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CONCENTRATION OF ECONOMIC POWER &
RESTRICTIVE TRADE PRACTICES:
ROLE OF MRTP ACT

by

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CONCENTRATION OF ECONOMIC POWER AND RESTRICTIVE TRADE

PRACTICES: ROLE OF MRTP ACT

Introduction

Historical Background

Monopolies and Restrictive Trade Practices are not new. The word monopoly was first used in the year 347 B.C. in Aristotle's Politics in a discussion of people who cornered the market by buying up all the oil presses and all iron, selling them later for a high profit at a time of urgent demand. Code of Hamurabi (2100 B.C.), the earliest known code of business practices contained references to monopolistic practices. Few centuries B.C., in India regulations had been enacted prohibiting making of cartels to jack up the prices of commodities, and prescribing penalties for breaches of such regulations.

In more recent times, the English Parliament in year 1623, passed the statute of Monopolies forbidding the grants of exclusive rights of trade by the crown. In America, the Massachusetts colonial legislature decreed in year 1641 that "there shall be no monopolies granted or allowed amongst us but of such new inventions as are profitable to the country, and that of a short time." In 1890, USA Congress passed the Sherman Anti-trust Act, prohibiting all contracts, combinations and conspiracies in restraint of trade as well as all monopolies and attempts to monopolise. The Sherman Anti-trust Act has been a model for 'Anti-trust' legislation passed by a number of other countries. To Supplement Sherman Anti-trust Act, the USA Congress passed in the year 1914, the Clayton Act, prohibiting price discrimination, tying contracts whose effect may be "to substantially lessen competition." In 1974 again the US Congress passed the Federal Trade Commission Act to investigate and prevent practices of 'unfair methods of competition.' In UK, the Monopolies (Inquiry and Control) Act was passed in the year

1948, creating the Monopolies and Restrictive Practices Commission to investigate matters referred to it by the Board of Trade. This commission was to declare such practices unlawful as were found to be against the public interest. The UK Act was a parent to the Indian Monopolies and Restrictive Trade Practices Act passed in 1969.

Some Issues

Thus we see that the subject of Monopolies and Restrictive Trade Practices has been tackled by the Governments since time immemorial. Whatever business and its concomitant power crackled, the government had to think of ways by which the detrimental aspects of business power could be mitigated. However, various communities have found it difficult to exactly define the concept of monopoly. Some say that a monopoly is said to exist when a manufacturer/trader has the entire business of a commodity in his hands. This however, raises the question of what is a commodity. In most cases, leaving aside the basic commodities for human existence, one can find a substitute whether perfect or less than perfect.

The issue of the extent of control of monopoly by public authorities has also been constantly debated in developing as well as developed countries. It is usually granted that in a number of areas of industrial activity, natural selection and open market competition leads to oligopolistic/monopolistic competition. However, it is feared that the restraints on such corporations or houses might dampen the industrial growth.

Most writers tend to agree that monopoly (productwise) has the effect of reducing consumer choice and increasing the price of the product.

The major issues which does arise are (a) whether to disallow monopolies (productwise) or large concentrations of economic power in few hands per se, (b) or to curb monopoly's harmful effects whenever they are detrimental to public interest.

Developments leading to enactment of MRTP Act in India

The Government of India after independence has been concerned with the question of concentration of economic power almost from the very beginning. The Constitution of India, enacted in 1950 in its Directive Principles of State Policy stated that the State shall, in

particular, direct its policy towards securing that the operation of the economic system does not result in concentration of wealth and means of production to the common detriment.

The Industrial Policy Resolution (April 1956) drawing its cues from the directive principles emphasized the need for prevention of private monopolies and concentration of economic power. This resolution also stated that the widest diffusion of ownership and management of private industry should be encouraged.

The Industrial Development and Regulations Act required the 'scheduled industries' to obtain licenses for substantial expansion and establishment of new industrial undertakings. Thus most businessmen had to obtain license from the Government if the investment envisaged for substantial expansion and establishment of new undertakings was above a particular monetary limit.

India also chose the path of planned economic development through the device of five year plans. The plan documents estimated the capacities required for various industries and the licenses granted to entrepreneurs were guided by such targets and plans. Very soon in various quarters, the questions were raised as to who had benefited from such developmental efforts and whether the licensing system had fostered industrial development.

