

Competition Policy & Law and Intellectual Property Law

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Research Team



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Objective of Study



This study is an enquiry into the development of jurisprudence in India in the field of creation of intellectual property rights and competition law in general and the impact of product patent law on India's competition policy and law in particular.

This study has been confined to pharmaceutical and chemical industries in India.

Questions Addressed



- What regulatory relationship needs to be built between CCI and the Patent Office?
- What conditionalities in the licensing agreement needs to be examined and what could be India's licensing policies with regard to Intellectual Property?
- What should be CCI's role when examining grant, if any, of product patents?
- What competition concerns may indicate the probability of imposing compulsory licensing?

IIT is Expected



- Examine market practice of all players regarding competition and intellectual property
- Prepare a status report regarding product patent and competition
- Prepare policy guideline for licensing where it might lead to anti competitive practices
- Study competition law concerns stemming from acquisition of intellectual property
- Examine issues of acquisition of intellectual property through merger & acquisition

Research Design



Analytical

Empirical

Data Source



- Online data base Westlaw, Springer, Heinonline, LexisNexis, Cambridge Journal, Manupatra etc.
- Secondary Data Source Prowess, Capitaline, Indiatat, Annual reports of Companies and Association
- Patent Office Data base, TIFAC Data base
- Primary survey of Selected Pharma and Chemical Industries in the country
- Unstructured Interviews of Office Bearers of Different Associations, Company IP & Legal Head and Directors

Analytical



Patent office documents and records and TIFAC data base

Collection of secondary data from different CIMS and Annual Report about company R&D expenses & Patent Profile and Patent Acquisition

Literature Survey Including Research Article, Reported Cases, Reports from Domestic, Cross Boundary & international agency.

