
UNIT 21 MARKETING AND PUBLIC POLICY

Objectives

The underlying objectives of the unit are to help you:

- visualise the panoramic view of government in regulating industrial and economic activities
- appreciate the intervention of government in marketing goods and services
- identify various public policy instruments in the form of acts and statutes that impinge on various marketing decisions.
- understand and interpret the impact of specific policy instrument on the 4Ps of marketing mix.

Structure

- 21.1 Introduction
- 21.2 Regulatory Role of the Government
- 21.3 Role of Government in Marketing in Developing Economies
- 21.4 Government Control and Marketing Decision-Making Process
- 21.5 Impact of Government Control on Product Decisions
- 21.6 Impact of Government Control on Pricing Decisions
- 21.7 Impact of Government Control on Promotional Decisions
- 21.8 Impact of Government Control on Channel and Distribution Decisions
- 21.9 Summary
- 21.10 Key Words
- 21.11 Self Assessment Questions
- 21.12 Further Readings

21.1 INTRODUCTION

In this unit we will familiarise you with the role of government in regulating economic and industrial activities in India. Emphasis will be laid on the affects of government intervention and control in marketing decision making. The 4Ps of marketing mix of any firm, whether consumer or industrial goods will reveal that there is hardly any marketing area, which is unaffected by Government control. The need for public policy was felt by the government as the market mechanism alone cannot perform all economic functions. These governmental control in the form of various acts and statues in toto contribute to an over all public policy frame work which could guide, correct and supplement the market mechanism in certain respects. The objective of government intervention and control is to bring about a high degree of fairness in the marketing exchange process.

21.2 REGULATORY ROLE OF THE GOVERNMENT

There are four important roles played by the Government in an economy these are :

- i) the regulatory role
- ii) the promotional role



- iii) the entrepreneurial role, and
- iv) the planning role

There is a direct relationship between Government and Business. A large part of the economy in a number of countries is regulated by the Government. The regulatory role may take any of these several forms :

- 1) The Government may determine the conditions under which persons or associations may enter certain lines of business. This may be enforced by issuing a charter, a franchise, or a licence for starting a business.
- 2) The Government may regulate the conduct of business once it has been- set up. This may be done through controls that merely lay down general standards, prohibitions and some conditions that interfere with matters that may be considered managerial.
- 3) Public control may extend to the results of business operations as in the limitation of public-utility profits, ceiling on profits and the imposition of excess profit tax.
- 4) The Government may control the relationships between the various segments of the economy so that the conflicts of interest of concentration of economic power may be avoided. Such controls may be in the form of restrictions on monopolies and unfair trade practices, interlocking of directors among corporations, the abolition of certain kinds of holding companies, the enactment of certain labour laws, etc.

21.3 ROLE OF GOVERNMENT IN MARKETING IN DEVELOPING ECONOMIES

Government tries to influence, regulate, intervene and also control the marketing system of country with the sole objective of ensuring a fair and equitable treatment of millions of producers and endusers of various products and services. In addition, the government also seeks to manage shortages through a legislative process. In addition, one of the other expected role of public policy is to improve the efficiency of marketing systems. These are brought about in three ways.

Through normal regulative activities including price controls, control of product; quality and quantity, controls over market participation, sales taxation, and antitrust regulations.

Through provision of marketing infrastructure and market information. Such resources and services as credit, training, storing, transportation and marketing research are provided by the public sector to help private enterprise especially small-scale private traders and producers.

For example, providing loans to gem and jewellery exporters helps to promote trade and to expand the export of these items. Another example is that of the Bureau of Indian Standards which has developed a large number of product standards facilitating product identification, purchasing, selling and servicing.

Through direct entrepreneurial participation in the marketing process. The role of the government in such a case is not necessarily intervention but may rather be one of guidance and leadership in guiding the economy including helping the sick units to become healthy once again.

For example, super bazars in cities of India act as competitors in the marketing of various products. The other example is that of the National Textile Corporation (NTC) which is engaged in the production, wholesaling and retailing of textiles in 'direct competition with private enterprise.

Still other important examples are that of the Food Corporation of India (FCI), the Cotton Corporation of India (CO), and the Jute Corporation of India (JCI) which procure and sell agricultural commodities such as foodgrains, cotton and jute respectively.



Naturally, you will like to ask and understand at this stage as to what is the 'specific purpose of legislation which spells out normal regulative, activities. These purposes are:

- One, to protect companies from each other. It is with this objective that the government passes laws to define and prevent unfair competition.
- Two, to protect consumers from unfair business practices. It is with this end in view that the government tries to exercise control on quality, packaging, price, promotion, etc.
- Three, to protect the larger interest of society against unbridled business behaviour. The main focus here is to charge business with the social costs created by their production processes or products.

Articles 39(b) and (c) of the Constitution of India which spell out the reasons for government control and the main control laws affecting marketing are listed in the next section. The marketers should know these laws and also keep track of the evolving interpretations by law courts. They should also know the state and local laws that affect their local marketing activity.

