CARTEL INVESTIGATION IN INDIA

I. INTRODUCTION & UNDERSTANDING OF CARTELS

In the beginning of the 1990s, there were about 30 countries with a competition law, however at present there are over 100 countries in the stage of enactment of competition law. Competition laws across the world differ in various aspects, however there is one feature that unites them i.e. condemning cartel agreements.

Across the globe, there is a common understanding among various stakeholders, that the seller or trader should sell goods, that the various utilities should provide the consumers services at competitive prices and quality, that the courier company should deliver the consignment undamaged to the customer, that the manufacturer should distribute durable reliable products. However, these various rules have been broken time and again in India, despite the existence of laws, policies and regulations.

To make the matter even more complicated and difficult, with the advent of globalization, economic transactions have moved on from the phase of ink-paper and gone digital, gone beyond the physical boundaries of a nation state, when various stakeholders in the market can produce, sell, buy goods from stakeholders of different nationalities, the common consumer is subjected to higher degree if abuse, and the protection of their interest, is no longer the sole responsibility of a national law.

With the advent of liberalisation and globalisation, companies are equipped and are more powerful to form cartels, which could seriously hamper the economic growth of any country. Globalisation also led to market reforms, liberalisation of prices, deregulation and privatization of sectors that were under state control. However, these reforms are not adequate in fighting anti-competitive practices such as cartels. Governments across the globe have realised that there is a need to implement competition law as a tools to tackle the problem of cartels.

Consumer's benefit from competition through lower prices, better products and services. However, when competitors agree to forego competition for collusion, consumers lose those benefits. The competitive process only works when competitors set prices independently. Secret cartel agreements are a direct assault on the principles of competition and are universally recognized as the most harmful of all types of anticompetitive conduct.

Wherever, cartels operate nations experience social and economic disruption since the local industries or small business houses cannot compete with big combinations that have lower costs and collusive strategies. In this given situation, entire community could be devastated by the failure or non-functioning of local businesses due to the formation of cartels.

One of the problems faced in India, is that there are certain policies and practices of the State Governments that lead to anti-competitive practices at local level. One such policy is of giving preference by the state governments to local units in their procurement policy. Under such a policy price or purchase preference is given to a small sector units, with the objective

to protect and support such a small sector units. In the process, the state government gives preference to certain units over the others and distorts the competition between units producing the same kind of product. However, the problems arise when such small sector units form a cartel and the state government lands up paying higher price for a product.

Another sector in India, where cartelisation was present due to faulty government policy is the distribution and marketing of liquor. In certain states, liquor groups spread over large geographical areas are auctioned, competition is restricted to a small number of players, who have the muscle power and the money to run the business. Thus over a period of time, it leads to cartelisation which in turns leads to loss of government revenue. However, the Government of Rajasthan has taken certain steps to tackle the problem. In its excise policy of 2005-06, the government introduced a government owned agency, called the Rajasthan State Beverages Corporation Limited (RSBCL). RSBCL would deal exclusively with all the liquor items and would imbibe the role of middlemen of purchasing and supplying liquor. In addition to that, the government also introduced separate licenses for the wholesaler and the retailer and undertook the system of allotment by way of a lottery system. Thus the new system aims at devolution of liquor selling rights to a large number of vendors to break the nexus of a dozen liquor contractors, who informally form a cartel while bidding for selling rights.[1]

However, the determination whether cartels unreasonably restrain the trade depends on the nature of agreement and on the surrounding circumstances that give rise to an inference that the parties are involved in some pernicious activity. There has to be an agreement to purchase or sell the goods only at price or on terms or conditions agreed upon between the sellers or purchasers. Thus there has to be an agreement either in respect of prices or in regard to terms and conditions on which the goods are to be sold. Existence of an agreement (oral or written) is one of the essential conditions is to be fulfilled to establish a cartel.

"There is worldwide recognition and consensus that Cartels harm consumers and damage economies. Japan has estimated that recent cartels raised prices on average by 16.5 percent. In Sweden and Finland, competition authorities observed price declines of 20-25 percent following enforcement actions against asphalt cartels. The football replica kits case in the United Kingdom has resulted in long-term price reduction to the extent of 30 percent following the OFT's enforcement action. In Israel, the competition authority observed that prices declined by approximately 40-60 percent after it uncovered a bid-rigging cartel among envelope producers. Estimates in the United States suggest that some hard-core cartels can result in price increases of up to 60 or 70 percent. Based on a review of a large number of cartels, it is estimated that the average overcharge is somewhere in the 20–30 percent range, with higher overcharges for international cartels than for domestic cartels. [2]

In India too, cartels have been alleged in various sectors, namely cement (Refer to Box 1), steel, tyres, trucking (Refer to Box 2), family planning device (Copper T) etc. India is also

[1] Dayal, P and Agarwal, M (2006), "State Government Policies and Competition", Towards a functional competition policy for India, Ed. Mr. Pradeep S Mehta, CUTS International.
[2] Bhatia, G.R. "Combating Cartels in the markets: Issues & Challenges", Competition Commission of India (CCI)

believed to be a victim of overseas cartel in soda ash, bulk vitamins, petrol etc. In the bulk vitamin case, it was estimated that the cartel overcharged consumers in developing nations by around US$1.34bn. (Refer to Box 3) All these tend to raise the price or reduce the choice of consumers. The business houses are affected most by cartels as the cost of procuring inputs is enhanced or choice is restricted making them uncompetitive, unviable or are satisfied with fewer profits." [3]

II. TOOLS FOR DISCOVERING CARTELS

II.1 Whistleblowing

Competition authorities face a hurdle in gathering evidence, as the cartel activities are operated in close rooms and board rooms, this is where a whistleblower is important to reveal provide relevant information about the meetings, contacts, participants and the range of practices covered under the cartel.

Competition authorities across the globe are persuading whistleblowers in approaching them to give information about companies coming together and forming a cartel. However, there are certain conditions attached, such as that the whistleblower must not be the ringleader of the cartel and that he would be cooperating with competition authority for undertaking the investigation against such companies. Once the conditions are fulfilled to the satisfaction of the competition authorities, complete immunity is available from any penalty that might have been imposed, if the competition authorities discovered the relevant cartel before.[4]

II.2 Dawn Raids & Leniency Provisions

Companies forming a cartel are aware of the unlawfulness of their action and thus they often come together in jurisdictions where they are likely to be overlooked by the competition authorities. They use code-names; undertake verbal discussions with nothing being recorded on paper to avoid detection.

It follows that competition authorities may find it very difficult to compile evidence that would satisfy a court to the required standard of proof that there has been illegal behaviour. Without doubt the adoption of dawn raids and leniency programmes by competition authorities across the globe have been immensely important and successful in this respect

It is important that the competition authorities should be given investigative powers such as unannounced dawn raids, which are effective in gathering direct evidence such as agreements, participants, recording tapes, etc to satisfy the standard of proof as required by law.

In today's world, with advancement in technology, information relating to cartels can be stored electronically. Thus it is required the information to be retrieved, for which the competition authorities must have staff, or access to individuals, with the necessary skills to

[3] Supra Note 3
[4] Whilsh. R, (2006)" Control of Cartels and Other Anti-competitive Agreements", Professor of Law, King's College London

achieve this. This is why, in some jurisdictions, powers exist to listen to telephone conversations; to maintain surveillance, for example, of office premises in order to monitor who is attending meetings there; and even to require people to attend meetings of a cartel and to report back to the competition authority of what had taken place[5].

To this effect, the Indian Competition Act, 2002 has been empowered with a leniency provision. According to Section 46, the CCI has the power to impose lesser penalties. However, there is a catch that the leniency is granted only if the whistle blower approaches the authorities before the prosecution procedure starts. The same can be seen in the case of Brazil Competition Authority, which also grants immunity or leniency if the approach has been made before the authorities discover any evidence themselves.

The party desirous to take shelter under the leniency provision has to proceed carefully as conditions precedents to avail of the concessions are: -

- That full and true disclosure is made before initiation of investigation/enquiry
- The disclosure is vital in bursting the cartel
- That the benefit of lesser penalty is limited to the party who made the disclosure first; and
- The benefit can be rescinded if there is non-compliance of conditions subject to which lesser penalty was imposed.