Competition & IP: Interlinks

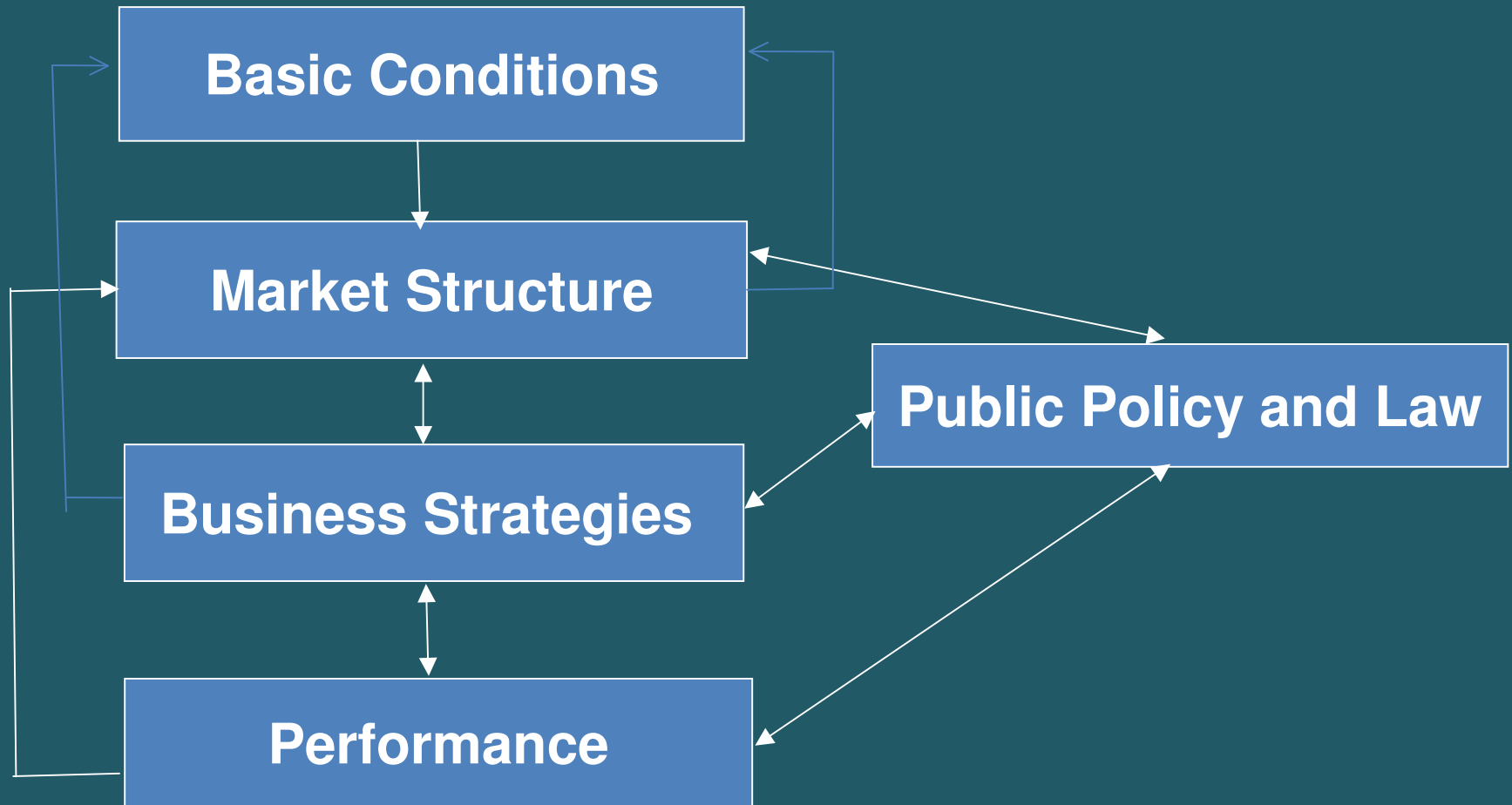


First, to what extent the court and the competition authority restrict the exercise of Intellectual Property Rights?

Secondly, when is competition law actually applied to Intellectual Property Right?

Thirdly, to what extent can and should various Intellectual Property Rights Laws be reformed?

Analytical Framework



Variables Used



Market Structure:

Market Concentration (3-Firm Concentration Ratio, Herfindahl Hirschman Index, Price-Cost Margin)

Market Size, Import Competition

Business Strategies:

Selling Strategies (Advertising, Marketing, Distribution)

Technology Strategies (In-house R&D, Technology Purchase)

Performance:

Financial Performance (Profitability, Return on Capital)

Export Performance

Policy:

Trade Ratio

Empirical Frame



Intellectual Property Law And Competition Law & Policy

Market Structure



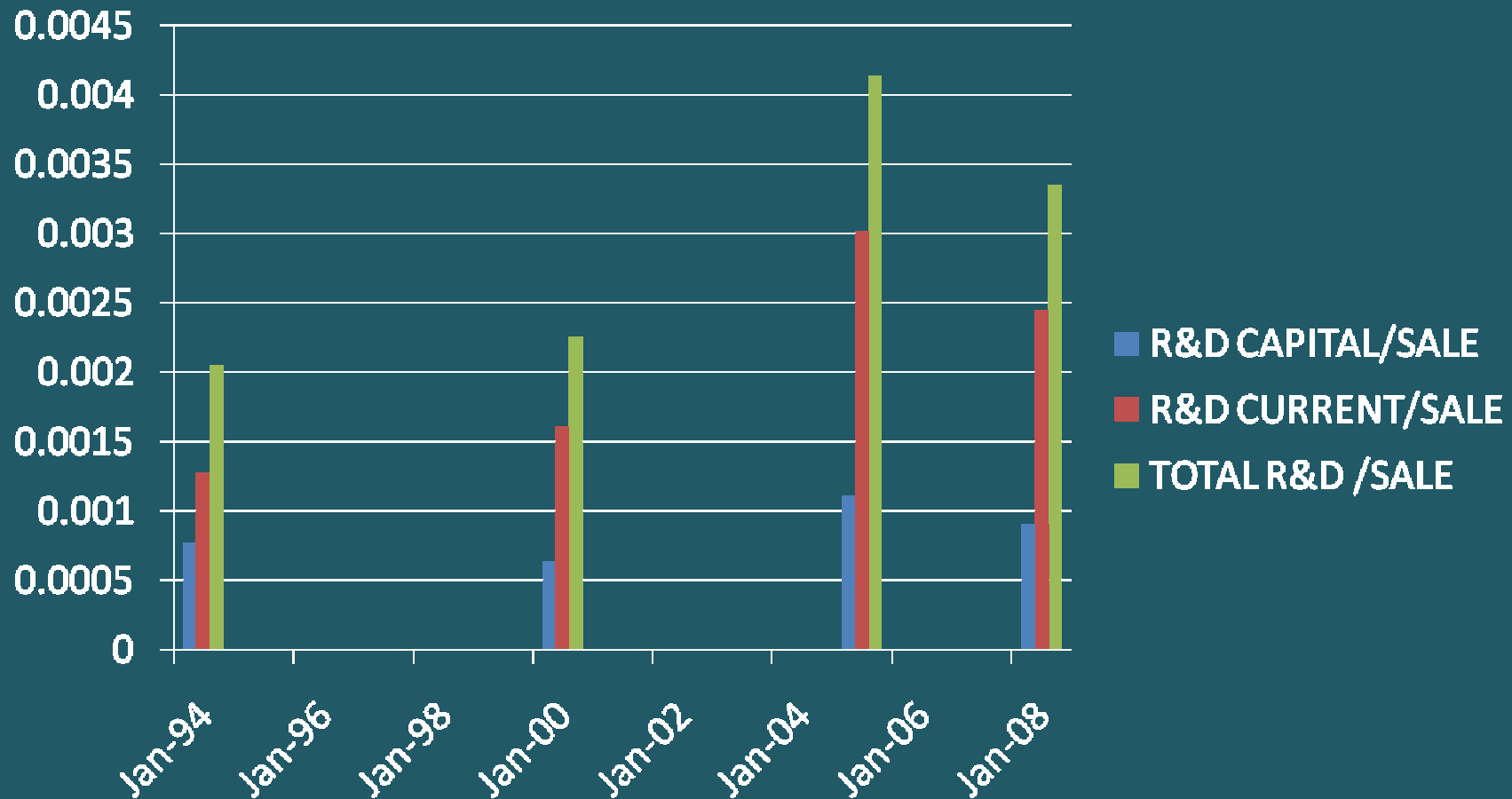
- Wide-scale variations in market size, market concentration, import competition across industries.
- High market concentration in paints and varnishes, and cosmetics and toiletries and low in drugs and pharmaceuticals.
- Market concentration - declining tendency in the chemical industry as a whole but increasing trend in drugs and pharmaceutical industry.
- Increasing competition from import, especially, in fertilizers, drugs and pharmaceuticals, dyes and pigment and pesticides.