21.4 GOVERNMENT CONTROL AND MARKETING DECISION-MAKING PROCESS

A number of laws affecting business have become operational over the years. The important ones affecting marketing are listed below:

- 1) The Indian Contract Act, 1872
- 2) The Indian Sale of Goods Act, 1930
- 3) The Industries (Development and Regulation) Act, 1951
- 4) The Prevention of Food Adulteration Act, 1954
- 5) The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954
- 6) The Essential Commodities Act, 1955
- 7) The Companies Act, 1956
- 8) The Trade and Merchandise Marks Act, 1958
- 9) The Monopolies and Restrictive Trade Practices Act, 1969 (MRTP Act)
- 10) The Patents Act, 1970
- 11) The Standards of Weights and Measures Act, 1976
- 12) The Consumer Protection Act, 1986.

Some of the legislations mentioned above apply to every undertaking, irrespective of the nature of the product sold or the service provided by it like the Contract Act, the Sale of Goods Act, the Companies Act, the Trade and Merchandise Marks Act and the Standards of Weights and Measures Act. The MRTP Act, however, does not apply to public undertakings, government-managed private undertakings, financial institutions and co-operative societies.

As against this there are certain legislation listed above which seek to regulate certain decisions of undertakings engaged in the specific industries. These include the Industries (Development and Regulation) Act; 1951; the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954; the Prevention of Food Adulteration Act, 1954; the Essential Commodities Act, 1955, and the Cigarettes (Regulation of Production, Supply and Distribution) Act, 1975.

It would be too much to expect a marketer to know all about the various Acts listed above as well as few other like the Bureau of Indian Standards Act, 1986; the Drugs and Cosmetics Act, 1940, and the Drugs (Control) Act. 1950 that affect his decision-making. But, nevertheless, it is essential for him to have a good working knowledge of the major laws protecting competition, consumers and the larger interests of society.



Such an understanding would help him to examine the legal implications of his own decisions.

According to Articles 39(b) and (c) of the Constitution of India, control-exists as a means of achieving a socialist pattern of society. These Articles ensure that "the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment" and that the ownership and control of the material resources of the community are so distributed as best to subserve the common good.

The main reasons for government controls can be summarised as follows:

- protecting the welfare of individuals and, promoting higher standards of public health, general well being, safety, etc.
- maintaining equality of opportunity for all persons irrespective of the sex, nationality, race or religion
- restraining business from engaging in practices harmful to the interests of the public, like making false and misleading statements about a product or service, manipulating prices for personal gains, failing to support warranties, etc.
- protecting small firms from the threats of unfair competition by big firms
- preventing unfair practices resulting from mergers or other forms of combinations like price fixing
- Conserving national resources especially forests, fuels, water, energy, etc.
- preventing pollution of the environment
- preventing concentration of economic power and industrial wealth
- encouraging widely dispersed industrial growth and the growth of small scale industries
- protecting the economy from dominance by foreign investors. and helping save the valuable foreign exchange resources.

You should, however, remember that ours is a planned economy and it is not a case of natural growth but of a nurtured growth and the measures of government control and intervention are a reflection of the government's desire to achieve a desired direction or pattern in investment, production and distribution or consumption.

Indian Contract Act (1872)

Regulates the economic and commercial relations of citizens. The scope of this Act extends to all such decisions which involve the formation and execution of a contract. The essentials of a valid contract are specified and examined in detail.

A contract is an agreement enforceable at law made between two or more persons by which rights are acquired by one or more to acts or forbearances of the part of the other or others.

The Act also specifies provisions for the creation of an agency and the rights and duties of a principal and an agent.

Indian Sale of Goods Act (1930)

Governs the transactions of sale and purchase. A contract of sale of goods is defined as a contract whereby the property in goods is transferred or agreed to be-transferred by the seller to the buyer for a price. The Act also lays down rules about passing of property in goods and the rights and duties of the buyer and seller, rules regarding the delivery of goods as well as the rights of the unpaid seller.

Industries (Development and Regulation) Act (1951)

It is through this Act that the industrial licensing system operates. In effect it empowers the government to licence (or permit) new investment, expansion of licensed units, production of new articles, change of location by the licensed units and also to investigate the affairs of licensed units in certain cases and to take over the management



thereof, if conditions so warrant. The objectives behind these powers are, of course, development and regulation of important industries involving fairly large investments which have an all-India importance. It is in the actual implementation of these objectives that the relevant aspects of the industrial policy are expected to be fulfilled.

Industrial licensing is a form of direct state intervention in the market to over rule its forces. The underlying assumption here is that the government is the best judge about the priorities from the national point of view and also that it can do the allocation in a better and socially optimal way. It must, however, be understood that there are economic costs involved in the measures of control and the benefits that are expected to accrue at least equal to or more than the costs involved.

Prevention of Food Adulteration Act (1954)

Prohibits the production, storage distribution and sale of adulterated and misbranded food articles and to ensure purity in the articles of food.

Drugs and Magic Remedies (Objectionable Advertisements) Act (1954)

Prohibits the publication or issue of advertisements tending to cause the ignorant consumer to resort to self-medication with harmful drugs and appliances.

Advertisements for certain drugs for preventing diseases and disorders like epilepsy, prevention of conception, sexual impotency, etc. are also prohibited. The Act also prohibits advertisements making false claims for the drugs.

Essential Commodities Act (1955)

Provides for the control of production, supply and distribution in certain commodities declared as essential under Section 2(a) of the Act, in the public interest. Under Section 3(a) of this Act, the government can fix the price of such a commodity.