In August 1959, the Prime Minister Pandit Jawaharlal Nehru while moving the resolution in Parliament for the consideration of a draft outline of the third five year plan referred to the question of who had benefited from the additional incomes generated in the country as a result of developmental efforts. He mentioned that it was desirable to have the matter examined by an Expert Committee.

To pursue the above suggestion, the Planning Commission in October 1960 appointed the Committee on Distribution of Income and Levels of Living. The terms of this Committee, commonly known as Mahalanobis Committee included, "to ascertain the extent to which the operation of economic system has resulted in the concentration of wealth and means of production." This Committee in its report submitted in February 1964 observed among its other conclusions, "that the working of the planned economy has contributed to the growth of big companies in Indian Industry." The Committee also observed that despite all the countervailing measures taken, the concentration of economic power in the private sector was more than what can be justified a considered necessary on functional grounds. The Committee also pointed out the limitations of data availability and suggested that more comprehensive and detailed information regarding various

aspects and ramifications of economic power and controls for the private sector should be collected.

In pursuance of the above suggestions, Government in 1964 appointed the Monopolies Inquiry Commission (MIC) to enquire into the extent and effect of concentration of economic power in private hands and the prevalence of monopolistic and restrictive practices in important sectors of economic activity. MIC was also asked to identify the factors responsible for such concentration and Monopolistic and Restrictive Practices. MIC was asked to suggest such legislative and other measures that might be considered necessary to protect essential public interests.

One of the major conclusions of MIC was that "the planned economy which the Government decided to adopt for the country as the quickest way to achieve industrialisation on the right lines has proved to be a potent factor for further concentration." MIC suggested that a Monopolies and Restrictive Trade Practices Act should be enacted to control monopolistic and restrictive trade practices.

The reports of the Mahalanobis Committee and MIC generated very serious discussion regarding the role played by industrial policy in concentration of economic power. The Planning Commission in July 1966 requested Dr R K Hazari to conduct a study to review the operation of the industrial policy over previous two plan periods. One of the major conclusions of Dr Hazari was that there was an increase in concentration of economic power vested in 20 business groups between 1951 and 1958.

The Rajya Sabha in May 1967 debated Hazari's report which led to the appointment of Industrial Licensing Policy Inquiry Committee (ILPIC). The Committee was appointed to enquire into the working of industrial licensing system with a view to ascertain whether the larger industrial houses in fact secured undue advantages over the other applicants in the matter of issue of such licenses. ILPIC decided to treat 75 houses identified by MIC (assets not less than Rs.5 crores) as 'large industrial houses'. ILPIC also decided to add large independent companies with assets above Rs.5 crores for examination. ILPIC submitted its report in July 1969. Among its other conclusions the committee stated that "the licensing system had worked in such a way as to provide disproportionate share in the newly licensed capacity to a few concerns belonging to the large industrial sector. The maximum benefit of this went to a few larger houses." The report also stated that the licensing system was not properly organised for the purpose it was expected to achieve. ILPIC suggested continuation of licensing as a policy instrument subject to laying down specific guidelines for industrial policy. The committee added that planning should be refashioned to ensure the formulation of

detailed industrial plans for the core sector and that a Monopolies Commission should be constituted. The above developments, studies and committee recommendations led to enactment of Monopolies and Restrictive Trade Practices Act in year 1969.

M RTP Act

The preamble of the MRTP Act states that it is:

"An Act to provide that the operation of the economic system does not result in the concentration of economic power to the common detriment, for the control of monopolies, for the prohibition of monopolistic and restrictive trade practices and for matters connected therewith or incidental thereto."

The jurisdiction of the MRTP Act extends to whole of India except the State of Jammu and Kashmir. The Monopolies and Restrictive Trade Practices Commission was constituted in August 1970.

The MRTP Act has two distinct parts:

- i) control of restrictive and monopolistic practices, and
- ii) to ensure that concentration of economic power does not take place to the common detriment.

Powers of MRTPC are mandatory for (i) and are of recommendatory nature for part (ii). Part (ii) deals with substantial expansion, establishment of new undertakings, merger/amalgamations, acquisition/take over, and division of undertakings. The MRTP Act defines the undertakings for which all proposals of Part (ii) would have to be examined under the purview of MRTP Act as follows:

- a) Undertakings whose assets, or its own assets together with its inter-connected undertakings are less than Rs.20 crores;
- b) Dominant undertakings - defined as undertakings which on their own or along with their inter-connected undertakings have assets of not less than Rs.1 crore. Dominant undertakings are those which have more than one-third market share.

