

110

T. R. NO. 110

# Technical Report

PATTERNS OF MRTPC JUDGEMENTS

by

Rakesh Khurana

&

Nikhilesh Dholakia

WP110



WP  
1976  
(110)

IIM  
WP-110



**INDIAN INSTITUTE OF MANAGEMENT  
AHMEDABAD**

PATTERNS OF MRTPC JUDGEMENTS

by

Rakesh Khurana

&

Nikhilesh Dholakia

T.R. No. 110  
April, 1976

Indian Institute of Management  
Ahmedabad

## PATTERNS OF MRTPC JUDGEMENTS

By  
Rakesh Khurana  
&  
Nikhilesh Dholakia

In its report submitted in 1964, the Mahalanobis Committee on Distribution of Income and Levels of Living found some evidence to the effect that industrial planning had been responsible for an increase in income disparities. The industrial structure and the concentration of economic power were believed to be the possible causes for this phenomenon. In pursuance of this report, the Monopolies Inquiry Committee was appointed in April 1964 "to enquire into the existence and effect of concentration of economic power in private hands." This Committee found that concentration of economic power did exist and indicated that this was caused by, inter alia, restrictive practices followed by manufacturers in the marketplace. These developments led to the passing of the Monopolies and Restrictive Trade Practices Act in 1969. The Monopolies and Restrictive Trade Practices Commission was appointed in August 1970 to administer this Act.

### Provisions of the Act

The MRTP deals with three basic issues:-

1. Concentration of economic power,
2. Monopolistic trade practices, and
3. Restrictive trade practices.

In this paper, judgements relating to restrictive trade practices are analysed. Restrictive trade practices are covered in Chapters 5 and 6 of the MRTP Act. Specifically, Section 33 (1), (a) to (1), pertain to the registerable agreements relating to restrictive trade practices. These provisions require the registration of all agreements entailing practices such as sole selling agency, full line forcing, exclusive dealing, discriminatory discounts, territorial restrictions, captive production agreements, etc. Extracts from the relevant section are reproduced in Appendix - I.

### Details of the Judgements Analysed

This paper presents an analysis of 29 restrictive trade practices (RTP) cases available to us which were disposed of by the Commission between 5-9-1972 and 27-10-1975. The list of cases is given in Appendix II. Of these 29, only one case was disposed of in 1972, none in 1973, four in 1974, and 24 in 1975.

We shall try to analyse the nature of applicants and respondents related to these 29 cases. We shall also look into the nature of allegations and try to examine if there are any systematic patterns in the allegations by product classification.

### Applicants and Respondents

A complaint may be initiated by the Registrar of Restrictive Trade Agreements if, upon examination of a particular agreement, the Registrar has grounds to believe that certain clauses of the agreement are restrictive. In some cases, the Director of Investigation of the MRTP Commission files a complaint based upon preliminary evidence generated from investigation carried out in response to complaints by consumers, dealers, or from an autonomously initiated inquiry. The MRTP Act also provides for a complaint to be initiated by an association of dealers, consumers or users if such an association has grounds to believe that certain practices followed by manufacturers or other dealers are restrictive. Table 1 shows the distribution of cases by applicants. The majority (68%) of the cases have been initiated by the Registrar of Restrictive Trade Agreements. The Director of Investigation of MRTPC has initiated complaints in seven out of 29 cases studied by us. One case each has been filed by a dealer association and an association of users. It appears that the facility which the Act gives the users and dealers associations to initiate a complaint is only sparsely used. Furthermore, there is no complaint filed by an association of ultimate consumers against dealers or manufacturers.

The majority (58%) of respondents in the cases studied are individual manufacturers (See Table 2). In 24% of the case studied, a group of manufacturers are named as respondents. In three out of the 29 cases, a manufacturer together with some of his dealers has been named as a respondent. There is one case each when a group of dealers, or a marketer and a contractual producer supplying to the marketer have been named as respondents. From the cases studied it appears to us that the provisions of the Act have essentially been directed against restrictive trade agreements between manufacturers and dealers. Restrictive trade practices directly affecting the dealer-consumer relationship or the manufacturer-consumer relationship have not been the subject of investigation in these 29 cases.

Table: 1 : Distribution of Cases by Applicants

Sl.No.	Applicant	No. of cases	%age of total
1	Registrar of Restrictive Trade Agreements	20	68%
2	Director of Investigation, MRTPC	7	24%
3	Dealer Association	1	4%
4	Consumer/User Association	1	4%
Total		29	100%

Source: MRTPC Judgements.