Companies Act (1956)

It is a piece of legislation which has far reaching effects on business by its regulation of the organisation and functioning of companies. With more than 650 sections it is one of the longest legal enactments. It is meant to regulate the growing uses of the company system as an instrument of business and finance and possibilities of abuse inherent in that system.

Trade and Merchandise Marks Act (1958)

Deals with the trade and merchandise marks registered under this Act.

A mark includes a device, brand, heading, label, ticket, name, signature word and letter of numeral or any combination thereof.

A trade mark is a distinctive symbol, title or design that readily identifies the company or its product. The owner of the trademark has the right to its exclusive use and provides legal protection against infringement of his right. A trademark is registered for a maximum period of 7 years and is renewable for a similar number of years, each time the period of 7 years expires.

Further, no such trade mark should be used which is likely to be deceptive or confusing, or is scandalous or obscene or which hurts the religious sentiments of the people of India.

Monopolies and Restrictive Trade Practices Act (1969) (MRTP Act)

Provides 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, restrictive and unfair trade practices and for matters connected therewith or incidental thereto.

It may be of interest for you to know that the first country to pass such a legislation was the United State which has a free enterprise system. There such an Act was passed



as far back as 1890 and is called the Sherman Antitrust Act. But so far as the United Kingdom is concerned it was only in 1948 that the Monopolies and Restrictive Practices (Inquiry Control) Act was passed. In 1956 and 1964 two more Acts were added, viz. Restrictive Trade Practices Act and the Resale Prices Act respectively. Our Act is modelled on the lines of the above three Acts.

Patents Act (1970)

Provisions of this Act are attracted especially where the company intends to produce patented products. A patent is the exclusive right to own, use and dispose of an invention for a specified period. The patent is a grant made by the Central Government to the first inventor or his legal representative.

Standards of Weights and Measures Act (1976)

Specifies the quantities in which certain products can be packed. The products are bread, butter, cheese, biscuits, cereals and pulses, cigarettes, cigar, cleaning and sanitary fluids, cleaning powder, condensed milk, tea, coffee, cooking oils, cosmetics, honey, ice cream, jams, sauces, milk powder, soaps, spices, toothpaste, etc.

Consumer Protection Act (1986)

Consumer Protection Act is the latest addition to the list of the legislations regulating marketing decisions in India. The Act is in addition to and not in derogation of the provisions of any other law which influence marketing decisions. The Act is intended to provide better protection of the interests of consumers and for that purpose makes provision for the establishment of Consumer Councils and other authorities for the settlement of consumers disputes and for matters connected therewith. It does not exclude or exempt from the purview of the regulatory measures the public enterprises, financial institutions, and co-operative societies, which enjoyed a privileged position under the MRTP Act being immune from any action even against those marketing practices of theirs which were considered against consumer or public interest. With the enforcement of the Consumer Protection Act, the consumer can get the redressal of his grievance even against the public organisations like the Delhi Development Authority, Municipal Corporations, Indian Railways, Delhi Transport Corporation (DTC) and other State Transport Corporations etc. In particular, this Act provides a new challenge to a large number of public sector undertakings engaged in manufacture or distribution of consumer goods and provisions of consumer services.

The new Act comes with sharper teeth. One of the weaknesses of earlier legislations was the confusion regarding the burden of proof. They never made it sufficiently clear whether the onus of proof rested with the manufacturer, the trader or the consumer.

The Act establishes a landmark in the sense that for the first time the onus has been shifted to the manufacturer and the seller.

The Act provides the consumer the right

- to be protected against marketing of goods which are hazardous to life and property
- to be informed about the quality, quantity, Potency, purity, standard and price of goods to protect the consumer against unfair trade practices (the term 'unfair trade practice' has been defined under the MRTP Act, under Section 36-A, and the relevant Section has been discussed later in this unit)
- to be assured, wherever possible, access to an authority of goods at competitive prices.
- to be heard and to be assured that consumers interest will receive due consideration at appropriate forums
- to seek redressal against unfair trade practices or unscrupulous exploitation of consumers
- to consumer education.



These objects are sought to be promoted and protected by the Consumer Protection Councils to be established at the Central and State levels

To provide speedy and 'simple redressal to consumer disputes, a quasi-judicial machinery is sought to be set up at the District, State and Central levels. These quasi-judicial bodies will observe the principles of natural justice and have been empowered to give reliefs of a specific nature and to award, wherever appropriate, compensation to consumers.

Penalties for non-compliance of the orders given by the quasi-judicial bodies have also been provided.

One could say that the scope of this legislation is much wider than any of the existing legislation. But the success will depend on whether the required infrastructure, particularly at the district and State levels, will get created and whether there will be necessary enthusiasm not only to create the machinery but also to implement the provisions of the Act.

Environment (Protection) Act (1986)

The Environment (Protection) Act provides for the protection and improvement of environment and for the prevention of hazards to human beings, other living creatures, plants and property.

Environment includes, water, air and land and the inter-relationship existing between them and the human beings, living creatures, plants, etc. Any solid, liquid or gaseous substances present which may tend to be injurious to environment is an environmental pollutant and the presence thereof is pollution.

The present enactment covers not only all matters relating to prevention, control and abatement of environmental pollution but also powers and functions of the Central Government and its officers in that regard and penalties for committing offences.