Thus an enterprise can have the benefit of lesser penalty, if it follows the above-mentioned conditions carefully. However, the reduction in penalty is discretionary, is only available before the starting of the investigation. However, under the US Anti-trust Act, leniency is provided before and after the starting of the investigation. To qualify for post-investigation leniency, a corporation, in essence must, be the first one to come forward, corporate fully and make restitution to injured parties, where possible.[6]

II.3 Fines

The Indian Competition Act, 2002 also makes the participating enterprises liable to penalty. The penalty provisions are extremely stiff in respect of anti-competitive agreements, which are in the nature of a 'cartel', and it leaves no discretion with the Commission. The law provides that the Commission shall impose upon each enterprise, which is a party to the cartel, a penalty equivalent to three times of the amount of profits made out of such agreements or ten per cent of the average turnover of the cartel for the last three preceding financial years, whichever is higher.[7]

[5] On the powers to this effect in UK law, see Whish *Competition Law* (5th edition, 2003, Oxford University Press), pp. 392-393.
[6] Supra No. 3
[7] Supra No. 3

III. Cartels under Indian Competition Law

III.1 MRTP ACT 1969 - OVERVIEW

The Monopolistic and Restrictive Trade Practices Act 1969 (MRTP Act), has its genesis in the Directives Principle of State Policy, embodied in the Constitution of India. It was enacted:

- Prevention of concentration of economic power to the common detriment,
- To provide for control of monopolies,
- To the prohibition of monopolistic and restrictive trade practices ex. cartels, and
- To the prohibition of unfair trade practices.

The MRTP Act underwent various amendments during the course of its journey. Important amendments among them were the ones that were undertaken during 1984 and 1991. In 1984, the Unfair Trade Practices, enquiries were added and in 1991, the chapter dealing with Mergers and Acquisitions was deleted.

The MRTP Act has empowered the Central Government to set up a commission, the Monopolistic and Restrictive Trade Practice Commission (MRTPC), which has investigative, advisory and adjudicative functions, to oversee the implementation of the MRTP Act. The MRTPC could investigate into any restrictive trade practice, on a complaint from any trade or consumer associations or upon a reference made by the Central or State Government, or upon the application made by the Director General of Investigation and Registration (DG (IR)) – which is the investigative wing of the MRTPC, or on suo moto basis.[8]

Complaints regarding restrictive trade practices from an association are required to be referred to the DGIR for conducting preliminary investigation as per section 11 and 36C of the MRTP Act. DGIR after completion of the preliminary investigation and as a result of its findings submits at application to the MRTPC for an enquiry.

Restrictive trade practices, are the generally those practices that have an effect on prevention, distortion and restriction of competition. For example, a practice, which tends to obstruct the flow of capital or resources into the line of production, manipulation of prices and flow of supply in the market, which may have an effect of unjustified cost or restriction in choice for the consumers, is regarded as a Restrictive Trade Practice.

One example of a RTP is a cartel. As held in ***Union of India & Others .v. Hindustan Development Corporation,***[9] " Cartel is an association of producers who by agreement among themselves attempt to control production, sale and prices of the product to obtain a monopoly in any particular industry or commodity". Under the MRTP Act, cartel is categorized as an RTP, which has been defined as, " a trade practice which has or may have the effect of preventing, distorting or restricting competition", Section 2(o) of the MRTP Act.

[8] Section 10 and 37 of the MRTP Act, 1969
[9] 1994 CTJ 270 (SC) (MRTP)

Various categories of agreement enumerated under section 33(1) of the MRTP Act, including agreement, which restrict persons from whom certain goods can be purchased, have been recognized as per se restrictive. Cartels, fall under clause (d) of the section, which states that " any agreement to purchase or sell goods or to tender for the sale or purchase of goods only at prices or on terms or conditions agreed upon between the sellers or purchasers, shall be deemed for the purpose of this Act, to be an agreement relating to restrictive trade practices and shall be subjected to registration as under Section 35 of the MRTP Act. However, such agreements are not per se void or illegal. The MRTPC would still require to make an enquiry as under Section 37 of the MRTP Act, as to whether the agreements are prejudicial to public interest or not. Until the time that the MRTPC declares the agreement as prejudicial to public interest, the parties may continue to conduct trade and business as usual.

Under the MRTP Act, the only power vested with the MRTPC with respect to restrictive trade practices such as cartels, is to issue a 'cease and desist order' or to permit the parties to a collusive agreement to modify the agreement so that it is no longer prejudicial to public interest. As already mentioned above, party until it is instructed by the MRTPC, can continue with the restrictive trade practice. At the most when a party is called and a restrictive trade practice is established, it may be directed to discontinue with the practice and only if it continues with the practice after the direction, would it be punishable for contravening an order made under Section 31 and 37 as provided in Section 50 of the MRTP Act.

Inquiry before the MRTPC under section 37(1) is not par with a trail in the court. In case of a trail, the respective parties know the facts on which the parties are relying a claim or defence. On the basis of the facts produced in the court, one party would be asserting the facts and the other would be denying the same. This conflict would raise issues for determination and the judge in the court of law would judicially examine and frame the issues between the parties involved in the trial. In comparison, an inquiry into an alleged restrictive trade practice inquiry, there are no statements of facts that a party could rely on while pleading its claim. It follows that at the stage where the inquiry has begun, no instances of facts findings can be given to the accused. An allegation of restrictive trade practice is only an allegation that a party is practicing certain trade restrictions in its own interest. However, even when the facts as discovered during the inquiry, do establish the existence of a restrictive trade practice, then it is obligation of the person so accused to show that the restriction is not against public interest or that the restriction is not unreasonable, as per section 38 of the MRTP Act.

Looking at the cases of cartels, no matter how malicious the offences may be in the eye of public interest, no matter how serious the detriment caused may be, the MRTPC is without any weapon to grant justice to the aggrieved consumers. The consequences are that the respondent, in case a complaint is lodged with respect to such breach of law or the MRTPC inquires suo moto, can still enjoy the fruits of their illegal acts, which may amount to innumerous amount of economic rents and yet to penalty can be levied because the MRTPC has not been powered to impose penalties or spell an order of imprisonment to the offenders, what it could do is just pass an cease and desist order.

Due to the defects in the MRTP Act, the MRTPC in its history of 30 odd years rarely booked any cartel cases in the domestic markets. No penalty has ever been recorded and no loss suffered by the consumers, has been able to be retrieved so far.

The following section deals with the analysis of some cartel cases as dealt by the MRTP Act and highlights the drawbacks.

III.2 Select cases dealt under the MRTP Act, 1969 and the weaknesses that emerges

In order to appreciate and look at the practices by Cartels in India we need to refer to cases brought under the Monopolies and Restrictive Trade Practices Act, 1969. It is pertinent to note here that cases relating to all the industries were not brought before the MRTP Commission but those cases brought before the Commission definitely throw light on possible pernicious activity of Cartels in other industry types.

We had undertaken analysis of roughly 63 cases (Refer to Annexure - I) that were decided by the MRTP and given below is a chart of some selected sectors that were mostly affected by cartels or anti-restrictive practices. Next to each sector there is a number, which is given, that shows the number of cases from that particular sector, in order to understand which sector is more prone to cartelisation in India -

Manufacturing	**Services**
Chemical - 4 Cement - 4 Tyre - 3 Misc. (Oil Mills, Power Cables, Foils, Ice Creams, Pictures, Batteries, Banks)	Trucking - 5 Newspaper – 2

Case I: ***DG (IR) vs. Modi Alkali and Chemicals Ltd***[10]

Charge

It was alleged on the basis of an anonymous complaint that the respondents have entered into a cartel for hiking the prices of their products. The prices of chlorine gas and hydrochloric acid had an increase of 277% and 200% within six and four months respectively. The same was a result of an agreement amongst the parties to create artificial scarcity, in order to raise the prices of their products.

Investigation

[10] 2002, CTJ 459 (MRTP)

Keeping in the mind the above complaint, the MRTPC started the investigation and directed the issuance of Notice of Enquiry. However, the respondents raised an objection, on the grounds that the notice of Enquiry lacks a concise statement of material fact on which the notice is based, not meriting to cognizance based upon an anonymous complaint. The DG contended that the present Notice of Enquiry has been issued under Section 10 (a) (iv) of the Act, which empowers the Commission to inquire into restrictive trade practice upon its own knowledge or on a complaint or information. Information can be derived from an invalid/irregular complaint or from any anonymous letter as held by their Lordships of Hon'ble Calcutta High Court in the case of ***ITC Limited vs. MRTP Commission & Ors. (1996) 46 Comp. Cas. 619.*** Thus it was held that objection in regard to anonymous complaint is not valid.

The Commission then looked into the allegation of formation of a Cartel. Cartel was not defined in the MRTP Act, however, in the light of judicial pronouncements – "cartel is an association of producers who by an agreement among themselves attempt to control production, sale and prices of the product to obtain a monopoly in any particular industry or commodity". It was further observed "a mere offer of a lower price by itself does not manifest the requisite intent to gain monopoly and in the absence of a specified agreement by way of a concerted action suggesting conspiracy, the formation of a cartel among the producers who offered such lower price cannot readily be inferred". The three essential ingredients, namely – identify of prices, agreement by way of concerted action suggesting conspiracy, and to gain monopoly or restrict or eliminate competition can be taken out from the above – mentioned definition.