Table: 2 : Distribution of Cases by Nature of Respondent Cited in  
RTP Allegations

S.No.	Nature of Respondent	No. of cases	%age of total
1	Individual manufacturer	17	58%
2	Group of manufacturers	7	24%
3	A Manufacturer and dealer(s)	3	10%
4	Group of Dealers	1	4%
5	Marketer & Contractual Producer	1	4%
Total		29	100%

Source: MRTPC Judgements.

### Nature of Allegations

We have tried to categorise the allegations cited in the complaint into four major categories:

1. Restrictions on price, including minimum resale price and resale price maintenance;
2. Restrictions on products, including tied sales and full line forcing;
3. Restrictions on distribution, including exclusive dealership, territorial restrictions, discriminatory discounts, and display requirements; and
4. Restrictions on manufacture, including captive production agreements.

A list of specific restrictive practices falling within each of these categories along with the number of times these practices were alleged is given in Appendix III. It should be noted that the classification given in Appendix III has been developed by us for analytical purposes and does not correspond exactly to the provisions of the Act.

A total of 93 restrictive trade practices were alleged in the 29 cases studied by us. Of these 93 alleged RTPs, 46 allegations (or 49%) pertain to restrictions on distribution (see Table - 3). The next major category of allegations pertains to restrictions on price. This category accounted for 23% of the alleged restrictive practices. Restrictions on product accounted for 17% of the alleged RTPs., and those on manufacture accounted for 8% of the alleged RTPs. In three of the 29 cases, the allegations were not specified. Within the category of restrictions on price, the maximum number (16 out of 21) pertained to specific resale price maintenance. Of the various restrictions on product, the restrictions on quantity to be bought and full line forcing were alleged most frequently. Each of these restrictions was alleged six times out of a total of 16 allegations pertaining to product-related restrictions. Of the 46 allegations pertaining to restrictions on distribution, the most frequently alleged practices were: discriminatory discounts (15), exclusive dealership (12), and territorial restriction (11). Of the alleged restrictions on manufacture, three pertained to captive production agreements and four to restriction on manufacture and sales of competing products. The detailed breakup of the specific restrictions and the frequency with which they were alleged in the 29 cases studied are given in Appendix - III.

Table: 3 : Distribution of Allegations by Nature of RTP

S.No.	Nature of RTP	No. of complaints	%age
1	Restriction on Price	21	23%
2	Restriction on product	16	17%
3	Restriction on distribution	46	49%
4	Restriction on manufacture	7	8%
5	Not specified	3	3%
Total		93	100%

Source: MRTPC Judgements



### Variations in Allegations by Product Classification

Of the 29 cases studied, two cases were such that the application was rejected for lack of evidence. Of the remaining 27 cases, 15 pertained to industrial products, five to consumer durables and seven to consumer nondurables (see Table 4). Of the 93 alleged restrictive practices, 55 pertained to industrial products, 14 to consumer durables and 24 to consumer nondurables. The average number of allegations per case works out to be 3.7 for industrial products, 2.8 for consumer durables, and 3.4 for consumer nondurables. Although at this stage it might appear that there are some differences in the alleged number of restrictive practices by product classification, we would like to introduce a note of caution that such interpretations are not warranted by the limited number of cases decided so far in each product category.

Table 5 shows the distribution of alleged RTPs by products classifications. It appears that the patterns of alleged RTPs are not very different in the three product categories, although restrictions on distribution occurred somewhat more frequently in the industrial category than in the other two categories.

### Categorisation of Orders Passed

Table 6 shows the nature of the decisions in the 29 cases studied. In the overwhelming majority of the cases (72%), the Commission ordered the respondent(s) to cease and desist from all the alleged restrictive practices. In one case no order was passed as the respondent agreed to modify the contract after a complaint was launched. In two out of the 29 cases, the application was rejected by the Commission because of insufficient evidence. Again, only in two cases, the order passed by the Commission did not require the cessation of all the alleged restrictive practices. In one case, the respondent was able to successfully argue that certain allegedly restrictive practices were necessary to protect the brand name and image of the product. The Commission accepted this argument and allowed the respondent to place a restriction on the contractual producer that the contractual producer should not manufacture and sell the product under the respondent's brand name. In the other case, the respondent was able to retain (in a modified manner) the exclusive dealership clause in his agreement on the basis of the argument that such a restriction was necessary to maintain the service level to the ultimate buyers.

### Conclusions

The cases disposed of and available to us so far are not sufficient to make any definitive assessment regarding the patterns of MRTTP judgement. However, even in these 29 cases, it is possible to discern certain interest-

Table: 4 : Distribution of Allegations by Product Classification  
(Industrial, Consumer Durable, Consumer Nondurable)

S.No.	Product Classification	No. of cases	Allegations		Avg. No. of allegations per case
			No.	%age	
1	Industrial	15	55	59%	3.7
2	Consumer Durable	5	14	15%	2.8
3	Consumer Nondurable	7	24	26%	3.4
Total		27	93	100%	3.4

Source: MRTPC Judgements.