Bureau of Indian Standards Act (1986)

The Bureau of Indian Standards Act provides for the establishment of a Bureau for the harmonious development of the activities of standardisation, marking and quality certification of goods and for matters connected therewith or incidental thereto.

It has been provided that the Bureau of India Standards will be a body corporate and there will be an Executive Committee to carry on its day-to-day activities. It has also been stipulated that access will be provided for to the Bureau's Standards and Certification Marks to suppliers of like products originating in General Agreement on Trade and Tariff (GATT) code countries.

The Act does not make any change in existing law except to provide a new forum for deciding the cases effectively and without delay.

When the Indian Standards Institution was established in 1947, the industrial development in the country was still in its infancy. Since then there has been substantial progress in various sectors of the Indian economy and hence the need for a new thrust to be given to standardisation and quality control. A national strategy for according appropriate recognition and importance of standards is to be evolved and integrated with the growth and development of production and exports in various sectors of the national economy. The public sector and private sectors including small scale industries have to intensify efforts to produce higher standard and quality goods to help in inducing faster growth, increasing exports and making available goods to the satisfaction of the consumers.

It was to achieve the above objectives that the Bureau of Indian Standards has been set up as a statutory institution.

Government Agencies

To enforce the laws, the Government has established a number of regulatory agencies, like, the Bureau of Industrial Costs and Prices, the Agricultural Prices Commission and the MRTP Commission.



21.5 IMPACT OF GOVERNMENT CONTROL ON ' PRODUCT DECISIONS

We will discuss the impact of government control on marketing decision-making. We will discuss these with reference to each element of the marketing mix. The first element that needs to be discussed in this context is obviously the 'product'. The relevant provisions of the concerned laws which effect the choice of the marketer will be highlighted.

The following are the relevant laws and other provisions which need to be explained in this context.

The Industries (Development and Regulation) Act, 1951

The Industrial Development and Regulation Act, 1951 is an important piece of legislation affecting the industrial sector of the country.

The provisions of this Act not only influence the product decisions, but also the pricing and distribution decisions of companies in India.

In order to equip the new challenges posed by the changed national and global economic environment the government was compelled to issue the new industrial policy statement on 24th July 1991 which incorporates various liberalisation measures directed towards unshackling the Indian industry from Administrative and legal controls.

Objectives

The Act, provides Central government means of implementing the industrial policy. The preamble to the Act states that I (D&R) Act is an act 'to provide for the development and regulation of certain industries which are specified in the first schedule of the Act known as "Scheduled Industries". The central government has no powers to add any new undertakings to the first schedule mentioned above.

The central government has framed the "Registration and licencing of Industrial undertaking Rules 1952" which prescribes the general procedures to be followed for the purpose of regulation and licencing of an industrial undertaking.

You may note that I(D&R) Act primarily deals with

- a) developmental aspects
- b) regulating aspects of scheduled industries as specified in the first schedule of the Act.

Regulation of scheduled industries is sought to be done by means of a system of

- a) registration of existing undertakings
- b) licencing of new undertakings for producing new articles
- c) substantial expansion or change of location of existing undertaking.

According to Section 11 of the Act the manufacturer of a product listed in the first schedule of the Act who carries on production in a factory must register the new industrial undertaking in the prescribed manner within 3 months from the date it becomes such an undertaking.

A factory for this purpose means any premises in which a manufacturing process is being carried on

- i). with the aid of power employing 50 or more workers or
- ii). without the aid of power employing 100 or more workers.

Production of a New Article by an Existing Undertaking

The definition of the term in the Act that the existing undertaking which propose to manufacture new article covered within the ambit of the same item in the first schedule



under which the concerned undertaking held a registration certificate or industrial licence, and that where no new trade mark or no new patent was involved, the article of proposed manufacturer would not be considered as a new article and there should be no objection to the owner of the industrial undertaking manufacturing it.

New Industrial Policy, 1991 and Essentials for Licensing

The New industrial policy was announced by the Government on July 24, 1991. The announcement was inevitable in view of the fast changing national and global economic environment and invasion of global multinationals into Indian markets, the policy also proposed a range of liberalisation measures which include abolishing of compulsory licensing for all industries with few exceptions, promotion and tapping of foreign investment in Indian projects, rehabilitation of the public sector and discontinuation of ceiling on assets limit under the MRTP Act.

The decisions of the Government with respect to industrial Licensing are as follows:

- i) Industrial licensing will be abolished for all projects but for industries related to security and strategic concerns, social organisation promoting welfare and development hazardous chemicals etc. industries reserved for the small scale sector will continue to be so reserved.
- ii) The security and strategic related industries will continue to be reserved for the public sector alone.
- iii) In projects where imported capital goods are essential, automatic clearance will be given:
 - a) In cases where foreign exchange availability is ensured through foreign equity or
 - b) If the CIF value of imported capital goods required is less than 25% of total value (net of taxes) of plant and equipment, upto a maximum value of Rs. 2 crores.

In other cases, imports of capital goods will require clearance from the Secretariat of industrial Approvals (SIA) in the Department of Industrial Development according to availability of foreign exchange resources.

- iv) In locations other than cities of more than 1 million population, there will be no requirement of obtaining industrial approvals from the Central Government except for industries subject to compulsory licensing. In respect of cities, with population greater than 1 million industries other than those of non-polluting nature such as electronics, computer software and printing will be located outside 25 kms. of the periphery, except in prior designated industrial areas.