Order

Thus keeping in mind the definition of cartels and the necessary ingredient, the Commission was of the view that except the use of expression 'cartel' there is no material evidence to suggest parity of prices or meeting of minds. The Commission was of the view, that the Notice of Enquiry and the subsequent investigation lacks relevant and necessary information in regard to the parties forming a cartel leading to distortion and restriction of competition in the market. Having the essential ingredient not being proved, the Commission agreed with the respondents that prima facie there was no case of a cartel. Thus the charges under section 2 (o) (iv) are being dropped.

Weakness – Cartels were not defined in the MRTP Act, 1969, but the understanding of cartels was only possible to be drawn from the Section 2(o) i.e. restrictive trade practice.

Case II: ***American Natural Soda Ash Corporation (ANSAC) vs. Alkali Manufacturers Association (AMAI) and others***

Charge

In this case**,** the Supreme Court held that MRTP Commission has no jurisdiction to try cases outside of India. The AMAI filed a complaint as well as an application to grant of temporary injunction before the MRTPC alleging that ANSAC, comprising of six producers of natural

soda ash, have come together to form an export cartel by way of an membership agreement amongst themselves entered into in USA. The six producers as per the agreement agreed that all export sales by them or any of their subsidiaries would go through ANSAC, which was formed as an association.

Investigation

The MRTPC instituted an enquiry and passed an ad interim injunction on ANSAC, restraining it from cartelised exports to India. In June 1997, the Commission rejected ANSAC's petition for vacating the injunction. Quoting from the ANSAC membership agreement, it held that ANSAC was prima facie a cartel which was carrying out part of its trade practices in India, giving the Commission jurisdiction under Section 14 of the MRTP Act, even though the cartel itself was formed outside India. The Commission confirmed its earlier injunction, on the grounds that ANSAC was prima facie a cartel. ANSAC then appealed to the Supreme Court of India, on the following grounds –

- Under the MRTP Act, there is no power to stop import,
- The MRTPC could take action when a restrictive trade practice is carried out in India in respect of imported goods. In this case, the goods were not imported into India and hence the matter was beyond the jurisdiction of the MRTPC.
- The MRTP Act did not confer extra-territorial jurisdiction to the MRTPC

Order

The Supreme Court did not go into the allegation of cartelization, but instead held that the wording of the MRTP Act did not give it any extra- territorial jurisdiction. The MRTPC could therefore not take action against foreign cartels or the pricing of exports to India, nor could it restrict imports. The Supreme Court overturned the order of the MRTPC.

Weakness – The MRTP Act did not empower the MRTPC with the extra-territorial jurisdiction powers. It could only handle cases that emerged in the Indian market but not the cases that emerged outside India, however having the effect in the Indian market.

Case III: ***Alkali & Chemical Corporation of India Ltd. And Bayer India Ltd***

Charge

The companies were engaged in the manufacture and sale of rubber chemicals and amongst them constituted a dominant share of the total market in the product. There were charges of them making identical increases in prices on five to six occasions on or around the same date.

Investigation and Order

However, there was no direct evidence available behind the increase in prices. The MRTPC observed while making its judgment, that "in the absence of any direct evidence of cartel and

the circumstantial evidence not going beyond price parallelism, without there being even a shred of evidence in the proof of any plus factor to bolster the circumstances of price parallelism, we find it unsafe to conclude that the respondents indulged in any cartel for raising the prices".[11]

There have been instances where the DGIR and the MRTPC have tried to investigate cartels on suspicion of price rises or submission of collusive tenders, in various industries such as Tyre industry, sugar mills, yarn producers, plywood manufacturers, cement manufacturers, etc. However, they were not successful to prove the existence of cartel as because the evidence collected did not go beyond price parallelism and hence they were not able to provide direct or indirect evidence such as an agreement or meeting of minds to prove the existence of a cartel. The Supreme Court held the same view in ***Haridas Exports v. All India Float Glass Manufacturers Association 2002 CTJ 353 (SC) (MRTP),*** that the mere formation of a cartel by itself will not give rise to an action. Something more must have to be proved to demonstrate the detrimental effect thereof.

The formation of a cartel amounts to anti-competitive act and which is against the public interest is rarely proved by direct evidence. Most of the time, it has to be proved by circumstantial evidence by setting up a chain of events leading to a common understanding or plan. The underlying task is to find out at the minimum, what constitutes that 'meeting of minds' which must be directly or circumstantially established to prove that there exists a cartel.[12]

Weakness: The MRTPC did not have the tools or the powers to efficiently investigate in order to recover direct evidence to prove the existence of a cartel activity.

Case IV: ***Sirmur Truck Operators case***,[13]

Charge

The MRTP Commission received a complaint from Paonta Transport Co-operative Society Ltd., Himachal Pradesh against the respondents, alleging that they had acted in concert while fixing the freight rates for rendering transport services and that they did not allow non-member trucks operators to load and unload goods in Sirmur unless they paid donations on demand.

Investigation

The MRTPC instituted an enquiry on the basis that the practices indulged by the respondent fell under the section 33(1)(d) and Section 2(o) of the MRTP Act. For substantiating the allegations made against the respondents, the Director General submitted a lost of several documents, such as the freight rates circulated by the respondent union, the letters exchanged between the respondents.

[11] Kumar, S.S "Cartels and Price Fixation: Worst type of anti-competitive practices".
[12] Ibid.
[13] (1995) 3 CTJ 332 (MRTPC)

Taking the freight rates as evidence, it was seen that there was no information on the freight list that with the increase or reduction of the rates of diesel oil by the Government of India, there would be increase or decrease in freight rates fixed by the respondents. Thus there was no doubt that fixing the rates for the truck operators and asking the members to charge freight only on the rates fixed by the union is one of the instances of restrictive trade practice falling under clause (d) of Section 33(1), which states –

"Every agreement falling within one or more of the following categories shall be deemed, for the purpose of this Act, to be an agreement relating to restrictive trade practice and shall be subjected to registration, namely

(d) any agreement to purchase or sell goods or to tender for the sale or purchase of goods only at prices or on terms or conditions agreed upon between the sellers or purchasers".

In addition to the above evidence, the Director General also submitted a copy of an FIR (First Information Report) alleging that the respondents were unlawfully preventing the truck operators from operating within their territory. While it is a matter of fact that an FIR cannot be itself deemed to be a substantive piece of evidence. However, it does assume relevance in so far as to show that FIR was filed against the respondent for similar activities. It does lay some credence to the evidence and allegation made by the Director General to show that the respondent have been so interfering and preventing others from doing business in Sirmur.

Order

The MRTPC concluded based on the evidence that preventing and restricting competitors from doing business is undoubtedly restrictive trade practice falling under Section 2(o) of the MRTP Act. Thus the MRTPC issued an order of 'cease and desist' against the respondents and directed them to stop the trade practice.

Case V: *Truck Operators Union vs. Mr. N.C. Gupta & Mr. Sardar*[14],

Charge

It was alleged that the respondents were preventing the non-members truck owners including the complainants from loading their goods (paddy and rice) on the grounds that they are not the members of the respondent union. Their further complaint was that they are not allowing even the other transporters to lift the goods and insisted the complainants to become the members of the respondent union, if they wanted to operate their vehicles.

Investigation

The DG (I&R), upon receiving the complaint, was directed to undertake the investigation and submit the PIR. The DG (I&R) served a letter, which the respondents did not respond too and hence they conducted on-spot investigation to assess the correctness of the

[14] (1995) 3 CTJ 70 (MRTP)

allegations. During the on – spot investigation, they met a member of the union, who did orally acknowledge that unless the complainant truck owners become members of the union, they would be not be permitted to operate unless they become a part of the respondent union. The Commission acknowledged the PIR and issued a Notice of Enquiry under section 10 (a) (iv) and 37 of the MRTP Act. The Director General in support of the case, presented certain documents and witnesses, who affirmed the complaint. The one of the witness was the driver of the complainant driving trucks and transporting goods.

Order

The Commission was of the view that, from the evidence that was produced, that the respondents have indulged in a restrictive trade practice. Having held so, a 'cease and desist' order is passed against the respondents prohibiting the respondents from engaging in the impugned trade practices in near future.

Weakness: In both the above cases (IV+ V), the MRTPC were only empowered to pass 'cease-desist orders' in successful detection of cartelization. It did not have powers to impose more stringent orders along with fines.

Case VI: ***DG (I&R) vs. Sumitomo Corporation, Tokyo, Japan and others,***[15]

Complaint

It was charged that the Japanese companies along with their Indian agents have colluded and are quoting identical prices in response to a tender floated by the Steel Authority of India (SAIL).

