

# India, China embrace competition law

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**A**SIA'S giant economies, India and China, are both gearing up to push through competition laws, which is good news for their consumers. The very premise on which competition laws are enacted is to protect the interest of consumers. Essentially, competition law protects competitive markets and prohibits predatory business practices. Any conduct which prohibits or restricts businesses from entering into a market and introducing new products or services are generally considered illegal under competition law.

It can be argued that consumers need no special protection and their behaviour can be governed by the market forces. However, a perfectly competitive market is a utopian concept and pure consumer sovereignty is a myth. Hence an effective mechanism to protect the interest of the consumers and businesses is required.

In pursuit of globalisation, India has responded by opening up its economy, removing controls and resorting to liberalisation. The globalised and liberalised economy is facing its share of competition. As a natural corollary to this, India has enacted a new competition law called the Competition Act 2002 which shall replace the earlier law and provide institutional

support to healthy and fair competition.

As India gets ready to notify its new Competition Act, it is important to look back into history to see what drove it. After attaining independence, India adopted and followed policies comprising a variety of "Command-and-Control" laws, rules, regulations and executive orders. The Monopolies and Restrictive Trade Practices Act ("MRTP Act") was one such law.

The 1990s saw the advent of widespread economic reforms in India and together with these, India started moving from a "Command-and-Control" economy to an economy based on principles of free market.

The experience in administering the MRTP Act over three decades since its inception in 1969 was instructive. The Act itself had deficiencies, most notably its draconian restrictions on expansion of businesses. There were also weaknesses in structure and the composition of the MRTP Commission, as well as administrative delays.

India's changing economic milieu spurred by liberalisation, privatisation and globalisation impelled the need for a new competition law. Following the adoption of reforms, the most far-reaching of the amendments to the MRTP Act were introduced in 1991, which removed the need for government approval to establish

new undertakings on the expansion of existing undertakings, and also diluted the provisions of the mergers and acquisitions clause. Furthermore, it deleted the exemption granted to government undertakings and cooperative sector, thus creating a more level playing field for the private sector.

Countries such as the UK, Canada, Australia, Singapore, Thailand and the European Community also enacted new competition laws and repealed their earlier laws as a result of the changing international economic scenario.

## Encouraging competition

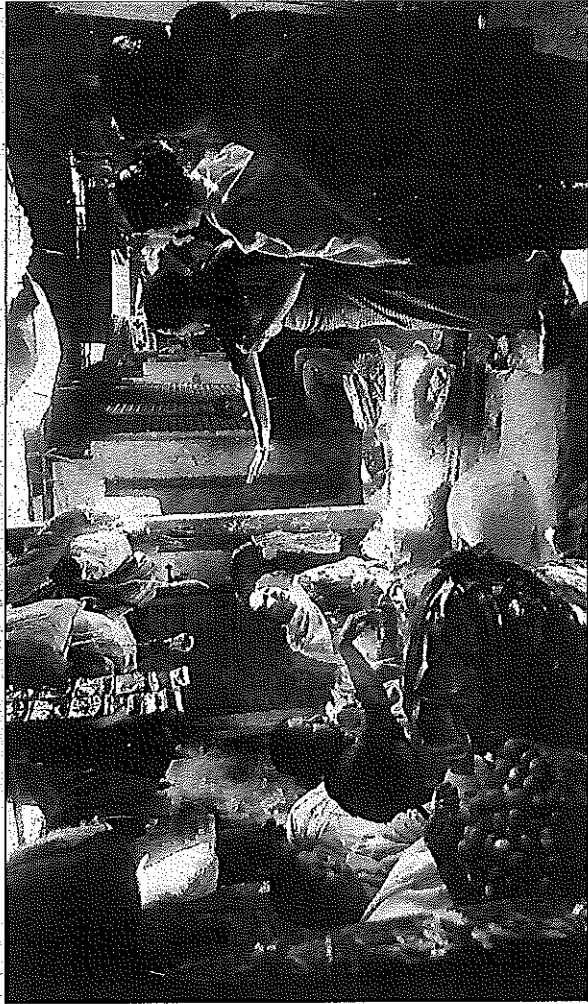
India's new Act is a shift from curbing monopolies to encouraging competition and is designed to repeal the MRTP Act. Like most antitrust laws in other jurisdictions, the new Act contains three pillars: anti-competitive agreements, abuse of dominance and merger control.

The Indian experience in setting up a competition regime has been a difficult task due to the country's unique social, political and economic conditions. As of now, only a few provisions of the new Act have been brought into force because of legal challenges and the prolonged process of amendments. At present, the outgoing law - MRTP Act - and the new law - Competition Act 2002 - are concurrently in force, with only some provisions of the new law being in effect.

Both China and India's efforts in legislating and implementing modern competition law are driven by the robust growth in their economies. The new competition regime in each country will help suppress inflation and raise living standards through improved productivity, leading to accelerated economic growth.

At the same time, it would spur innovation which brings the benefit of lower prices, wider choices and better services to the consumers. However, effective enforcement is the key; indeed, weak enforcement of competition law is perhaps worse and more fatal than the absence of rights and penalties.

The law includes rules against anti-competitive conduct, standards for administrative monopolies, enforcement mechanisms and definition of abuses of intellectual property rights and penalties.



**Buyer beware: It can be argued that consumer behaviour can be governed by market forces but a perfectly competitive market is a utopian concept and pure consumer sovereignty is a myth**

China too is moving ahead with competition law. On Aug 1, 2008, its long-awaited Anti-Monopoly Law came into force and is expected to play an important role in China's transition towards a market economy. As in the case of India, the introduction of this law does not appear to have been an easy task as it required more than 15 years from the time the law was first proposed.

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