A flexible location policy would be adopted in respect of such, cities (with population greater than 1 million) which require industrial regeneration.

Appropriate incentives and the design of investments in infrastructure development will be used to promote the dispersal of industry particularly to rural and backward areas and to reduce congestion of cities.

- v) The system of phased manufacturing programmes run on an administrative case by case basis will not be applicable to new projects. Existing projects with such programmes will continue to be governed by them.
- vi) Existing units will be provided a new broad banding facility to enable them to produce any article without additional investment.
- vii) The exemption from licensing will apply to all substantial expansions of existing units.
- viii) The mandatory convertibility clause will no longer be applicable for term loans from the financial institutions for new projects.

Procedural consequences

- ix) All existing registration schemes (Delicensed Registration, Exempted Industries' Registration, DGTD registration) will be abolished.



- x) Entrepreneurs will henceforth only be required to file an information memorandum on new projects and substantial expansions.

Exemption from industrial licensing under the New Industrial Policy, 1991

The Government vide Notification No. 477 (E) dated 25-07-1991 has exempted certain industrial undertakings from the operation of the provisions of Sections 10, 11, 11A and 13 of the Act i.e. registration of existing industrial undertakings, licensing of new industrial undertakings, licensing for manufacture of new article and other provisions for licensing in special cases.

The exemption applies to:

- i) Small scale/ancillary industrial undertakings subject to the condition that the article(s) manufactured is:
 - a) covered under Schedule III, which contains the list of articles reserved for exclusive manufacture in the small scale sector.
 - b) not covered under Schedule 1, which contains the list of industries reserved for the public sector.
 - c) not covered under Schedule II which contains the list of industries in respect of which licensing is compulsory. i.e. small scale and ancillary undertakings would not require licensing for all articles of manufacture which are not subject to compulsory licensing or reserved for the public sector in addition to being exempted from licensing for all articles of manufacture exclusively reserved for the small scale/ancillary industry even if they happen to be included in the list in Schedule II.
- ii) Other industrial undertakings (i.e. other than small scale or ancillary ones) subject to the condition that:
 - a) the article(s) of manufacture does not fall under Schedule I, H and III respectively.
 - b) the proposed project is not located within 25 kms. from the periphery of the standard urban area limit of cities having a population of more than 10 lakhs as per the 1991 census.

However, this condition will not apply to:

- i). For non-polluting industries such as computer software, printing, electronics that may be notified from time to time.
- ii). Industries located with industrial area designated by the State Government before 24.4.1991.
- iii). Exemption under Section 11A will be available only if the new article does not fall under schedule, I, II or III and no additional investment in plant and machinery is needed.
- iv). The exemption from licensing will be available to industrial undertakings set up by MRTP and FERA companies also, subject to clearance under the respective Acts.

Industrial Undertakings (other than small scale/ancillary units) availing of licensing exemption under the said notification shall have to file a Memoranda with the Department of industrial Development (SIA), as prescribed by the Central Government.

First, the undertaking should not belong to one or other of the following categories:

- 1) Undertakings covered by Section 20(a) of the MRTP Act, 1969, i.e., undertakings whose own assets together with the assets of inter-connected undertakings, if any, are Rs. 100 crores or more,
- 2) Dominant undertakings covered by Section 20(b) of the MRTP Act, 1969. This term means and includes:
 - i) An industrial undertaking to which the licensing regulations are applicable and which has a licensed capacity along with its inter-connected undertakings



of at least 25% of the total installed capacity in India for the production of such goods and has assets of Rs. 1 crore or more.

- ii) An industrial undertaking to which the licensing regulations apply and whose actual production individually or along with inter-connected undertakings is at least 25% of the total goods produced or supplied or distributed in the whole or substantial part of India and which has assets of Rs. 1 crore or more.
 - iii) Any other undertaking which individually or along with other inter-connected undertakings produces or controls production of at least 25% of the total goods of any description (listed in the first schedule of the Industries Act) produced in the whole or substantial part of India and which has assets of Rs. 1 crore or more.
- 3) Undertakings belonging to 'foreign concerns'. These include foreign companies, their branches or subsidiaries and companies in which more than 40% of the paid-up equity capital is held directly by foreign companies, their branches or subsidiaries or by foreign nationals or non-resident Indians.
 - 4) That they are not subsidiaries of or owned or controlled by any other undertaking.
- During the last couple of months, there has been some relaxation in the context of dominant companies.

Second, the product should not belong to:

- 1) Industries listed in Schedule A of the Industrial Policy Resolution, 1956.
- 2) Specified industries subject to special regulation like coal, textiles manufactured, produced or processed on power looms, milk foods, malted foods, oilseed crushing, vanaspati, leather, matches, distillation or brewing of alcoholic drinks.

To summarise, an industrial licence is not necessary in the following cases:

- i). Where the item of manufacture relates to an industry not included in the first schedule of the Industries Act, 1951.
- ii). The proposed manufacture is to be carried on in factory which is not covered by the definition of Factory provided in the Act.
- iii). The items of manufacture do not fall within the definition of new article.
- iv). The proposed expansion of an existing undertaking does not amount to substantial expansion.
- v). Small-scale units and ancillary units subject to certain conditions.
- vi). Other units in the delicensed sector with investment up to Rs. 5 crore (or higher in some cases) subject to certain conditions.