All undertakings defined above are required to take permission of Central Government under the MRTP Act before substantial expansion, establishment of new undertakings, merger or amalgamation, and acquisition or take over.

Comments on the working of MRTP Act

Just after the Monopolies and Restrictive Trade Practices Bill was introduced in the Parliament, Oza commented that nowhere in draft of the Bill, which deals with the concentration of economic power, was an attempt made to expressly or implicitly define as to what is meant by concentration of economic power.¹

In October 1973, Economic and Political Weekly said that Monopolies Commission had reached a dead end. It said that there was absence of a clear-cut approach to the question of curbing the growth of large houses. It went on to add that the Commission had become sanctioning authority for further expansion of the big houses.²

In November 1973, Economic and Political Weekly again commented on the functioning of MRTP Commission and described it as a scape-goat for Government inaction.³ In February 1974, Dr Paranjape, a member of the MRTP Commission wrote "In Defence of the MRTP Act."⁴ Commenting on the criticism that the Act had come in the way of industrial growth, Paranjape mentioned that "those who have made this charge were giving the Commission too large a credit. The Commission has had little impact, for good or bad."

In May 1974, Economic and Political Weekly again commented on the functioning of MRTP Act and pointed out the case of Hindustan Lever

¹ Oza, A.N. "Monopolies and Restrictive Trade Practices Bill," Economic & Political Weekly, January 1969, pp. 91-102.

² "Monopolies Commission at a dead end," Economic & Political Weekly, October 20, 1973, pp. 1901-1902.

³ "Monopolies Commission: The Scape-Goat," Economic & Political Weekly, November 17, 1973, pp. 2033-2034.

⁴ Paranjape, H.K. "In Defence of the MRTP Act," Chartered Secretary, Vol. 3: 11, February 1974, pp. 678-679.

characterising it as "Monopolies growth with Government blessings."⁵ In June 1974, Commerce wrote "MRTP Act needs new look."⁶ It said that Government should lay down guidelines instead of checking each case related to concentration of economic power. It added that the "Commission should pay greater attention to the monopolistic and restrictive trade practices on which the interest of consumers who are being economically pulverised day by day depend."

In November 1974, Pandey,⁷ Secretary of MRTP Commission wrote that "most of the provisions of the MRTP Act are designed to safeguard public interest and much of the success of this legislation depends upon the interest that the public or consumers in general take in its working." In January, 1975, Narahari Rao⁸ commented upon the imperfections in MRTP Act especially in terms of the definitions of the dominant undertakings, monopolistic undertakings, etc. He called for amending the Act to avoid definitional problems.

In August 1976, Justice J L Nain, on the eve of his retirement after Chairmanship of MRTP Commission for three years, called for amendments in the MRTP Act.

Thus, there have been numerous comments on functioning of the MRTP Act, but to date no comprehensive study has been conducted to evaluate the impact of MRTP Act. In August 1977, Government of India constituted an eleven member high powered Expert Committee under the Chairmanship of Justice Shri Rajinder Sachar, to review the Companies Act and the MRTP Act. Three of the terms of the reference of the Committee related to MRTP Act are:

- i) What improvements, if any, are required to be made in the present administrative structure and procedures regarding the enforcement of the provisions of the Companies Act, 1956 and the Monopolies and Restrictive Trade Practices Act, 1956;

⁵ "Monopolies Growth with Government Blessings," Economic & Political Weekly, May 18, 1974.

⁶ "MRTP Act needs New Look," Commerce, June 8, 1974, pp. 1826-1829.

⁷ Pandey, T.N. "MRTP Act and the Consumer," Financial Express, November 20, 1974.

⁸ Narahari Rao, C.V. "Imperfections in MRTP Act," Economic Times, January 3, 1975.

- ii) What changes are required to be made in the Monopolies and Restrictive Trade Practices Act, 1969 in the light of the experience gained in the administration and operation of the said Act; and
- iii) Any other matter incidental or ancillary to the administration of the Companies Act, 1956 and Monopolies and Restrictive Trade Practices Act, 1969 having regard to the growth and development of trade, commerce and industry.

It is in this context that an attempt has been made in this study to evaluate the impact of MRTPA since its inception till August 1977.

