly", *Economic and Political Weekly*, June 8, pp. 906-916.

28. _______ (1972), "Monopoly in Indian Industry: An Approach", *Economic and Political Weekly*, Annual Number, pp. 385-392.

29. Gokarn, S. and R. Vaidya (1993), "Deregulation and Industrial Performance-The Indian Cement Industry", *Economic and Political Weekly*, February 20-27, vol. 28, no. 8.

30. Government of India (2003), 'Competition Act, 2002', Department of Company Affairs, New Delhi, Downloaded from www.nic.in/dca/comp.

31. _______ (2000), "Report of High Powered Committee on Competition Policy and Law", Ministry of Law, Justice and Company Affairs, Department of Company Affairs, New Delhi. (Raghavan Committee)

32. ________ (1991), "Industrial Policy Statement", New Delhi.

33. ________ (1978), "Report of the High Powered Committee on Companies and MRTP Act", Ministry of Law and Company Affairs, New Delhi. (Rajinder Sachar Committee)

34. _________ (1965), "Report of the Monopolies Inquiry Commisstion (MIC)", New Delhi. (K.C. Das Gupta Committee)

35. Goyal, S.K. (1993), "TNCs and the Third World: Need for a Realistic Policy Framework", Institute for Studies in Industrial Development (ISID), New Delhi.

36. _________ (1988), "Nature and Growth of Indian Corporate Sector", Institute for Studies in Industrial Development (ISID), New Delhi.

37. _________ (1979), *Monopoly Capital and Public Policy*, Allied Publishers, New Delhi.

38. Gupta, G.S (1975), "Economies of Scale in Cement Industry", *Economic and Political Weekly*, March 29, vol. 10, no. 13.

39. Hazari, R.K. (1966), *The Structure of Private Corporate Sector*, Asia Publishing House, Bombay.

40. Hoekman, Bernard and Peter Holmes (1999), "Competition Policy, Developing Countries, and the World Trade Organisation", *World Economy*, vol. 22, no. 6.

41. Karnani, Aneel (2000), "Competing for the Indian Market: Local Firms Vs MNCs", Indian Institute of Foreign Trade (IIFT), New Delhi.

42. Kathuria, Sanjay (1995), "Competitiveness in Indian Industry" in *Indian Industry: Policies and Performance*, Dilip

Mookherjee (ed), Oxford University Press, New Delhi.

43. Katti, Vijaya (2002), "Competition policy in the context of Doha development agenda", *Focus WTO*, May-June, vol. 4, no.1.

44. Khanna, Sushil (1999), "Financial Reforms and Industrial Sector in India", *Economic and Political Weekly*, Nov. 6.

45. ________ (1997), "Industrial Deregulation and Corporate Restructuring: Understanding India's First Merger Wave", Paper presented at Seminar on 'Economic Foundations of Strategic Management' at Indira Gandhi Institute of Development Research (IGIDR), Mumbai, August 21-22.

46. Khemani, Shyam (2002), "Applications of Competition Law: Exemptions and Exceptions", UNCTAD/DITC/CLP/Misc.25, UNCTAD, Downloaded from www.unctad.org

47. Khor, Martin (2002), "The WTO, post-Doha agenda and the future of the trade system", Presented at a Seminar on WTO at the Annual Meeting of the Asian Development Bank, Shanghai, China, 10th May, Downloaded from www.twnside.org.

48. Klodt, Henning (2001), "Conflicts and conflict resolution in international anti-trust: Do we need international competition rules?", *World Economy*, vol. 24, no. 7.

49. Kumar, Nagesh (2000), "Mergers and Acquisitions by MNEs: Patterns and Implications", *Economic and Political Weekly*, Aug. 5, pp. 2851- 2858.

50. ________ (1982), "Regulating Multinational Monopolies in India", *Economic and Political Weekly*, May 29.

51. Kumar, Rakesh (2002), "Factor Intensity, Efficiency, Productivity and Government Policy in Cement Industry", *Indian Journal of Economics*, January, vol. 82.

52. Lachmann, W. (1999), "The Development Dimension of Competition Law and Policy", UNCTAD, Geneva.

53. Lahouel, M. and Keith E. Maskus (1999), "Competition policy and the intellectual property rights in developing countries: Interests in unilateral initiatives and a WTO agreement", Paper presented at the WTO-World Bank Conference on Developing Countries in a Millennium Round, WTO Secretariat, Geneva, Downloaded from www.worldbank.org.

54. Lall, Sanjay (2004), "Reinventing Industrial Strategy: The Role of Government Policy in Building Industrial Competitiveness" G-24 Discussion Paper Series, No. 28, April 2004, UNCTAD, Downloaded from www.unctad.org.

55. Lee, Marc and Charles Morand (2003), "Competition Policy in the WTO and FTAA: A Trojan Horse for International Trade Negotiations?", Canadian Centre for Policy Alternatives, Ottawa, Downloaded from www.policyalternatives.ca.

56. Madhubala (2003), "Cement Industry in India-Policy, structure and Performance", Shipra Publicatons, New Delhi

57. Mani, Sunil (1995), "Economic Liberalisation and the Industrial Sector", *Economic and Political Weekly*, May 27, vol. 30, no. 21.