Investigation

In the preliminary investigation, it was revealed that the prices quoted by the Japanese companies and their Indian agents quoted the identical prices in respect of 8 items pursuant to a global tender No. P/IMP/Rolls 66/2203, floated by SAIL. However, there were some sort of negotiations between the relevant authorities and the Japanese companies revised their quotes, which also were identical and they were quoted by their apex body i.e. Rollers Expert Association. The same was the case in with regard to another global tender in the year 1984 being P/IMP/Rolls/565/9470010, invited by the Rourkella Steel Plant (RSP) to supply qualified rolls. On the basis of a complaint initiated by the RSP, the DG was of the view that the respondents were indulging in restrictive trade practice within the meaning of section 2(o)(ii) of the Act. Accordingly the Notice of Inquiry was initiated.

In lieu of the investigation, the defendants submitted their defense on the following grounds –

[15] 2004 CTJ 26 (MRTP)

- In the absence of any factual allegations regarding the manipulation of prices imposing unjustified cost on consumers, the issue of notice of enquiry is misconceived.
- In view of participation of 35 companies from 13 countries identical prices as quoted by the Japanese companies would in no way lead to manipulation of prices imposing unjustified costs.
- Restriction of competition is to be seen with reference to context of SAIL, which has 90% of the market share in product and supplies.
- The ultimate decision for placement of orders on the suppliers rested with SAIL, as well as RSP, thus the uniformity in prices would have no significance.
- The orders under the global tenders that were floated were for 18 rolls out of 228 pieces.
- The Indian agents also a party to the investigation, pleaded that they had no role to play in either fixation of prices of the products or with the negotiations with the purchaser.

The Commission concentrated on the depositions made by the defendants, where it was confirmed that their apex body (Rollers Expert Association) conducted the negotiations. The variations in commission to their respective agents and conditions of delivery have also been argued to make no difference to the price the purchaser has to pay. Thus these facts clearly established a case of price fixing cartel by the respondents. However, the respondents contended that it has in no way been established that quotations of identical prices by the defendants have been instrumental in preventing or impairing competition in any manner. In any case, the order for supply as placed by the respondents was so small that it had virtually negligible effect on the competition in the market and the same would bring the case of the respondents in the ambit of provisions of Section 38 (1) (d) of the Act –

(1) For the purposes of any proceedings before the Commission under section 37, a restrictive trade practice shall be deemed to be prejudicial to the public interest unless the Commission is satisfied of any one or more of the following circumstances, that is to say – "(d) that the restriction is reasonably necessary to enable the persons party to the agreement to negotiate fair terms for the supply of goods to, or the acquisition of goods from, any one person party thereto who controls a preponderant part of the trade or business of acquiring or supplying such goods, or for the supply of goods to any person not party to the agreement and not carrying on such a trade or business who, either alone or in combination with any other such persons, controls a preponderant part of the market for such goods".

With reference to the definition of cartel, as mentioned above in ***DG (IR) vs. Modi Alkali and Chemicals Ltd,*** quoting of identical prices pursuant to a global tender, negotiation of prices by the parties other than those who have submitted the tenders, having a close nexus in the trade dealings are a few factors strongly pointing to an action or activity undertaken by the respondents for manipulating the prices, adversely affecting the competition in the market. In addition to that, it was argued that the arrangements between the respondents and its allied parties in quoting identical prices, have narrowed down the option of the purchasers to buy the goods, despite there being other 35 companies.

Taking the allegation of SAIL having 90% market power in the market, there is a need to make a distinction between restricting the players voluntarily and the restricted number of

players available in the market. The latter is due to market conditions. Thus the allegations raised by the respondents, are not sustainable.

As held in the case of ***Union of India v. Society of India Gasoline Marketers,*** it would aptly apply:

"Since in a price fixing conspiracy the conduct is illegal per se, further inquiry on the intent or the anti-competitive effect is not required. The mere existence of a price fixing agreement establishes the defendant's illegal purpose since the aim and result of every price fixing agreement, if effective, is the elimination of one form of competition".

Thus keeping in mind the facts of the present case, it was held that the respondents have indulged in cartelisation. However, the respondents argued that they are liable to be exempted in lieu of the gateways, to which the Commission also agreed. The Commission agreed that in terms of both the quantity and value of the rolls, it would have insignificant impact on the cost of rolled products.

Order

In lieu of the gateway available to the defendants, the NOE is discharged. The allegation of cartelisation is only being discharged on the grounds of the availability of the gateway to the respondents.

Weakness: The presence of such gateways, acted as a deterrent in successfully charging the companies of a restrictive trade practice act. It weakened the MRTP Act and gave the companies the gateways to escape punishment.

III.3 Competition Act 2002 – Overview

In India, the Monopolies & Restrictive Trade Practices Act (MRTP Act) was enacted in 1969. The focus of the MRTP Act was more on the control of monopolies and the prohibition of monopolistic and restrictive trade practices. In the era of globalisation, the MRTP Act had become obsolete and there was a need to shift the focus from curbing monopolies to promoting competition.

The Central Government, therefore constituted a high level committee known as the Raghavan Committee and after considering its report and suggestions from various stakeholders, enacted a new law called the Competition Act, 2002 (Competition Act). The Central Government also constituted the Competition Commission of India (CCI).

The CCI is a quasi-judicial body having the powers to acquire, hold and dispose of property, both movable, immovable, to contract and can sue and be sued. (Section 7). The CCI may look into any alleged violations under the Act, either on its own motion, or on receipt of a complaint from any person, consumer or trade associations (Section 19) or on reference made by the Central Government, State Governments or any statutory authority (Section 21).

The aim of the Competition Act is to create an environment encouraging competition. However, the Competition Act does not condemn the existence of a monopoly in the relevant market as compared to its predecessor, the MRTP Act, 1969. This can be inferred from Section 3[16], which states that only such agreements will be void if they are causing 'appreciable adverse effect' on the relevant market. The species of agreements which would be considered to have an "appreciable adverse effect" would be those agreements which directly or indirectly determine purchase or sale prices, limit or control production, supply, markets, technical development, investment or provision of services, share the market by allocation of inter alia geographical area of market, nature of goods or number of customers or which directly or indirectly result in bid rigging or collusive bidding.

An apt example of the types of agreements which, if they cause an "appreciable adverse effect", are "tie-in arrangements" (where a purchaser is through the agreement forced to purchase other goods in addition to the goods desired) and "refusal to deal" agreements (which operate to restrict the persons or class of persons involved in the sale and purchase of the concerned goods).

Further, competitors know that such an agreement is unlawful and it compels them to keep such agreement secretive and resultantly it is invariably not reduced to writing and it is often found to be in the form of arrangement or oral understanding. Moreover, the best evidence against 'Cartel' is usually in possession of the charged parties, which are not likely to easily part with and make available to the investigator or enquiring authority. These compulsions seem to have persuaded the lawmakers to prescribe that 'Cartel' has appreciable adverse effect on competition."[17]

The Competition Act as compared to the MRTP Act extends its jurisdiction to cover any agreement referred to Section 3, which has been entered into or outside India and any party to such agreement, who is outside India. The CCI shall "have the powers to inquire into such agreement […] if such agreement […] has or is likely to have, an appreciable effect on competition in the relevant market in India". (Section 32).

A perusal of the MRTP Act would show that there was neither definition nor even a mention of certain offending trade practices, which were restrictive in character. Some illustrations of these are:

- Cartels
- Price Fixing
- Bid Rigging

[16] Sec 3(1) No enterprise or association of enterprises or person or association of persons shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India

[17] Supra No. 2

According to Competition Act, 2002 a cartel is formed if below mentioned three prerequisites are fulfilled:[18]

- An agreement which includes arrangement or understanding;
- Agreement is amongst producers, sellers, distributors, traders or service providers, i.e. parties are engaged in identical or similar trade of goods or provision of service, and
- Agreement aims to limit, control or attempt to control the production, distribution, and sale or price of, or, trade in goods or provision of services.

The Competition Act recognizes some of the abovementioned restrictive trade practices. The drafters of the Competition Act have tried to remedy the flaws of the MRTP Act, and to promote competition in a structurally correct manner. A specific goal of Competition Act is and needs to be the prevention of economic agents from distorting the competitive process either through agreements with other companies or through unilateral actions designed to exclude actual or potential competitors. It needs to control agreements among competing enterprises on prices or other important aspects of their competitive interaction. Likewise, agreements between firms at different levels of the manufacturing or distribution processes, which are likely to harm competition, need to be addressed. The foremost constituent of any competition law is obviously the objective to foster competition and its obverse is the need to deal effectively against practices and conduct that subvert competition. The Act reckons these propositions.