Business Strategies

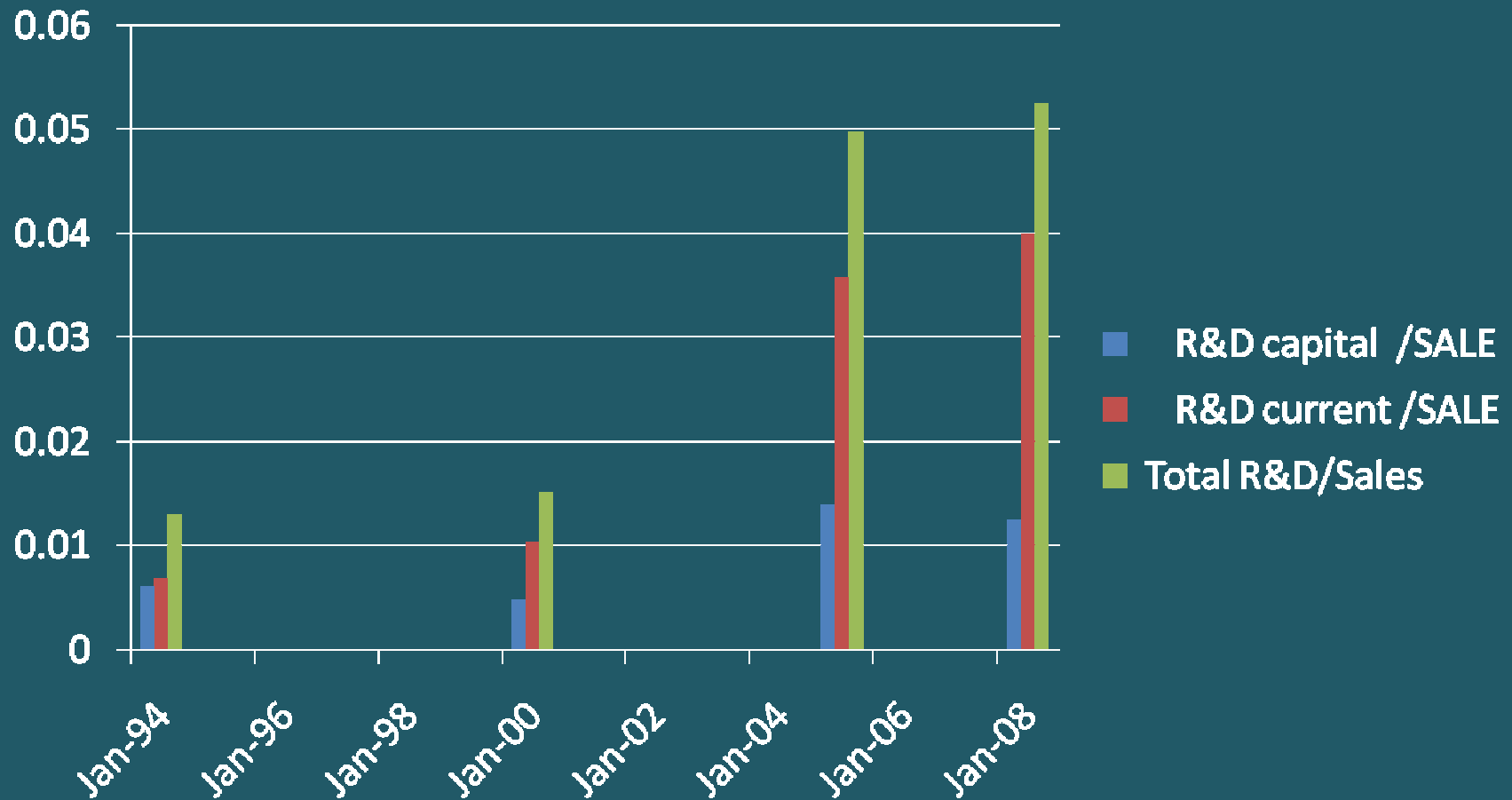


- Quite low in-house R&D efforts in the industry.
- Increase in R&D intensity in drugs and pharmaceutical industry, but not substantially.
- Reasonably faster increase in advertising intensity, though the level is still very low.
- Increasing tendency in both marketing and distribution intensity, but at a marginal rate.