Methodology

The major objectives of this research were:

1. to evaluate the impact of MRTPA, on the growth of large houses;
2. to study the impact of MRTPA in relation to guiding of investment in core industries;
3. to examine the relative impact of MRTPA on approvals of proposals for different product categories and industrial categories.
4. to analyse the reasons given by applicants and government for approving the proposals; and reasons given by government for rejecting the proposals;
5. to analyse the reasons given by MRTPC for recommending approval or rejection of various proposals;
6. to analyse the conditions of government order and their relationship to curbing of concentration of economic power to common detriment; and
7. to analyse the impact of MRTPA in curbing Restrictive Trade Practices and Monopolistic Trade Practices.

Data sources

Basic data sources for accomplishing the above research objectives were considered and it was decided to follow content-analysis approach to analyse the orders of the Government in relation to substantial expansion, establishment of new undertakings, merger/amalgamation and acquisition/take over ("concentration of economic power"). The Department of Company Affairs was approached to get copies of the Government Orders and reports of the MRTP Commission. Since the ~~cooperation~~ from Department of Company Affairs was not forthcoming, it was decided to analyse the orders available in the official publication of the Department of Company Affairs, namely, Company News and Notes. For the judgements of MRTP Commission regarding Restrictive Trade Practices enquiries, the Commission's office was approached and all the orders passed by the MRTP Commission till August 1976 were obtained.

The orders of government in relation to 'concentration of economic power' passed since the inception of MRTP Act till August 1977 were collected for analysis. 156 Government orders for substantial expansion, 125 orders for establishment of new undertakings, 24 orders for acquisition/take over and 12 orders for merger/amalgamation were available for analysis. The Central Government since the inception of MRTP Act till November 1976 had passed 272 orders for substantial expansion, 125 orders for establishment of new undertakings, 37 orders for acquisition/take over and 24 orders for merger/amalgamation. Thus the sample of orders available for the present study was a fair share of the total number of orders passed by the Government.

To seek opinions and comments of respondents involved in the restrictive trade practices cases, a questionnaire was sent to the Chairman/Managing Directors of various companies. A total of 79 questionnaires were sent. In spite of repeated reminders and requests, only one filled-up questionnaire was sent by respondents. Further field work in relation to restrictive trade practices enquiries which was intended to be done after receipt of questionnaires could not thus be attempted.

Some major conclusions

In this study orders of the Government regarding 'concentration economic power' have been analysed. This analysis has been done and reported for Indian and Foreign Undertakings, Large, Large and Dominant, and Dominant Undertakings. The analysis has also been done for the

disposal of proposals by product classification (consumer, consumer durable, industrial etc.) and by industrial classification (corresponding to the Industrial Development and Regulation Act schedules). The arguments of applicants and government for approving the proposals, and MRTPC Commission for recommending the proposals have also been analysed. Arguments of objectors, Government and MRTPC for rejecting the proposals also have been analysed. The conditions subject to which the MRTPC Commission recommended the proposals and the conditions laid down by government subject to which the approvals were granted have been reported and analysed. We have assessed the overall impact of MRTPC Act in relation to curbing of concentration of economic power to common detriment, curbing the restrictive and monopolistic trade practices.

The following are some of the major conclusions related to proposals approved and rejected, investment approved and rejected for various houses as well as the net impact of MRTPC Act on both large and dominant business houses. The overall position regarding the judgement of MRTPC Commission in relation to restrictive trade practices and monopolistic trade practices have also been reported.

Overall impact of MRTPC Act in relation to concentration of economic power

The following conclusions are for proposals of substantial expansion and establishment of new undertakings put together:

1. There were 281 proposals, out of which 183 proposals were approved, 19 were partially approved and 79 (28.1%) were rejected. These 281 proposals involved an investment of Rs.2164,26 lakhs, out of which Rs.173,760 lakhs was approved and Rs.357,31 lakhs was rejected. There was a partial rejection of Rs.6435 lakhs.
2. Top '10' houses had 91 proposals involving an investment of Rs.1173,16 lakhs out of which 19.7% investment was rejected. Top '10' houses accounted for 54.2% of the Investment Applied For (IAF) by all undertakings.
3. Houses ranked '11-20' had 39 proposals which involved an investment of Rs.1173,16 lakhs out of which 19.7% investments was rejected. Top '10' houses accounted for 54.2% of the IAF by all undertakings.
4. Top '20' houses had 130 proposals involving investment of Rs.1282,22 lakhs, out of which 19.9% was rejected. Top '20' houses accounted for 59.2% of the IAF by all undertakings.