However, the implementation of the Competition Act, 2002 ran into problems on account of the composition of the CCI, the competition authority entrusted with the responsibility of implementing the Act. A writ petition filed in the Supreme Court challenged that the CCI envisaged by the Act is more of a judicial body having ad judicatory powers and that in the background of the doctrine of separation of powers recognised by the Indian Constitution, the Chairman of the Commission had necessarily to be a retired judge.

Pursuant to this, the Government has proposed to amend the Competition Act, 2002. The Competition Amendment Bill, 2006 is expected to tabled in the forthcoming 'budget session' of the Parliament.

III.4 Competition Act, 2002 Vs. MRTP Act, 1969

The Competition Act, 2002 is better equipped to handle restrictive trade practices such as cartels, as explained below –

Case I (Weakness) – Cartels were not defined in the MRTP Act, 1969, but the understanding of cartels was only possible to be drawn from the Section 2(o) i.e. restrictive trade practice.

The Competition Act, 2002 explicitly define Cartels under section 2(c) of the Act –

[18] Section 2(c) of the Competition Act, 2002

"Cartels includes an association of producers, sellers, distributors, traders or service providers who, by agreement amongst themselves limit, control or attempt to control the production, distribution, sale or price of, or trade in goods or provision of services".

In addition to that, cartels are also covered under anti-competitive agreements, which are prohibited agreements under Section 3 of the Act. The Section lays down that, " any agreement entered into between enterprises or associations of enterprises or persons or association of persons or between any person and enterprise or practice carried on, or decision taken by, any association of enterprise or association of persons, including cartels, engaged in identical or similar trade of goods or provision of services, which –

- Directly or indirectly determines purchase or sale prices,
- Limits or control production, supply, markets, technical development, investment or provision of services,
- Shares the market or source of production or provision of services by way of allocation of geographical area of market, type of goods or services, or number of customers in the market, and
- Directly or indirectly results in bid-rigging[19] or collusive bidding, shall be presumed to have an appreciable adverse effect on competition."

Case II (Weakness) – The MRTP Act did not empower the MRTPC with the extra-territorial jurisdiction powers. It could only handle cases that emerged in the Indian market but not the cases that emerged outside India, however having the effect in the Indian market.

Section 32 of the Competition Act, 2002 empowers the CCI to investigate and take action against acts that must have been formed outside India but have an effect on competition in India. The Section lays down that, "The Commission shall, notwithstanding that –

- An agreement referred to in Section 3 has been entered into outside India, or
- Any party to such agreement is outside India, or
- Any enterprise abusing the dominant position is outside India, or
- A combination has taken place outside India, or
- Any party to combination is outside India,
- Any other matter or practice or action arising out of such agreement or dominant position or combination is outside India, have power to inquire into such agreement or abuse of dominant position or combination if such agreement or dominant position or combination, has or is likely to have, an appreciable adverse effect on competition in the relevant market in India."

[19] Bid rigging means any agreement between enterprises or persons engaged in identical or similar production or trading of goods or services, which has the effect of eliminating or reducing competition for bids or adversely affecting or manipulating the process of bidding.

Case III (Weakness):The MRTPC did not have the tools or the powers to efficiently investigate in order to recover direct evidence to prove the existence of a cartel activity.

The Competition Act, 2002 has been given proper tools and powers to efficiently investigate cartel cases. First, the Act defines Cartels under Section 2(o). Thus there is a better understanding and much more importance is given to curbing such anti-competitive practices. Secondly, the Act constitutes a Commission called the Competition Commission if India under section 7. The Act empowers the Commission to investigate into cases related to cartels, on a suo moto basis or on a complaint received from any person or consumer association or on a reference made to it by the Central or State Government or any statutory authority. Thirdly, as mentioned above, Section 32 gives extra-territorial jurisdiction to the CCI to investigate into acts taking place outside India but having an effect on competition in India. Fourthly, Section 18 empowers the Commission for the purpose of discharging its duties such as investigation into cartel cases, to enter into any memorandum or arrangement with the prior approval of the Central Government, with any agency of any foreign country.

Further to strengthen the investigative powers and to follow best international practices the Competition Act empowers the CCI with a leniency provision. According to Section 46, the CCI has the power to impose lesser penalty, "if it is satisfied that any producer, seller, distributor, trader or service provider included in any cartel, which is alleged to have violated Section 3, has made a full and true disclosure in respect of the violation and such disclosure is vital, impose upon such producer, seller, distributor, trader or service provider a lesser penalty as it may deem fit". However, in order to seek the benefit of the leniency provision, the disclosure must be made before the start of the investigation. In addition to that, the leniency provision is only available to the producer, seller, distributor, trader or service provider who first makes such full disclosure.

Cases IV+ V (Weakness): The MRTPC was only empowered to pass 'cease-desist orders' in successful detection of cartelization. It did not have powers to impose more stringent orders along with fines.

Section 27 of the Competition Act, empowers the CCI with powers to impose stringent orders and fines on successful detection of cartel activities. According to the section the CCI may pass all or any of the following orders-

- Direct any enterprise or associations of persons, as the case may be, to discontinue or not to re-enter such agreement,
- Commission shall impose upon each producer, seller, distributor, trader or service provider included in the cartel, a penalty equivalent to three times of the amount of profits made out of such agreement by the cartel or ten per cent of the average turnover of the cartel for the last preceding three financial years, whichever is higher,
- Direct that the agreement shall stand modified to the extent and in the manner as may be specified by the commission, and
- Direct such enterprises concerned to abide by such orders as the Commission may pass and comply with the directions, including payment of costs.

Case VI (Weakness): The presence of such gateways, acted as a deterrent in successfully charging the companies of a restrictive trade practice act. It weakened the MRTP Act and gave the companies the gateways to escape punishment.

There are no such gateways present in the Competition Act, 2002.

IV. Conclusion

The availability of definition of cartel, incorporation of a leniency program, the powers to impose fines against cartel member, the explicit provision to exercise jurisdiction in respect of actions taken place outside India, however with an effect in India, with the provisions to enter into co-operation agreement with the overseas competition agencies, etc the CCI has been much better empowered to tackle cartel cases than its predecessor.

However, there is lot of improvement to be done in the CCI investigative methodology, infrastructural support has to be provided to the investigators, protection to the whistleblower has to be assured, etc. In order to achieve this, there are lessons to be learnt from competition authorities in developed countries that are better quipped to prevent or crack hard-core cartels. Success requires the following: proactive role on the part of the competition authority; high level of fines; criminal liability (for individuals); protection for whistleblowers; leniency program for the firms willing to cooperate in the proceedings; and co-operation among countries (and probably an international watchdog) in case of global cartels.

One important amendment as proposed in the Competition Bill 2006, is in relation to leniency provision. As per the Competition Act producer, seller, distributor, trader or service provider who comes first to the authorities and discloses vital information regarding the cartel, would be able to get the benefit of leniency provision. However, the Competition Amendment Bill proposes that the Commission would allow reduced penalty (not just the first) that provides vital information before the start of the investigation. The proposed amendment, removes the incentive to report first about the cartel activity. Thus there is a need to revisit the leniency provision scheme and do away with the proposed amendment.

Box 1: MRTP Cases Against Cement Cos For Arbitrary Pricing

11 August 2006

Lok Sabha

The Monopolies and Restricted Trade Practices (MRTP) Commission has registered cases against some cement companies.

The DG (I&R) filed an application under section 10(a)(iii) of the MRTP Act against Cement Manufacturers, Bombay and 44 others cement manufacturers. It was alleged that the Respondents had fixed the prices of cement arbitrarily and in an unjustified manner. It was further alleged that there was little variation in the prices of several cement manufacturers in the same region inspite of the fact that the cost of production was not identical. The matter is listed on 28.11.2006 for cross-examination of respondent's witnesses.

The DG(I&R) had filed an application under section 10 of the MRTP Act, 1969 against Associated Cement Companies Limited, Bombay. It was alleged that the Respondents increased the prices from time to time without any increase in the cost of production and this had led to an unreasonable increase in the profit of the Respondent. The matter is listed for final arguments on 21.8.2006.

A complaint filed by M/s Gayatri Agencies against Cement Manufacturers Association, Chennai under section 10(a)(i) alleging, interalia, that the Respondent did not give free hand to the applicant in the matter of prices, sale and distribution of cement by imposing various restrictions. The matter was referred to D.G. (I&R) for investigation. The D.G. (I&R) filed Preliminary Investigation Report stating that the respondents are indulging in Restrictive Trade Practices under sections 33(1)(d) and Section 2 (o) of the MRTP Act. The matter is listed on 21.8.2006 for consideration.

Shri Servejit Mokha & Another have filed a complaint against Cement Manufacturers Association and 10 others under section 10(a) (i) and 36 B(a) alleging, interalia, that the said cement manufacturers had formed a cartel and had increased the prices. Notice of Enquiry against 11 Respondents was issued. The Hon'ble High Court of Delhi on 10.5.2005 has stayed the proceedings before the Commission. The matter is adjourned to 13.10.2006 for further consideration.