Thus management of a company cannot manufacture a product listed under the first schedule to the Industries Act despite all the factors favouring its production until it can obtain a licence for it. The Act provides for both civil and criminal liability for the violation of its provisions.

But remember in this context that the Government has taken a number of steps during the last two years to liberalise its policies. And as students of marketing you have to keep abreast of these changing policies since they affect marketing decision-making.

Preferences to Small-Scale Sector

The Government also pursues the policy of protective reservation for exclusive development under the Small scale Sector. The Government and its organisations show preference in making their purchases from small-scale industries. In order to ensure regular supply of raw materials to small-scale units, the Government has liberalised the import policy and streamlined the distribution of critical raw materials.

MRTP Act, 1969

The MRTP Act, of 1969 is an important piece of socio-economic legislation. It has a significant impact on the industrial structure and marketing practices of business firms



in India. Though the act is relatively a small enactment, yet it is considered to be a complex one, and has far reaching consequences for the firms.

The Principal objectives of this Act as spelt out in the preamble were:

- i). Prevention of concentration of economic power to the common detriment
- ii). For the control of monopolies
- iii). for the prohibition of monopolistic trade practices
- iv). prohibition of restrictive trade practices

Chapter 1 of the MRTP Act, besides containing definitions of the relevant terms deals with other preliminary provisions relating to the extent and the applicability of the act.

The main provisions are:

- i). Regulating expansions, mergers and amalgamations and appointment of directors in respect of `dominant undertakings' having assets of rupees one crore and more and of undertakings which by themselves or with inter-connected undertakings have assets of not less than Rs. 20 crores in value.
- ii). Regulating the standing of new undertakings which would become inter-connected undertakings of such existing undertakings the total assets of which exceed Rs. 20 crores.
- iii). Control over and prohibition of monopolistic and restrictive trade practices as are found to be prejudicial to public interest.

Section 3 of the MRTP Act, 1969 provides that unless the central government by notification, otherwise directs, this act shall not apply to:

- a) any undertaking owned or controlled by a Government company.
- b) any undertaking owned or controlled by a Government.
- c) any undertaking owned or controlled by a corporation (not being a company) established by or under and Central, Provincial or State Act.
- d) any trade union or other association of Workmen or employees formed for their own reasonable protection as such workmen or employees.
- e) any undertaking engaged in an industry, the management of which has been taken over by any person or body of persons in pursuance of any authorisation made by the Central Government under any law for the time being in force.
- f) any undertaking owned by a co-operative society formed and registered under any Central. Provincial or State Act relating to co-operative societies.
- g) any financial institution.

The act assumes paramount importance in the areas of product, pricing, promotional and distribution channels from the marketers point of view.

Regulation of Monopolistic Trade Practices

The Act prohibits monopolistic trade practices of companies. covered by it if they are found to be prejudicial to the public interest.

We shall now define what is meant by `monopolistic trade practice' and also when it is deemed to be prejudicial to public interest'.

Section 2(h) of the Act defines monopolistic trade practice as a trade practice which has, or is likely to have, the effect of:

- maintaining prices at an unreasonable level by limiting, reducing or otherwise controlling the production, supply or distribution of goods of any description, or the supply of any services, or in any other manner;
- unreasonably preventing or lessening competition in the production, supply or distribution of any goods or in the supply of any services;



- limiting technical development or capital investment to the common detriment or allowing the quality of any goods produced, supplied or distributed, or any service rendered, in India to deteriorate;
- increasing unreasonably: -
 - a) the cost of production of any goods; or
 - b) charges for the provision, or maintenance, of any services;
- increasing unreasonably -
 - a) the prices at which goods are, or may be, sold or resold, or the charges at which the services are, or may be, provided; or
 - b) the profits which are, or may be derived by the production, supply or distribution (including the sale or purchase) of any goods or by the provision of any services;
- preventing or lessening competition in the production, supply or distribution of any goods or in the provision or maintenance of any services by the adoption of unfair methods of unfair or deceptive practices.

According to Section 32 of the Act, a monopolistic trade practice is deemed to be prejudicial to public interest if its effect is or would be:

- to increase unreasonably the cost relating to the production, supply or distribution of goods of the performance of any service;
- to increase unreasonably the prices at which goods are sold, or the profits derived from the production, supply or distribution of goods or from the performance of any service;
- to reduce or limit unreasonable competition in the production, supply or distribution of any goods (including their sale or purchase) or the provision of any service;
- to limit or prevent unreasonably the supply of goods to consumers, or the provision of any service;
- to result in a deterioration in the quality of any goods or in the performance of any service.

In order to determine whether the practice is prejudicial to public interest, the Central Government may ask the MRTP Commission to inquire into and report about it. Where the MRTP Commission on inquiry finds that such a trade practice operates or is likely to operate against the public interest, the Central Government may pass an order Section 3(3) for:

- a) regulating the (production, storage, supply,) distribution or control of any goods by the undertaking or the control or supply of any service by it and fixing the terms of sale (including prices) or supply thereof;
- b) prohibiting the undertaking from resorting to any act of practice or from pursuing any commercial policy which prevents or lessens, or is likely to prevent or lessen, competition in the (production, storage, supply) or distribution of any goods or provision of any services;
- c) fixing standards for the goods used or produced by the undertaking;
- d) declaring unlawful, except to such extent and in such circumstances as may be provided by or under the order, the making or carrying out of any such agreement as may be specified or described in the order;
- e) requiring any party to any such agreement as may be so specified or described to determine the agreement within such time as may be so specified, either wholly or to such extent as may be so specified;
- f) regulating the profits which may be derived from the production, storage, supply, distribution or control of goods or from the provision of any service;
- g) regulating the quality of any goods or the provision of any service so that the standards thereof may not deteriorate.