Table: 5 : Distribution of Allegations by Nature of RTP and by Product Classification (Industrial, Consumer Durables, Consumer Non-durables)

S. No.	Product Classification	Nature of RTP Alleged											
		Restrictions on price		Restrictions on products		Restrictions on distribution		Restrictions on manufacture		Not Specified		Total	
		No.	(%age)	No.	(%age)	No.	(%age)	No.	(%age)	No.	(%age)	No.	(%age)
1	Industrial	11	(20%)	9	(17%)	29	(53%)	3	(5%)	3	(5%)	55	(100%)
2	Consumer Durable	4	(29%)	2	(14%)	6	(43%)	2	(14%)	0	(0%)	14	(100%)
3	Consumer non-durables	6	(25%)	5	(21%)	11	(46%)	2	(8%)	0	(0%)	24	(100%)
Total		21	(23%)	16	(17%)	46	(50%)	7	(8%)	3	(2%)	93	(100%)

Source: MRTPC Judgements

Table: 6 : Categorisation of Orders Passed

S.No.	Nature of Decision	Cases	
		No.	%age
1	No order (Company agreed to modify contract after complaint launched)	1	4%
2	Application rejected because of insufficient evidence	2	7%
3	Order requiring cessation of all alleged practices	21	72%
4	Order requiring modification/cessation of some of the alleged practices	2	7%
5	Case being contested	3	10%
Total		29	100%

Source: MRTPC Judgements.

ing trends. Firstly, all the cases pertained to relationships between manufacturers and dealers, or marketers and their contractual producers. Possible restrictive practices affecting the final consumer directly, such as tied sales of packaged goods and offering of discriminating discounts to consumer, have not been investigated so far. Secondly, the majority of the cases have not been strongly defended by the respondents. In fact, the text of the large majority of judgements indicates that the respondents have not attempted to put forth arguments supporting the economic or marketing rationale of the alleged restrictive clauses cited in the complaint. Only in two of the 29 cases, the respondent has successfully made use of the "public interest" gateways provided in the Act. Even in these cases, the respondents were able to defend only one of the several alleged restrictive practices.

The overall trend of these 29 judgements would seem to indicate that the control exercised by the manufacturers on dealers through legal agreements has been somewhat relaxed. It would, however, be of interest to investigate whether the actual relationships in the marketplace have undergone any change as a result of the orders passed. It is too early to say what impact this apparent transfer of power from manufacturers to distributors would have on the market structure, performance, and conduct. It would be of interest to examine the MRTPC orders as and when they are available and analyse emerging patterns. A beginning has been made in this direction with the creation of an information system for coding, storing and retrieving the pertinent data regarding applicants, respondents, nature of allegations, nature of decisions and other useful information. We hope to gain several useful insights regarding the impact of the MRTP Act on market structure and marketing practices as the data base for this information system expands.

Appendix - I

## Section 33: Registrable agreements relating to restrictive trade practices:

(1) Any agreement relating to a restrictive trade practice falling within one or more of the following categories shall be subject to registration in accordance with the provisions of this Chapter, namely:

- (a) any agreement which restricts, or is likely to restrict, by any method the persons or classes of persons to whom goods are sold or from whom goods are bought;
- (b) any agreement requiring a purchaser of goods, as a condition of such purchase, to purchase some other goods;
- (c) 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;
- (d) any agreement to purchase or sell goods or to tender for the sale or purchase of goods only at prices or in terms or conditions agreed upon between the sellers or purchasers;
- (e) any agreement to grant or allow concessions or benefits, including allowances, discount, rebates or credit in connection with, or by reason of, dealings;
- (f) any agreement to sell goods on condition that the prices to be charged on re-sale by the purchaser shall be the prices stipulated by the seller unless it is clearly stated that prices lower than those price may be charged;
- (g) any agreement to limit, restrict or withhold the output or supply of any goods or allocate any area or market for the disposal of the goods;
- (h) any agreement not to employ or restrict the employment of any method, machinery or process in the manufacture of goods;
- (i) any agreement for the exclusion from any trade association of any person carrying on or intending to carry on, in good faith the trade in relation to which the trade association is formed;
- (j) any agreement to sell goods at such prices as would have the effect of eliminating competition or a competitor;

## Appendix - I (contd.)

- (k) any agreement not hereinbefore referred to in this section which the Central Government may, by notification in Official Gazette, specify for the time being as being one relating to a restrictive trade practice within the meaning of this sub-section pursuant to any recommendation made by the Commission in this behalf;
- (1) any agreement to enforce the carrying out of any such agreement as is referred to in this sub-section.
- (2) The provisions of this section shall apply, so far as may be, in relation to agreements making provision for services as they apply in relation to agreements connected with the production, supply distribution or control of goods.
- (3) No agreement falling within this section shall be subject to registration in accordance with the provisions of this Chapter if it is expressly authorised by or under any law for the time being in force or has the approval of the Central Government or if the Government is a party to such agreement.