D.G.(I&R) filed an application under section 10 (a)(iii), read with section 37 of the MRTP Act, 1969 against Gujarat Ambuja Cements Limited and two others alleging that the respondents in collusion have created an

artificial scarcity of cement resulting in increase in prices, which constitutes a Restrictive Trade Practice as defined under section 2(o) read with section 33(1)(d) of the MRTP Act, 1969. The matter is listed before the Commission on 31.8.2006 for consideration.

The MRTP Commission has directed the D.G.(I&R) to investigate into the sudden and steep increases in prices of cement reported in the print media during May-2006. It was reported that the prices of cement rose from Rs. 140 to Rs. 220-240/- per bag with in a period of two months. It was also reported that the cement manufacturers have entered into a cartel. The Preliminary Investigation Report is awaited.

Shri Prem Chand Gupta, Minister of Company Affairs in reply to the question raised by Shri Bhubneshwar Prasad Mehta in Lok Sabha today, gave this information.

Source: http://www.indlawnews.com/1d1fdaa54779c92320fde0c478b09cf4

Box 2: Truck Operators' Cartels: A Snapshot

- In case of Baddi, Himachal Pradesh, the Baddi Nalagarh Truck Operator Cooperative Transport Society, has monopolised the movement of goods from the state. Controlled by the local MLA, the truck union charges 30 percent higher on the Baddi-Delhi route and 15-20 percent on the Baddi-Mumbai route. Trucks coming in with supplies go back empty, because they are not allowed to pick up freight, which only adds to the cost.
- In the case of Orissa, the Angul Truck-owners Association, a Government registered body operating at the National Aluminium Co. Ltd.'s factory charges as much as 200 percent more for transportation of ingots under the obliging eyes of the authorities. Such official cartels are known to exist in other parts of Orissa also like in Sukinda Mines, Paradeep Port and Balasore.
- In Punjab's Derabassi, truck unions have drafted their own tariffs, increasing costs of production for local units, thus rendering them uncompetitive. A cartel of around 500 truck operators has been troubling the area, since Derabassi's inception as an industrial town in 1987. In Sirhind, near Mandi Gobindgarh, such unions stalled industrial growth, resulting in industry to flourish in nearby Khanna and Amloh.
- A similar situation now exists in Bikaner, Rajasthan where the truck operators' union is creating problems in the smooth movement of minerals from the area. Due to obstruction in the supply, the ceramic tile industry, which uses these minerals as raw material are facing hardships, and even closure.

Source: Various newspaper clippings published across India

Box 3: The Vitamins Cartel

Duration and Effect: The vitamins cartel to fix prices and allocate market shares for the sale of certain vitamins operated from 1990-1999. Annual global sales over the conspiracy period averaged US$1.34bn. (Yu, 2003) The price increase generated by this cartel has been estimated to be 35 percent. In the US alone this cartel may have produced US$500mn in overcharges. (OECD, 2003)

Impact on Developing Countries: The aforementioned high overcharge definitely impacted developing countries in view of the fact that developing countries imported around US$6.6bn worth of vitamins in the course of the conspiracy. (Yu, 2003)

***Sanctions*:** US, Canada, EC, Australia, and South Korea have each investigated and prosecuted the cartel for its effect on their domestic markets. The US and Canadian authorities have fined the cartel approximately US$1bn and the EC 85mn, respectively. (OECD, 2000) The Korea Fair Trade Commission (KFTC) imposed corrective measures and a civil penalty to the amount of 3.9 billion Korean *Won*. Brazil. Japan and Mexico are reported to be investigating.

Source: Chowdhury. J (2006), "Private International Cartels – An Overview", Briefing Paper, CUTS C-CIER

ANNEXURE - I

CARTEL CASES IN INDIA

S. No.	Case	Reference	Description
Cases before 1991 Amendment: Price Fixing and Collusive Tendering or Bid Rigging [Section 33(1)(d), (j(b))]			
1.	Raymond Woollen Mills Ltd (J.K. Engineering Files Division)	RTPE 27 of 1974, Order dated 25/2/1975 before MRTPC	
2.	I A & I C (P) Ltd, Bombay and Sulphur Mills (P) Ltd, Bombay	RTPE 6 of 1981, order dated 23/2/1984	Two respondents were manufacturers of Sulphur dust 85% and allegedly engaged in parallel pricing and acting in concert for fixing, maintaining and increasing price of sulphur dust 85% Filed two statements in reply to a notice of enquiry (NOE) categorically stating that they will not indulge in RTP of fixing and raising prices in concert or indulging in cartel formation. After this, the MRTPC did not proceed with the enquiry whether the respondents were already engaged in a cartel or not; written statements were deemed to be as efficacious as a cease and desist order Mere assurance from respondents who may be indulging in RTP was satisfactory enough to stop the enquiry since the ultimate result of enquiry is not very different anyway
3.	Tirunerveli District Lorry Owners Association	RTPE 14 of 1983, order dated 20/3/1984	Similar situation (assurance given by respondents, hence no enquiry undertaken)
4.	Jay Engineering Works Ltd and others	RTPE 17 of 1980, order dated 6/4/1983	Similar situation (assurance given by respondents, hence no enquiry undertaken)

S. No.	Case	Reference	Description
5.	Oriental Power Cables Ltd and Others	RTPE 12 of 1975	Enquiry instituted against 10 respondents on the ground that they quoted identical or near about identical rates by arrangement and understanding among themselves. On receipt of NOE, respondents filed a writ petition at Bombay High Court complaining that they were being denied necessary particulars and they should be provided with better particulars by the MRTPC After 7 years! (In 1982), the High Court ordered the MRTPC to furnish better particulars. Subsequently, DG (I&R) furnished better particulars. The respondents then filed an application under 37(2) stating that they have never indulged in any cartel and would not indulge in such activity in future. They further stated that there is no relevance for investigating into an alleged cartel that formed almost a decade ago. DG alleged that respondents have a habit of entering into a cartel and same situation can happen in future, and that the matter should be thoroughly enquired. But the MRTPC did not find any relevant to continue with the enquiry and stated that if respondents indulge in such practices in future, DG can launch a fresh proceeding before the Commission
6.	The general Code of Conduct for Members of the Automotive Tyre Industry of India	RTPE 1 of 1971, order dated 19/4/1976 (Ref: First Annual Report of MRTPC, 1971-72)	Eight firms (Incheck Tyres Ltd, Dunlop India, Goodyear India, Firestone Tyre and Rubber Co. India Pvt Ltd, Premier Tyres Ltd, The India Tyre and Rubber Co. Pvt Ltd, Ceat Tyres of India Ltd, and Madras Rubber Factory Ltd.) engaged in a cartel with a formal or written agreement among them in the post 1967 period The agreement was known as “The general Code … …” The MRTPC instituted an enquiry in 1971

S. No.	Case	Reference	Description
			and commenced with it in December 1972 on grounds of price fixing concert, discriminatory dealings, market sharing, fixing terms and conditions of sale other than price, mutually agreed distribution system, limiting, restricting and withholding supply, etc. MRTPC took up another enquiry against the 8 tyre companies based on a complaint lodged by the All India Motor Transport Congress. Allegations were price fixing concert, discriminatory dealings, restricting and withholding supplies and dumping accessories and other motor vehicle parts on dealers. Cease and desist order passed by the Commission in 1976 and in 1978 respectively. This led (?) to formal breaking up of the alleged cartel.
7.	Firestone Tyre & Rubber Co. of India (P) Ltd (now changed to Bombay Tyres International Ltd) and Others	RTPE 13 of 1978, order dated 24/3/1983	MRTPC instituted an enquiry in 1978, but closed in early 1980s on the ground that the respondents agreed not to indulge in the concerted price fixing in future and agreed to inform the price increase to the Commission for consecutive 3-year period.
8.	Madras Rubber Factory Ltd, Goodyear India Ltd, Dunlop India Ltd and Bombay Tyres International Ltd.	RTPE 6 of 1978, order dated 2/2/1983	Respondents filed an application under section 37(2) agreeing not to indulge in RTPs of concerted tying up sale of tyre flaps with either tubes or tyres or both and also agreed to inform the MRTPC about change in prices of tyre flaps in the replacement markets within three months of change for next five years. Two cease and desist orders were passed against these tyre manufacturers in late 1970s. Still the MRTPC did not punish them even though allegations of price fixing recurred again and again. MRTPC closed enquiry on the ground that respondents 'assured' it of not indulging in such practices in future.