Restrictive Trade Practices

Every trade practice which is in restraint of trade is not necessarily a restrictive trade practice. It is only where a trade practice has the effect, action or probable, of restricting, lessening or destroying competition that is liable to be regarded as a restrictive trade practice. If a trade practice merely regulates and thereby promotes competition, it would not fall within the definition of restrictive trade practice even though it may be, to some extent, in the restraint of trade.

Regulation of Restrictive Trade Practice

The Act also prohibits restrictive trade practices of companies which are covered by it if these are found to be prejudicial to the public interest on an inquiry by the MRTP Commission or otherwise. "restrictive trade practice" means a trade practice which has, or may have, the effect of preventing, distorting or restricting competition in any manner and in particular:

- i) which tends to obstruct the flow of capital or resources into the stream of production, or
- ii) which tends to bring about manipulation of prices, or conditions of delivery or to effect the flow of supplies in the market relating to goods or services in such manner as to impose on the consumers unjustified costs or restrictions.

The essential feature of such a practice is that it is calculated to hinder competition. Limiting output and manipulating prices or supplies are characteristics of such a practice. It may either actually have the effect of adversely affecting competition or it may have such a potentiality. In either case it is characterized as a restrictive trade practice.

You should, however, note that the definition of 'restrictive trade practice' given in the Act is in general terms. In other words, it describes the effect or possible effect of the trade practice on competition. The illustrative examples of well-known restrictive trade practices have, however, been provided by Section 33 of the Act, which we explain next. These examples relate to not only decision-making in the area of product but also in the areas of price and channels.

Registration of Agreements Relating to Restrictive Trade Practices

Not all restrictive trade practices are Prohibited by the Act. The Act prohibits only those practices which are prejudicial to the public interest.

Section 33 of the Act lists agreement relating to restrictive trade practices which require registration and are prohibited under the Act. Such practices are as under:

- a) any agreement which restricts, or is likely to restrict, by any method the persons or classes or persons to whom goods are sold or from whom goods are bought;
- b) 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;
- c) any agreement restricting in any manner the purchaser in the course of his trade from acquiring or otherwise dealing 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 on 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 resale by the purchaser shall be the prices stipulated by the seller unless it is clearly stated that prices lower than those prices 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;
 - a) any agreement restricting in any manner, the class or number of wholesalers, producers or suppliers from whom any goods may be bought;
 - b) any agreement as to the bids which any of the parties thereto may offer at an auction for the sale of goods or any agreement whereby any party thereto agrees to abstain from bidding at any auction for the sale of goods.
- k) any agreement not hereinbefore referred to in this section which the Central Government may be notified specify for the time being as being one relating to restrictive trade practice within the meaning of this sub-section pursuant to any recommendation made by the Commission in this behalf;
- l) any agreement to enforce the carrying out of any such agreement as is referred above.

The above provisions shall apply in respect of goods as well as services.

Whenever any activity is found to be prejudicial to public interest, the MRTP Commission may ask the company to cease and desist from carrying on such agreements or suitably amend them as directed.

The Essential Commodities Act (1955)

The Essential Commodities Act affects production pricing and distribution decisions of a company. Its objective is to control, in the interest of the general public, the production, supply, and distribution of trade and commerce in certain commodities declared essential under the Act. Section 2 of the Act defines essential commodities and lists a large number of products that are included under it. Whenever a company markets these commodities, the provisions of the Act apply to it. The provisions influencing product and distribution decisions in particular have been discussed here while provisions relating to pricing have been elaborated later under impact of government control on pricing decisions.

Section 3 of the Act empowers the Central Government to regulate and or prohibit the production, supply, and distribution of essential commodities and trade and commerce therein if in its opinion it is necessary for maintaining or increasing supplies of any such commodity or for securing their equitable distribution and availability at fair price.

This power of the Central Government may be exercised in the following ways:

- regulating by licences, permits or otherwise the production or manufacture of any essential commodity;
- controlling the price at which it may be bought or sold;
- regulating by licenses, permits or otherwise its storage, transport, distribution, disposal, acquisitions, use or consumption;
- prohibiting the withholding from sale of any essential commodity ordinarily kept for sale;
- requiring any person holding its stock to sell the whole or a part of it to the Government.

The Act imposes both civil and criminal liability on the person for the contravention of the orders made under this Act.

The Prevention of Food Adulteration Act (1954)

The Prevention of Food Adulteration Act also affects decisions of companies manufacturing food products in respect of more than one element of the marketing mix,



viz. production, promotion and distribution. The provisions of the Act as they affect these component have been discussed here.

The objective of the Act is to protect the health of the public by prohibiting adulteration of food articles. The Act prohibits the production, storage, distribution and sale of adulterated and misbranded food articles and ensures purity in the articles of food.