58. Martinussen, J.D. (2000), "Institutional Constraints on the Implementation of India's Industrial Policies", World Bank Working Paper Series, Downloaded from www.worldbank.org.

59. Mehta, Pradeep and N. Nitya (2003), "Competition issues with international dimension: How do developing countries deal with them", Centre for International Trade, Economics and Environment (CITEE), CUTS, Jaipur.

60. Merhav, Meir (1969), *Technological Dependence, Monopoly and Growth*, Oxford, Pergamon Press.

61. Monthly Commentary on Indian Economic Conditions (1999), "Cement majors to set their position through mergers and acquisitions", June, pp. 31-34.

62. Mookherjee, Dilip (1995), "Introduction", in *Indian Industry: Policies and Performance*, Dilip Mookherjee (ed.), Oxford University Press, New Delhi.

63. Morris, Sebastian and Rakesh Basant (2002), "Competition policy in India: Issues for a globalising economy?", *Economic and Political Weekly*, June 29, vol. 35, no. 31.

64. Nath, P and P.R. Bose (2002), "Leveraging Liberalisation-The Case of Indian Cement Industry", *Economic and Political Weekly*, July 27, vol. 37, no. 30.

65. National Council for Applied Economic Research (NCAER) (1979), "Cement Industry in India-Problems and Prospects", New Delhi.

66. Neumann, Manfred (2001), "Aims and Scope of Competition Policy" in *Competition Policy: History, Theory, and Practice*, Manfred Neumann (ed), Edward Elgar, UK.

67. Oh, Cecilia (2002), "Trade and Competition Policy in the WTO", Third World Network, Downloaded from www.twnside.org

68. Paranjape, H.K. (1982), "The Vanishing MRTP Act: Will only the Grin Remain?", *Economic and Political Weekly*, June 5, vol. 17, no. 23.

69. Patibandla, Murali (1992), "Industrial Decontrol and Competition Policy: A Few Conceptual Issues", *Economic and Political Weekly*, Nov. 28, vol. 27, no. 48.

70. Peter, Augustine (2002), "Competition Policy: Implementation of the Doha Mandate", *Focus WTO*, vol. 4, no. 1.

71. Pradhan, Gopinath (1992), "Concentration in Cement Industry under New Policy Regime", *Economic and Political*

Weekly, February 29, vol. 27, no. 9.

72. Rachagan, S. Sothi (2002), "Multilateral Arrangements for Competition Issues and Law- A Consumerist Perspective", UNCTAD, Downloaded from www.unctad.org.

73. Ram Mohan, T.T. (2000), "Competition Policy Dilemmas", *Economic and Political Weekly*, July15, vol. 35, no. 28.

74. Rao, S.L. (2001), "Indian Companies in an Open Economy", *Economic and Political Weekly*, February.

75. ________ (1998), "Towards a National Competition Policy for India", *Economic and Political Weekly*, February 28, vol. 33, no. 9.

76. Roy, Malabika (1999), "Mergers and Take Overs: The Indian scene during the 1990s" in *Economy and Organisation: Indian Institutions under the Neo-Liberal Regime*, Amiya Kumar Bagchi (ed), Sage Publications, New Delhi.

77. Sandesara, J.C. (1994), "Restrictive Trade Practices in India, 1969-91", *Economic and Political Weekly*, August 6, pp. 2081-2094.

78. Scherer, F.M. (2002), "Competition policies for an integrated world economy" in *Competition Policy Deregulation, and Modernizatoin in Latin America*, Naim Moise's and J.T. Tulchin (ed).

79. Singh, A. (2003), "Multilateral competition policy and economic development. A developing country perspective on the European Community", Downloaded from www.unctad.org.

80. ________ (2002a), "Competition and Competition Policy in Emerging Markets: International and Developmental Dimensions", Working Paper No. 246, ESRC Centre for Business Research, University of Cambridge

81. ________ (2002b), "The New International Financial Architecture, Corporate Governance, and Competition in Emerging Markets", University of Cambridge.

82. Singh, A. and R. Dhumale (1999), "Competition Policy, Development and Developing Countries", Working Paper No. 7, T.R.A.D.E., South Centre, Geneva, Downloaded from www.southcentre.org.

83. Singh, Jaivir (2000), "Monopolistic Trade Practices and Concentration of Economic Power: Some Conceptual Problems in the MRTP act," *Economic and Political Weekly*, Dec. 9, vol. 35, no. 50.

84. The Economic Times (2003), "Can the Competition Act Successfully Replace MRTP Act", March 5.

85. UNCTAD (2000), "World Investment Report 2000: Cross-border Mergers and Acquisitions and Development".

86. ________ (1999), "The role of competition policy for development in globalising world markets", Papers presented at pre-UNCTAD seminar, Geneva, 14-15 June.

87. ________ (1997), "World Investment Report 1997: Transnational Corporations, Market Structure and Competition Policy".

88. Viscusi, W. Kip, J.M. Vernon and Harrington Jr. (ed) (1994), *Economics of Regulation and Anti-trust*, MIT Press, Cambridge.

89. World Trade Organisation (WTO) (2001), 'Report of the Working Group on the Interaction between Trade and Competition Policy to the General Council', WTO Document, WT/WGTCP/5, Geneva.