S. No.	Case	Reference	Description
9.	Sandvik Asia	RTPE 44 of 1977, order dated 13/3/1979	Economic theory recognises that 'oligopoly pricing' is a special case of 'collusive pricing' and conscious parallelism is much-sophisticated business behaviour to guard the firms from anti-trust law. The Indian judgments did not recognise that price parallelism is a form of non-cooperative collusion. Several cases came up before the MRTPC regarding price parallelism by manufacturers or parallel price quotations for tenders, but the Commission stated that mere price parallelism or same price quotation is not a sufficient condition to prove concerted effort. In dealing with price parallelism, the Commission emphasised on direct evidence of concert and other circumstantial evidence to strengthen the case
10.	South India Mill owners' Association vs Gwalior Rayon	RTPE 83 of 1976, order dated 20/9/1979	
11.	RRTA vs India Foils and Indian Aluminium Co.	RTPE 16 of 1981, order dated 6/5/1983	
12.	Grind well Norton Ltd and Carborandum Universal Ltd	RTPE 23 of 1981, order dated 27/7/1983	
13.	DGIR vs All Gujarat Distillery Association and Others	I.A no. 109 of 1988 RTPE 315 of 1988, order dated 20/6/1988	
14.	RRTA vs Hyderabad Asbestos Cement Products and one other	RTPE 17 of 1979, order dated 20/12/1982	
15.	DGIR vs Cement Manufacturers Association and Others	Order dated 28/1/1991	
16.	National Organic Chemical Industries and Others	Order dated 25/11/1978	
17.	The Alkali and Chemical Corporation of India Ltd, Calcutta and Bayer (I) Ltd, Bombay	RTPE 21 of 1981, order dated 3/7/1984	Respondents were engaged in manufacture and sale of rubber chemicals and command a dominant share (around 75% to 82%, as per DGIR) in the market. Respondents failed to justify the arbitrariness of the price increase despite the fact that two opportunities were given to them to do so. Respondents did not deny price parallelism, but denied the allegation that it was due to

S. No.	Case	Reference	Description
			concerted effort. DGIR could not furnish other circumstantial evidences sought by the Commission. Alleged that respondents did not furnish cost data even when asked to do so In this case, the Commission relied on US judgment in deciding the case of price parallelism (346 U.S. 537, 1954, case of Theatre Enterprises) and sought for additional factors. The Commission held that there is no price collusion since DGIR did not provide with circumstantial evidences beyond price parallelism (crux: some additional factors or circumstances in the direction of concerted activity should be there to distinguish between price parallelism and tacit collusion). ⇨ Neither the law nor the Commission and investigating agency had the expertise to deal with such cases. In this case, the Commission held that like price parallelism, price leadership too is a common feature of an oligopolistic market and cannot be considered as concerted effort
18.	Hindustan Lever Ltd and TATA Oil Mills Co. Ltd	RTPE 4 of 1978, order dated 22/7/1982	Allegation of price parallelism The Commission pointed out two requirements for a trade practice to be a concerted one. First, the trade practice must either influence the market behaviour of undertakings concerned and remove in advance uncertainty as to the future competitive conduct of an undertaking or maintain or alter the commercial conduct in an uncompetitive manner. The MRTPC was satisfied with the facts presented by DGIR for proving the first requirement. But Commission emphasised on the second requirement: there should be a positive

S. No.	Case	Reference	Description
			contact, however slender, between the parties either by meeting or decision or in any manner. The Commission stated "in an oligopolistic industry, a few units will be dominating the industry and each would be having an eye on the other to see what its behaviour will be. They will be interdependent without any overt acting together. The two respondents being the executive members of ISTMA and being dominant units in the industry is consistent with this possibility. No other contact for the above acted objections was alleged. DGIR applied for a review of the judgment, but this was rejected by the Commission
19.	Major English Newspapers and Indian and Eastern Newspaper Society	RTPE 46 of 1975, order dated 18/12/1975	In 1975, four cases came up alleging concerted effort among major English newspapers and Indian and Eastern Newspaper Society and its regional committee to fix, increase and maintain price. It was alleged that even if there was substantial reduction in pages, the price was not reduced, rather increased in the said period. Interestingly, in this case, the respondents in all four cases submitted a 'cease and desist' order and MRTPC passed the order accordingly, without going for a full-fledged inquiry into price parallelism.
20.		RTPE 47 of 1975, order dated 6/2/1976	
21.		RTPE 48 of 1975, order dated 27/2/1976	
22.		RTPE 49 of 1975, order dated 19/3/1976	
23.	Coates India Ltd and five others	RTPE 7 of 1975, order dated 12/9/1975	Same as in newspapers case. Allegation of price parallelism, fixation and increase in prices in concert and concessions, discounts to dealers or customers
24.	Ghai Enterprises Pvt Ltd and Quality Ice Creams	RTPE 18 of 1983, order dated 25/4/1986	MRTPC finally linked price parallelism with tacit agreement The two leading manufacturers of ice cream had a market share of about 80% and MRTPC observed that identity of prices of a large number of varieties of ice cream was not coincidental but a mutually planned scheme.

S. No.	Case	Reference	Description
			It was also noted that the two respondents have interconnection. Not only price increase but introduction of other incentives like discount schemes, new flavours were following one another. The Commission concluded that 'preponderance of probabilities' in the case leads to an inference of concerted effort and passed cease and desist order accordingly.
25.	Bengal Tools Ltd	RTPE 120 of 1984, order dated 25/4/1984	In this case, collusive tendering was proved as concerted effort Quotes given by the respondents were totally identical for various sizes of sheer blades/knifes and slitting cutters. The cost data provided by respondents revealed stark differences in cost among the manufacturers though they quoted the same price! Respondents argued the act was not prejudicial to public interest. Anyhow, MRTPC passed a 'cease and desist order'.
26.	Excel Industries Ltd and Others	RTPE 31 of 1985, order dated 23/3/1985	Same result as Bengal Tools Ltd case
27.	Shri Gopal Metal and Wood Works Ltd and Others, Perfect Circle Victor and Others	RTPE 31 of 1976	Same result as Bengal Tools Ltd case
28.	Swastik Laminating Industries and Others	RTPE 81 of 1984, order dated 31/1/1986	Identical rates were quoted by various small-scale units against the tender floated by National Fertilizers Ltd, and prices quoted by these units were lower than others. Small-scale units contended that this benefited not only government, but also the units which depended for their survival on such large tenders. The Commission decided that the practice is not prejudicial to public interest mainly due to three reasons, (i) small-scale nature of the units, (ii) denial of any collusion by National Fertiliser Ltd and (iii) Fixed factor price,

S. No.	Case	Reference	Description
			which was quoted by respondents, was just 25-30% of the total cost of the goods supplied
29.	Chloride India Ltd and Others	RTPE 46 of 1979, order dated 12/5/1981	Case relating to price leadership Allegation revolved around quoting prices for storage batteries in concert because of the identity or near identity of prices quoted by the three respondents. The judgment stated "it was not possible to make allegation of concert against the first respondent, being the bulk supplier of batteries, having a large share of the market, other respondents could not be blamed for treating him as a price leader and quoting prices either identical with or similar to the prices quoted by it (The Commission seemed to express a viewpoint similar to that observed in a US Supreme Court order: the fact that competitors may see proper, in exercise of their own judgment, to follow the prices of another manufacturer, does not establish suppression of competition nor show any sinister domination)
30.	Baroda Rayon Corporation Ltd	Order dated 6/8/1976	Cases where manufacturers in same line of production form an association or federation that is often instrumental to fix prices or fix terms of sale. These associations were involved in price fixing and in all these cases, the Commission passed a cease and desist order
31.	Alkali Manufacturers Association	RTPE 26 of 1984, order dated 29/3/1985	
32.	Indian Woollen Mills Federation and others	RTPE 32 of 1976, order dated 25/4/1977	
33.	Food grains and kirana Merchants Association, Indian Rayon Corporation, Gujarat	RTPE 18 of 1981, order dated 22/2/1983	

S. No.	Case	Reference	Description
34.	Truck Operators and Transport Operators Association, Rampur and Other	RTPE 11 of 1987, order dated 14/8/1987	
35.	RRTA vs Hind Lamps and others	RTPE 13 of 1974, order dated 19/4/1984	(enquiry whether agreement prejudicial to public interest or not) Allegation was that the electric bulb manufacturers entered into a formal agreement which was restrictive in nature. Five foreign electric bulb companies and an Indian company floated a new electric bulb company within India named as Hind Lamps Ltd, through two agreements among them. The Commission dropped the enquiry on the ground that the agreement expired in 1972 and throughout the decade they did not hear any other complain against the respondents other than the application filed by RRTA.
36.	The Nylon pact	Civil Miscellaneous writ petition 8060 of 1974, order dated 16/4/1976 by the Allahabad High Court	(enquiry whether agreement prejudicial to public interest or not) The Nylon pact was among four nylon spinners and 18 weaver's association for the purpose of having an equitable distribution of nylon yarn at concessional prices under the supervision and approval of central government. The three-member bench differed in the matter that the agreement has the approval of central government but by majority judgment, commission decided against the nylon spinners on 21/10/1974. The writ petition was filed by one of the nylon spinners. The High Court agreed that the agreement had the requisite approval of the central government and cannot constitute the subject matter of an enquiry under section 37 of

