

# ***Indian Competition Regime and Experiences with Cartels***

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# *The Legal Provisions*

- MRTP Act: neither definition nor even a mention of certain offending trade practices. Some illustrations of these are:
  - Abuse of Dominance
  - Cartels, Collusion and Price Fixing
  - Bid Rigging
  - Boycotts and Refusal to Deal
  - Predatory pricing
- No Penalty – only cease and desist
- Public interest

# *The Metamorphosis*

- In the new Competition Act, four types of practices are presumed to be anti-competitive:
  - Agreements regarding prices (directly or indirectly, purchase or sale)
  - Agreements regarding quantities (limiting or controlling production, supply, markets, technical development, investment or provision of services)
  - Agreements regarding bids
  - Agreements regarding market sharing (sharing of markets or sources of production or provision of services by way of allocation of geographical area of market or type of goods or services or number of customers in the market or any other similar way)

# *Dealing with Cartel Cases*

- Cartel cases in cement, transport (trucking), tyres, pharma-retailing, BOPP film (Biaxially Oriented Polypropelene film, used for packaging), rubber, rubber chemicals, power cables
  - In some cases cease and desist order passed (trucking, pharma-retailing, tyres)
  - In some cases the matter never ended (cement)
  - In some cases not enough evidence was found(BOPP film, rubber chemicals)
  - In some cases (when concrete evidence found), the parties undertook to stop the practice, and the case ended (power cables, rubber)

# *The Cement Cases*

- Cement industry is known to be prone to cartelisation worldwide – nature of the industry
- Collusive price fixing since the beginning of decontrol of cement price in 1989?
- A legacy of the erstwhile control regime (CMA playing active role in price setting)?
- Accused of price rigging in 1991. The MRTPC was asked to adjudicate, no evidence 'found'

# *The Cement Cases*

- Cartelisation in December, 2000
- BAI demanding government intervention
- They demanded reduction of import duty, withdrawal of additional special duty and countervailing duty
- The MRTPC initiated a *suo moto* enquiry
- Boycotting, targeted two major companies, Grasim and GACL, prices came down
- Possibility of bid rigging

# *The Pharma Industry*

- Different types of collusion: manufacturer-manufacturer, manufacturer-doctor/hospital/pharmacist, pharmacist-pharmacist
- Several cases of pharmacists (AIOCD) – repeated offences (cease and desist?) – indication of switching from written circular to verbal instructions
- In some generic medicines, there may be more than one producers, in some dosage categories (there can only one brand, example Thyroxin) – Market Sharing?

# ***International Cartel***

- Vitamins cartel
  - India hit – CUTS intervention – No action
- Heavy electrical equipment cartel
  - India hit – No action
- Flat-rolled steel cartel
  - India hit – No action



# ***Export Cartel – ANSAC Case***

- US Export Trade Act 1918 (Webb-Pomerene)
- ANSAC as export cartel
- Action in EU
- Action in India
  - Restrictive trade practices (cartel)
  - Predatory pricing
- Problems with enforcement
- Supreme Court verdict

# ***MRTPC – General Experience***

- Inadequacy of budget and expertise (MRTPC-DGIR together had only 23 professional staff but more than 100 support staff!)
- Huge number of pending cases
- Not much success in handling cartels
- Unaware of international cartels and their impacts on India

# *The Crucial Issues*

- Burden of proof – Public interest test
- Exemplary punishment – Only cease and desist
- Leniency provision
- Dawn raid – but ‘advanced’ notice of enquiry
- How to find evidence (MRTPC passed cease and desist order even without ‘strong’ evidence, can that be done when penalty is involved?)

***Thank you***