Appendix - II  
MRTPC CASES & JUDGEMENTS

Sl. No.	Case No.	Date of disposal
1	Hindustan Pilkington Glass Works Ltd. and others (2/72)	14-2-1975
2	Cadbury Fry India Ltd. (3 of 1972)	5-9-1972
3	National Tobacco Co. of India Ltd. (4 of 1972)	4-10-1974
4	Groz Beckert Saboo Ltd. (5 of 1972)	13-2-1974
5	American Universal Electric India Ltd. (7 of 1972)	1-11-1974
6	Union Carbide Ltd. (1 of 1973)	27-12-1974
7	Tata Engg. and Locomotive Co. Ltd. (1 of 1974)	25-7-1975
8	Indian Tube Co. (1A/74)	25-2-1975
9	Carona Sabu Co. Ltd. (2 of 1974)	21-3-1975
10	Bata India Ltd. (3 of 1974)	23-9-1975
11	Tata Oil Mills Co. Ltd. (9 of 1974)	23-7-1974
12	Mysore Kirloskar Ltd. and Mahindra and Mahindra Ltd. (14A of 1974)	4-8-1975
13	Colour Chem. Ltd. and Others	14-1-1975
14	Modi Yarn Mills Co. Ltd. (23 of 1974)	18-2-1975
15	Khira Steel Works Pvt. Ltd. (33 of 1974)	4-8-1975
16	Chandan Metal Products Pvt. Ltd. (34 of 1974)	8-9-1975
17	Steel-Age Industries Ltd. (1 of 1975)	21-8-1975
18	Delhi Automobile Ltd. Pvt. (2 of 1975)	29-8-1975
19	Bajaj Electricals Ltd. (6 of 1975)	29-8-1975
20	All India X-Ray & Electro-Medical Trade Assn. (3 of 1975)	19-9-1975
21	Coates of India Ltd. and others	12-9-1975
22	Ex-Cell-O India Ltd. (10 of 1975)	4-8-1975
23	Singer Sewing Machine Co. Ltd. (21 of 1975)	26-9-1975
24	Atul Products and others (18 of 1974)	17-1-1975
25	All India Motor Transport Congress Vs Good Year (26 of 1974)	16-2-1975
26	Singer TVS Ltd. (31 of 1974)	17-1-1975
27	Raymond Woolen Mills	25-2-1975
28	Godrej and Boyce (17 of 1975)	27-10-1975
29	Godrej and Boyce (22 of 1975)	27-10-1975



## Appendix - III

Detailed Categorisation of RTPs\*

<u>Code</u>	<u>Restriction</u>	<u>No. of alleged Practices</u>
<u>RESTRICTION ON PRICE</u>		
100	Price restriction (general)	-
101	Minimum resale price	-
102	Specific resale price	16
103	Restriction on discounts which can be given down the channel	-
104	Restriction on service charge	-
105	Restriction on accessory price	-
106	Restriction on terms of sale down the channel	1
107	Price fixing by collusion	4
199	Other price restriction	-
<u>RESTRICTIONS ON PRODUCT</u>		
200	Product restriction (general)	-
201	Tied sales of two or more products	3
202	Tied sales of product and service	1
203	Restriction on inventory to be kept	-
204	Restriction on quantity to be bought	6
205	Full line forcing	6
299	Other product restriction	-
<u>RESTRICTIONS ON DISTRIBUTION</u>		
300	Restriction on distribution (general)	-
301	Exclusive dealership (no other product or unspecified)	12
302	Exclusive dealership (no competing line)	1
303	Territory restriction	11
304	Discriminatory discounts	15
305	Restriction on number of salesmen	-
306	Restriction on number/type of subdealers	2
307	Minimum display requirement	1
308	Refusal to sell	3
309	Restriction on place of delivery acceptance	1
399	Other distribution restriction	-

\*This categorisation is not as per the Act but has been developed by the authors for analytical purposes.

RESTRICTIONS ON MANUFACTURE

400	Restriction on manufacture (general)	-
401	Captive production agreement	3
402	Restriction on manufacture and sales of competing products	4
499	Other restriction on manufacture	-

ANY OTHER RESTRICTIONS

500	Any other restriction	-
-----	-----------------------	---

NOT SPECIFIED

600	Not specified	3
-----	---------------	---