5. '54' other large houses had 120 proposals involving an investment of Rs.667,53 lakhs, out of which Rs.577,52 lakhs was approved and Rs.9001 lakhs (13.5%) was rejected. These '54' other large houses accounted for 30.8% of the total IAF by all undertakings. If the data for shipping houses namely Chowgules, Bhiwandiwalla, Salgaocar, V.S. Dempo, and Oil India (a Government of India undertaking) is deducted, then '49' other large houses had an investment of Rs.349,01 lakhs, out of which Rs.9001 lakhs (25.8%) was rejected. This percentage of investment figure was one-and-half times of that of the investment rejected percentage of Top '20' houses.

Acquisition/Take over

Since the inception of MRTTP Act till November 1976, Government had received 62 proposals for acquisition/take over, 20 of which were withdrawn, 30 were approved and 7 were rejected. Only 4 cases have been referred to MRTTPC, 3 in 1972, and 1 in 1973. No application was referred to MRTTPC after 1973.

For our study 24 orders of the Government were available for analysis. Out of these 24 orders, 19 were approved, 2 were partially approved, and 3 were rejected. Out of our sample, 2 proposals were referred to MRTTPC, which recommended approval for both of them. However, one of these two proposals was subsequently rejected by the Government, since the company did not accept the prior conditions subject to which the Government was inclined to approve the application.

From the above analysis it is evident that the role played by the MRTTPC in evaluating the proposals for acquisition/take over has been minimal.

Merger/Amalgamation of undertakings

Since the inception of the Act till November 1976, the Government has received 32 applications, out of which 6 were withdrawn, 21 were approved and 3 were rejected. The 3 applications rejected by the Government were in the year 1971. None of the applications for merger or amalgamation has been rejected by the Government after the year 1971. None of the applications for merger or amalgamation has been rejected by the Government after the year 1971.

Four cases were referred to MRTTPC till 1973. No case was referred to the Commission after 1973.

12 orders of Government for merger or amalgamation were available for analysis in this study. All these 12 proposals were approved. None of the cases of our sample were referred to MRTPC.

Division of Undertakings

The first case of division of undertaking was referred by the Government to MRTPC in May 1974, in case of Jiyajeerao Cotton Mills Limited (a Birla Group undertaking). The Government was of the 'opinion' that the functioning of the undertaking was detrimental to public interest and asked the MRTPC to enquire into the case and recommend the division of the undertaking if it was expedient in the public interest. The undertaking filed a writ petition in the High Court of Delhi and got the proceedings stayed before MRTPC.

The Government referred the second case for division of undertaking in December 1975 to MRTPC involving 3 companies. This case is also pending before MRTPC.

Growth of Top '20' Large Houses under the MRTAP Act

The following conclusions are related to the disposals under the MRTAP Act regarding 'concentration of economic power' (substantial expansion, establishment of new undertakings, merger/amalgamation, acquisition/takeover put together).

1. Top '20' houses made 148 proposals under the MRTAP Act, out of which 34 (23%) were rejected. The top '10' houses made 102 proposals, out of which 28 (17.15%) were rejected. Thus, the number of proposals rejected for top '10' houses was less than the number of proposals rejected for houses ranked '11-20'.
2. Some of the top '10' houses applied for a much larger percentage of the IAF as compared to their percentage of the share in the total assets of top '20' houses as of year 1974. These houses were: Birla (32.3% vs. 18.73%), JK Singhania (10.5% vs. 4.78%), Scindia (9.1% vs. 3.88%), ACC (14.7% vs. 3.72%), Bangur (6.8% vs. 4.22%) and Kirloskar (3.89% vs. 2.91%). The houses which got substantially higher investment approved vs. their share in top '20' assets were: Birla (26.6% vs. 18.73%), JK Singhania (11.5% vs. 4.78%), Scindia (11.4% vs. 3.88%), ACC (18.5% vs. 3.72%), Bangur (6.9% vs. 4.22%) and Kirloskar (3.4% vs. 2.91%).