S. No.	Case	Reference	Description
			MRTP Act. On the issue of whether the Commission can enquire into an agreement that has already expired (the agreement expired on 31/8/1975), the Court concluded that the RTP which is intended to be enquired into and prevented from being repeated must exist in *praesenti*. So the writ petition was allowed nullifying judgment given by the MRTPC
Cases Before 1991: Output Restriction, and Collective boycott [section 33(1)(g),(i)]			
37.	RRTA vs Hindustan Pilkington Glass Workers Ltd and Window Glass Ltd		The manufacturers of wired, figured and profilite glass entered into an agreement with Surat Cotton spinning and weaving mills private ltd (proprietors of Navin glass products). The latter company was prevented from making or selling certain glass products in consideration of payment of agreed compensation of Rs.12.5 lakhs by each respondent and was further required to sell its products to both. Pilkington and Window Glass also arrived at a common marketing arrangement through Associated Partners and Wired Glass, a company promoted by them for the purpose. The Commission passed a 'cease and desist order' against the respondents and declared the agreement as void.
38.	RRTA vs Jay Engineering Works	RTPE 17 of 1980, order dated 6/4/1983	In these two cases, parties submitted before the Commission under section 37(2), without admitting it
39.	RRTA vs Crompton Greaves Ltd	Order dated 29/10/1976	
40.	Andhra Pradesh Paper Mills Ltd	RTPE 1973, order dated 31/1/1976	Enquiry closed on the ground that after Paper (Control of Production) Order, 1974 had come into existence, the ordinary white printing and writing paper was no longer in short supply
41.	DGIR vs All India Organisation of Chemists and	RTPE 259 of 1988, order dated	Respondents 1 to 4 (association of traders in pharmacy products) and respondent 5 (manufacturer of certain pharmaceutical

S. No.	Case	Reference	Description
	Druggists	18/11/1991	products) entered into an agreement where certain obligations were imposed on respondent no. 5 by rest of them for appointing one stockist each geographical district where no stockists are in existence and if respondet 5 wishes to employ additional stockists in any area, it could only be done through mutual consent and discussion. Another allegation was that the agreement fixed the trade Commission to be paid to the stockists. The Commission held that it was an agreement between a seller and a purchaser and passed a cease and desist order on the ground of restrictions on persons to whom goods have been sold and territorial restriction. However, the Commission refused to consider this as collective agreement
42.	Bombay Cotton Waste Merchants Association	RTPE 127 of 1984, order dated 20/3/1986	Collective Boycott Enquiry closed on the ground that the respondents submitted undertakings under section 37(2) stating not to indulge into such practices
43.	Ghee Merchants Association	RTPE 23 of 1976, order dated 14/2/1977	Cases of collective boycott involving trade associations
44.	Truck Operators Union	RTPE 32 of 1977, order dated 20/2/1978	
45.	Motor Merchants Association	RTPE 1 of 1979, order dated 8/8/1979	
46.	General Merchants Association	RTPE 19 of 1976, order dated 18/3/1977	

S. No.	Case	Reference	Description
47.	Association of Motion Picture Studios	RTPE 17 of 1985, order dated 8/4/1991	
48.	Retail and Dispensing Chemists Association, Bombay	RTPE 10 of 1984	
49.	Motor Lorry Owners and Operators Union (A.P.) and three other lorry owners' association	RTPE 97, 98 and 99 of 1989 and 402 of 1988, order dated 3/12/1990)	Allegation that four lorry owners at four places acting in concert in fixing freight rates, not allowing transport contractors to hire other lorries at existing market rates, and not allowing them to even place their own lorries and forcing the contractors to hire lorries from its members at higher rates. The Commission held that physical obstruction is not a RTP, it should be dealt under criminal offence. The Commission refused to believe that the respondents are forcing transport contractors to hire lorries from them. In the absence of clear-cut evidence, the Commission discharged the NOE
Cases before 1991: Collective Resale Price Maintenance [Section 33(1)(f), section 39, section 40]			
50.	RRTA vs Svadesi Mills Co. Ltd	RTPE 19 of 1974, order dated 30/1/1976	Respondents collectively known as 'Tata textile mills'. A standard agreement was entered into between respondents and each of a number of stockist. Clause 2 of the agreement declared, "the stockists shall at all times, sell cloths at prices not higher or lower than those prescribed by the Tata textile mills'. According to respondents this clause was drastically changed and circulated among the stockists where they were made free to sell at any prices lower than a stipulated maximum price limit. Commission passed a consent order stating that the clause should be modified to replace, 'the prices recommended by Tata textile mills or any of them to the

S. No.	Case	Reference	Description
			stockists shall be maximum prices and the stockists shall be free to charge prices lower than those prices'.
51.	Standard Mills Company Ltd and others	Case book on MRTP cases by Rajendra, page 502	Same judgment made in this case also, where textile mills of respondents were collectively known as Mafatlal group of mills.
52.	Phillips India Ltd and Others	RTPE 18 of 1975, order dated 18/6/	Collective resale price prohibited completely (cease and desist) in these cases
53.	Phillips India Ltd	RTPE 26 of 1975, order dated 25/7/1976	
54.	RRTA vs Crompton Greaves Ltd	Order dated 29/10/1976	
55.	Amco Batteries Ltd and others	RTPE 25 of 1976, order dated 8/5/1978	
56.	RRTA vs Electric Lamp Manufacturers (India) Pvt Ltd and Others	RTPE 12 of 1974, order dated 17/9/1984	Agreement among manufacturers or dealers of electric lamps and components. Main allegation was maintaining of resale price by the respondents. Respondents filed a writ petition before Bombay High Court objecting the institution of enquiry contending that the particulars furnished to them were insufficient. On the order of Bombay high court, RRTA furnished particulars demanded by them. The respondents filed an application under section 37(2) pleading that they have never indulged in any restrictive trade practices and assured the Commission that they will not do so in future. The Commission closed the inquiry without investigating into the matter.
Cases After 1991			
57.	American Natural Soda Ash	Order dated in 2002	Court held that MRTPC has no extra-territorial jurisdiction (details to be taken

S. No.	Case	Reference	Description
	Corporation (ANSAC) vs Alkali Manufacturers Association (AMAI) and others	(SC)	from CUTS' own records)
58.	DGIR vs Reliance Industries and others	RTPE 123 of 1989, order dated 31/5/2002	Cases of price parallelism
59.	DGIR vs Modi Alkali and Chemicals Ltd and others	RTPE 118 of 1994, order dated 1/3/2002	
60.	U.O.I & Others vs Hindustan Development Corporation and Others	Special leave petition 11897-11898 of 1992, order dated 15/4/1993	A case tried in the Supreme Court In this case three essential ingredients for cartel were identified: parity of prices; agreement by way of concerted action suggesting conspiracy; gain monopoly or restrict or eliminate competition Cartel not established
61.	DGIR vs Four Wheeler Nishan Owners Union and Others	RTPE 94 of 1990, order dated 8/5/2001	Respondents were restricting non-members from lifting goods of local trade and industry and were compelling non-members to hire vehicles from them at the prescribed freight rate which was maximum. The Commission passed a cease and desist order despite the gateways pleaded by respondents
62.	DGIR vs Indian Banks' Association and its constituent members	RTPE 106 of 1995, order dated 23/8/2001	Respondents allegedly formed a cartel with a view to high bank service charges. DGIR in its preliminary report reveals that the accusation of arbitrary increase of service charges may not be established since there have been an increase in cost of operation, but there is no doubt that all the banks are fixing bank charges collectively which impairs competition within the meaning of section 2(o)(ii) and section 33(1)(d) and (g) The RBI in its letter dated 8/9/1999 stated that though the present practice of fixing benchmark rates by IBA for services rendered by banks was consistent with a regime of

S. No.	Case	Reference	Description
			administered interest rate, in the current scenario of deregulation, the above practice is not consistent with the principles of competition among banks. So RBI directed IBA not to fix or advise any benchmark fees/service charges thereafter The Commission after observing RBI's direction did not find it relevant to investigate further into the matter.
63.	Standing Committee Association of State Road Transport Undertakings vs Karmobiles Ltd and others		Allegation of cartel by respondents and identical quotations for tenders But NOE issue under section 36A and 36B pertaining to UTP and not RTP as envisaged in section 2(o) and section 33(1)(d). Surprisingly, the two respondents do not produce same product! Commission dismissed the complaint