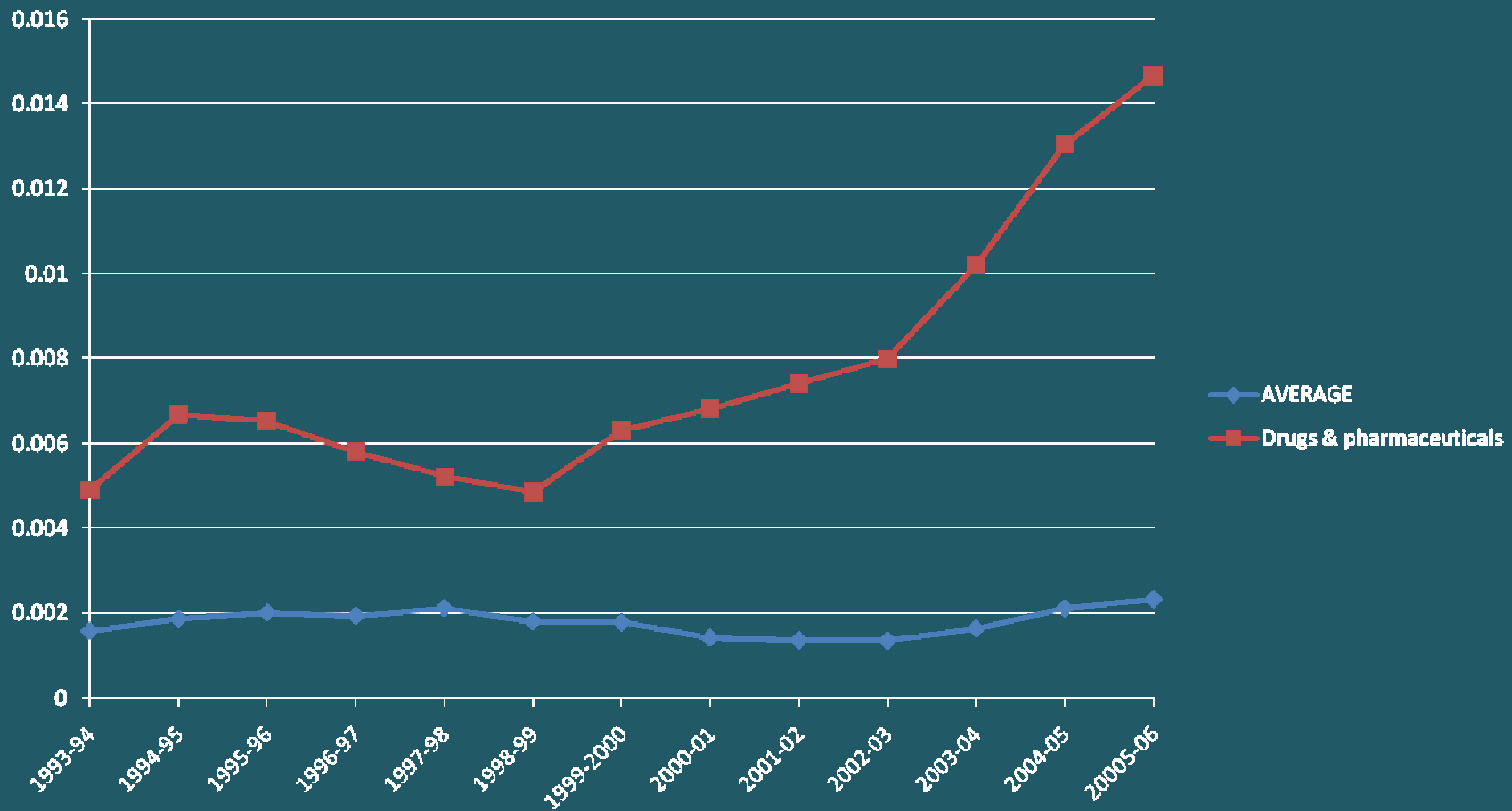
R & D Intensity in Chemical



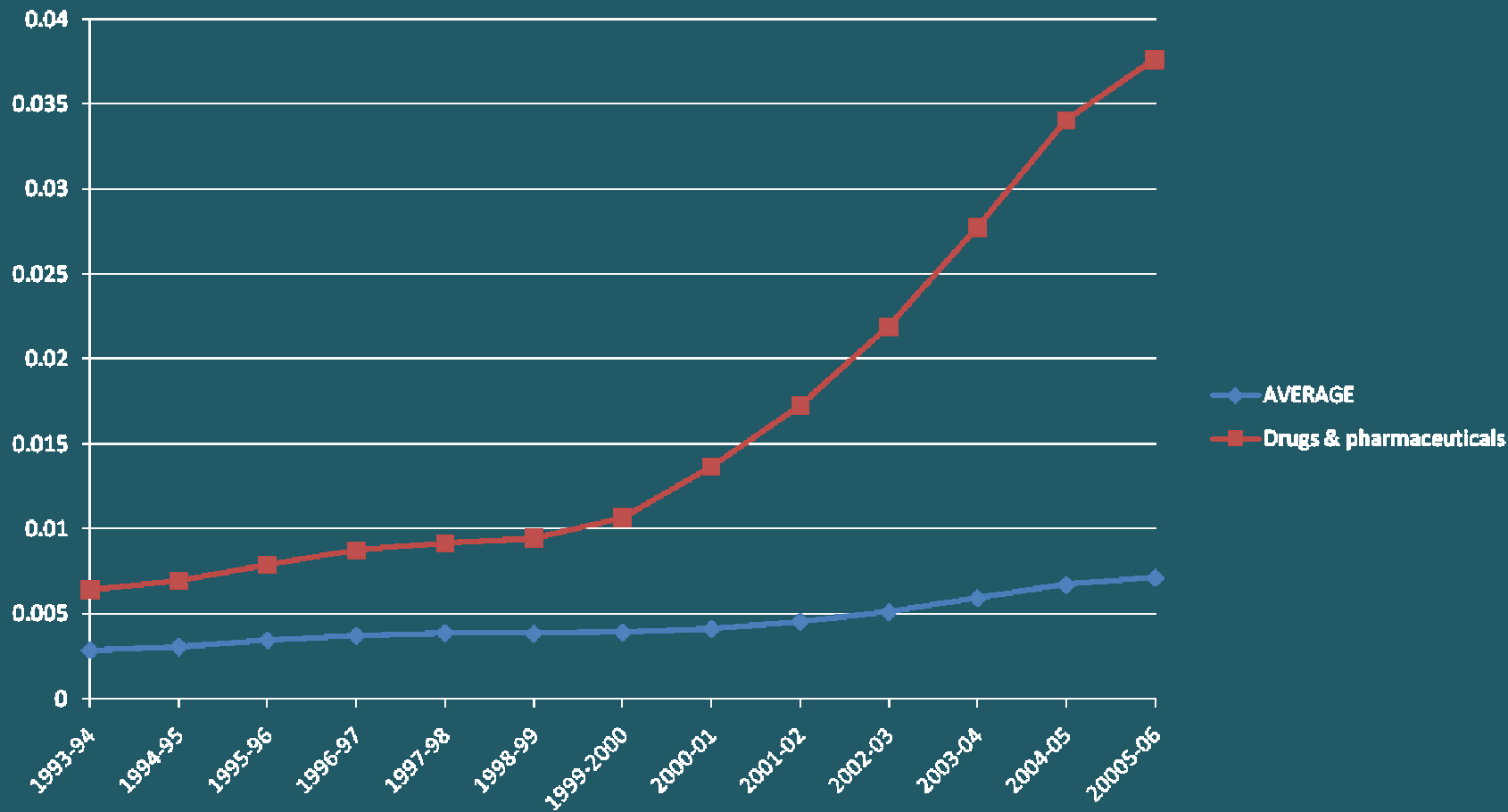
R & D Intensity in Pharmaceutical



R&D Intensity In Capital Account



R&D Intensity in Current Account



Performance



- Increasing profitability in drugs and pharmaceuticals, but reverse in chemical industry.
- Initial decline and then increase in rate of return.
- Improvement in export performance in chemical but at a much sharper rate in drugs and pharmaceuticals.
- Enhancement of competitiveness of Indian pharmaceutical companies in the international market.

Structure-Conduct-Performance Relationship



- Both three-firm concentration ratio and HHI have statistically significant negative correlation with import competition, R&D and other technology related strategies, and export performance
- The correlation is statistically significant but positive for advertising and the rate of return.
- Unlike three-firm concentration ratio, HHI does not have any statistically significant correlation with market size.

Year wise No. of patent filed and published



Company Name	2007	2006	2005	2004	2003
Ranbaxy	45	99	100	91	77
Dr. Reddy's	4	4	8	14	20
Sun Pharma	4	3	12	15	
Cipla	9	20	45	47	62
Lupin		18	20	8	16
Cadila		26	21	37	41
Nicholas	4	4	8	5	3
Aurobindo		6	8	4	2
Matrix	6	15	6	20	
Torrent			15	23	12
Workhardt		29	10	5	10
Penacea		15	5	12	

Observations from Survey



- Entry of majority of the firms after 1991.
- Entry mostly as new private enterprise adding excess productive capacity.
- Input sourcing from open market by majority firms.
- Input sourcing through agreement by many.
- No import of inputs by many.
- Many rely on others for manufacturing.

Observations from Survey



- Marketing and distribution related business alliances with others.
- Use of multiple channels for marketing, though considerably through open market.
- No competition from imports for majority.
- Sourcing IP through in-house R&D by many.
- R&D suffer from low success rate and long gestation lag.
- Increasing technology acquisition/licensing.
- Majority of the IPs are product related

We Thank You