3. Some of the houses which had substantially less investment approved versus their share in the top '20' assets were: Tata (9.4% approved vs. 11.99% share in top '20' assets), Mafatlal (1.4% vs. 5.9%), Thapar (1.3% vs. 4.30%).
4. Top '10' houses applied for 91.5% of the top '20' investment applied for and got exactly the same percentage, namely 91.5% investment approved as percentage of the top '20' investment approved.
5. The House of Birla, JK Singhania, Scindia and ACC accounted for as much as 67.8% of the investment approved for all the top '20' houses, the house of Birla alone accounted for as much as 26.6% of the top '20' investment approved.
6. Top '10' houses accounted for approximately 50% of the investment approved for all the undertakings under MRTTP Act. This analysis suggests that since the top '10' houses account for such a large percentage of total investment applied for and approved, may be the approvals under MRTTP Act should be required only for the top '10' houses and not for the other houses most of whom proposed and got fairly small investment approved as compared to the top '10' houses.
7. As compared to the assets of various houses in 1969 at the time of promulgation of MRTTP Act, a number of houses got more than 100% of their asset base approved under the MRTTP Act. These houses were: Scindia (166.88%), ACC (154.78%), and JK Singhania (143.73%).
8. In terms of investment approved for substantial expansion and establishment of new undertakings the houses were ranked as follows:

Birla (Rs.273,11 lakhs), ACC (Rs.188,78 lakhs), JK Singhania (Rs.117,78 lakhs), Scindia (Rs.117,00 lakhs), Tata (Rs.9616 lakhs), Bangur (Rs.7110 lakhs), Kirloskar (Rs.3595 lakhs), Shri Ram (Rs.3483 lakhs), TVS Iyengar (Rs.1936 lakhs), Larsen & Toubro (Rs.1720 lakhs), Mafatlal (Rs.1475 lakhs), ICI (Rs.113 lakhs), Walchand (Rs.635 lakhs), Mahindra & Mahindra (Rs.290 lakhs), ITC (Rs.250 lakhs), McNeill & Magor (Rs. 75 lakhs), Sarabhai (Rs.45 lakhs), Kasturbhai Lalbhai (Rs.31 lakhs), and Khatau (Rs.30 lakhs).
9. It may be noted that investment approved for House of Birla was more than the investment approved for all the '49' other large houses put together. Amongst the Houses which proposed relatively larger investments, House of ACC (Rs.188,78 lakhs), Scindia (Rs.117,00 lakhs), Larsen & Toubro (Rs.1720 lakhs), did not have any rejections whatsoever. House of Tata also had relatively less investment rejection (7.5%).

10. Top '10' houses accounted for 32.1% and Top '20' houses for 44% of the total corporate assets in 1969 (on the eve of promulgation of the MRTP Act). In 1974, top '10' houses accounted for 31.4% and top '20' for 43.3% of the total private corporate assets. Thus, there seems to have been no substantial reduction in the percentage of the assets of top '10' and top '20' houses assets to the total private corporate assets. It might be recalled that a fairly large percentage of the investment approved under the MRTP Act for the top '20' houses was in 1974. These additional approvals would create the base for faster growth of the MRTP companies in future years. Thus, after all the regulations and restrictions, imposed on large houses there does not seem to be any impact on their growth rates and further concentration.

11. Some of the other houses which had substantial percentage of the asset base in 1969 approved were: Bangur (69.37% of the asset base in 1969), Birla (65.26%), Kirloskar (62.80%) and TVS Iyengar (50.51%). House of Tata only had 19.02% of their asset base in 1969 approved under the MRTP Act. Some of the houses with least investment approved as a base of 1969 assets were ITC (3.59%), Mahindra & Mahindra (3.32%), Macneill & Magor (0.86%), Khatau (1%), Sarabhai (0.86%) and Kasturbhai Lalbhai (0.4%).

12. The above analysis clearly points out that there has been further concentration in the top '10' houses relative to the other houses, because of the approvals under the MRTPC Act. Compared to the investment approved for top '10' houses, the investment approved for 49 other large houses is miniscule. This analysis suggest that perhaps only top '10' houses, or at the outside, top '20' houses should be subject to approvals under the MRTP Act.

Restrictive Trade Practices Enquiries.

Agreements filed with the Registrar of Restrictive Trade Agreements (RTA) upto the end of November 1976 were 21,642. A small fraction of one per cent of these agreements filed has been pursued by RTA for filing applications with MRTPC. There has been Restrictive Trade Practice (RTP) enquiry on the basis of unwritten agreements or 'gentlemen's agreements.'

Out of 102 judgements given by MRTPC till August 1976 there was not a single application filed by either state government or central government. Only two applications had been filed by consumer/user/dealer associations.

Majority of the respondents in the cases analysed were individual manufacturers. Applications filed against a manufacturer and dealer(s), group of dealers, and a marketer and a contractual producer were extremely limited. As of August 1976 the agreements or practices indulged in by a manufacturer or a dealer vis-a-vis the ultimate consumer had not been investigated.

An analysis of complaints revealed that restrictions on distribution were predominant followed by restrictions on price, restrictions on products, and restrictions on manufacture.

In case of industrial products, the restriction on distribution happened to be more than consumer durable or consumer non-durable category.

Out of 100 effective orders passed, majority of the orders required cessation of all or some of the alleged practices. In two cases only, orders allowing continuation of alleged RTPs were passed.

Lately, suo motu enquiries by MRTPC have far exceeded the applications filed by RRTA.

Majority of the orders passed were consent orders.

Till August 1976, there was no case where restrictive clauses in the charters of professional associations had been examined.

Monopolistic Trade Practices (MTP) Enquiries

Three enquiries related to MTPs referred by the Government to MRTPC had been stayed in the Delhi High Court after the companies concerned, namely Coca Cola Export Corporation, Cadbury-Fray (India) Private Limited and Colgate Palmolive (India) Private Limited had filed writ petitions challenging the referral of Government to MRTPC.

One suo motu enquiry initiated in case of Avery India Limited by MRTPC has also been appealed against in the Supreme Court.

Two enquiries initiated by MRTPC under Section 37(4) in the case of Bengal Potteries Limited and Gramophone Company of India Limited have also been stayed in the High Court.

Thus, MRTPC has not yet recommended and Government has not, therefore, passed any final orders in the case of Monopolistic Trade Practices enquiries.

It should be noted in this regard that the Sherman Act of 1890, USA declares illegal every contract, combination in the form of Trust or otherwise or conspiracy in restraint of trade of commerce. Moreover, under Section 7 of the Sherman Act, any person injured by anything forbidden by the Act is entitled to recover three fold of the damages sustained. In case of MRTTP Act there is no provision for recovery of damages if a company is finally charged with indulging in monopolistic trade practices. The Ministry of Law, Justice and Company Affairs, should consider whether the provision in the MRTTP Act for recovering the damages sustained by injured parties would help in reducing monopolistic trade practices being indulged in by various companies in India.

Some major suggestions emerging from the above conclusions

1. Top '10' houses only should be subjected to approval under the MRTTP Act.
2. More specific criteria for evaluating proposals related to concentration of economic power to the common detriment should be evolved.
3. Since the proposals are primarily evaluated from the point of view of demand/supply situation, the export potential, the sophisticated technology involved etc., it would be preferable to announce a list of industries in which the large houses can participate. However, the proposals emanating from large houses should then be approved only for the industries listed. This policy in relation to guiding the investment for the economic growth might be more useful than "midway" analysis done now from the point of view of concentration of economic power and the importance of industries to the economy for which proposals are made.
4. The legal lacunae in the MRTTP Act in relation to enquiries into the Monopolistic Trade Practices should be taken care of.
5. Restrictive trade practices listed in the MRTTP Act should be declared illegal per se and the onus of providing that Restrictive Trade Clauses in the agreements are in 'public interest' should then be on the companies wanting to have such clause in their agreements.

Further Research

Analysis done in this study has pointed out that further study should be undertaken to examine the economics of concentration. As of now no studies and information are available regarding the effects of concentration of economic power on economic growth, pattern of private industrial investment, market performance of industries in which 'Monopoly' houses are involved, etc.

Field studies should be undertaken to evaluate the changes which have taken place in the relationships between manufacturers/marketers and dealers as a result of the removal of restrictive trade clauses in the agreements and the net impact which the judgements of MRTPC in relation to Restrictive Trade Practices enquiries have had on consumer welfare.

The analysis done for this study has incidentally revealed diversification strategies of various houses. Some houses have expanded primarily through the route of 'substantial expansion' (e.g. House of Larsen & Toubro), while others have expanded through 'establishment of new undertakings' (e.g. Houses of Modi, JK Singhania, Chowgule). Further work using the data base collected for this study could be done to identify various diversification strategies employed by houses, their reasons for doing so, effectiveness of such strategies, in terms of various indicators of performance. Such an analysis would aid Public Policy formulation related to diversification of large houses could then be evolved.