An **adulterated** food article is one which is injurious to public health when:

- the 'product quality is not as demanded or claimed .
- it contains an injurious substance
- any constituent of the article has either been substituted by inferior substance or been taken away it had been prepared, packed, or kept under insanitary conditions
- it is unfit for human consumption because it is filthy, putrid, rotten, decomposed, insect infested, etc.
- it is poisonous or deleterious
- it is obtained from a deceased animal
- it contains colouring matter other than that prescribed
- it contains a prohibited preservative
- its quality or purity falls below the prescribed standards.

A **misbranded** product, on the other hand, is one, which:

- is a deceptive imitation of or resembles an existing product
- is falsely stated to be a product of another place or country
- is sold by a name belonging to another article of food
- is so coloured, flavoured etc., that the article is made to appear of greater value than it really is
- makes false claims
- does not show clearly on the package the name and address of the manufacturer, and its contents
- bears any false or misleading information regarding its contents
- bears on the package or the label the name of a fictitious producer of the article
- contains any artificial flavouring, colouring, etc. without stating that fact
- is not labelled in accordance with the requirements of this Act.

The Patent's Act (1970)

The Patents Act is another piece of legislation which affects company's product decisions. The first thing to understand in this connection is what is a patent?

A patent is an exclusive right to own, use and dispose of an invention for a specified period. This is right which is granted by, the Central Government to the first inventor or to his legal representative. An invention as used in the above definition means any new and useful art, process, method, or manner of manufacture, machine, apparatus or other article and substance produced by the manufacturer.

The provisions relating to specified period in the above context are:

In respect of food articles, medicines or drugs, the term of patent is 5 years from the date of sealing of the patent i.e. after complete specifications are accepted by the Patent Office, or 7. years from the date of filing complete specifications of the patent whichever is shorter.

In respect of other inventions, the term of the patent is the years from the date of filing complete specifications of the patent.



We will now describe the procedure to be followed where an individual is interested in making use of the patent in India other than the patentee. The individual so interested has to make a request to the patentee to grant him a licence for the purpose on such terms and conditions as may be mutually agreed upon or as decided by the Controller of Patents. But remember that the right to share a patent can be exercised only after the expiry of 3 years from the date of sealing of the patent.

The Trade and Merchandise Marks Act (1958)

The Trade and Merchandise Marks Act not only influences the company's product decisions but also its advertising decisions, so far as they relate to the use of trade and merchandise marks registered under this Act.

A 'mark' includes a device, brand, heading, label, ticket, name, signature, word, and letter of numeral or any combination thereof.

A trademark is a distinctive symbol, title or design that readily identifies the company or its product. The registration of trademark under this Act endows on its owner the right to its exclusive use and provides legal protection against infringement of his right.

Initially a trademark is registered for a maximum period of 7 years and is renewable for a similar number of years, each time the period of 7 years expires.

However, a trademark cannot be registered:

- whose use is likely to be deceptive or confusing
- whose use would be against any other law in force
- which is scandalous or obscene
- which may hurt the religious susceptibilities of the people in India
- which cannot otherwise be protected in a court of law.

In the event of infringement- of the rights of the trademark owner, the court may pass an order of injunction or may grant damages or may ask for an account of the profits made by using it, at the desire of the owner.

However, falsifying and falsely applying trademarks by any person are declared offences by the Act and attract both civil and criminal liability.

The Standards of Weights and Measures Act (1976)

This is another piece of legislation which affects product decisions of a company. The Act specifies the quantities in which certain products can be packed. The products so covered are bread, butter, cheese, biscuits, cereals and pulses, cigarettes, cigar, cleaning and sanitary fluids, cleaning powder, condensed milk, tea, coffee, cooking oils, cosmetics, honey, ice cream, jams, sauces, ketchup, milk powder, soaps, spices, toothpaste, etc.

Thus, in relation to the product, the government exercises control with the help of a number of Acts which influence not only whether a product can be produced or not but also the quality of production, plans for future expansions, production of new article, the ingredients like colour, flavour, etc. to be used, as well as the packaging, labelling and branding of the products.

Activity 2

You may recall that prior to 1978 we used to have a very popular soft drink marketed in India under the brand name of Coca Cola. Try to gather some facts from published sources and find out as to which laws were used by the then government to force the exit of their soft drink from India.

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21.6 IMPACT OF GOVERNMENT CONTROL ON PRICING DECISIONS

The government's control in the area of pricing is yet another feature of the interrelationship between government and business in India. The discussion under this sub-unit starts with a brief overview of price fixation by the government during the second world war. The present position has been discussed mainly with reference to the three important pieces of legislation, viz. the Industries Act, the Essential Commodities Act and the MRTP Act.

The fixation of prices by the government of articles considered essential for the society was introduced in India for the first time during the second world war. This was essentially a temporary measure to meet a situation of scarcity created by conditions of war. This policy not only was considered as a safeguard against profiteering by business and scarcities of many essential manufactured products but the government was influenced by other considerations as well which in many ways were more important.

Whatever be the causes, price control did not succeed and the dogmatic approach adopted in fixing the prices of manufactured articles in a fast changing situation proved Counter Productive as this contributed towards creation of scarcities by slowing down growth of production and driving the investors away from investments in low-profit government price controlled industries.

The present position is that the government regulates the prices of the products mainly through three Acts, viz.

- the Industries (Development and Regulation) Act, 1951;
- the Essential Commodities Act, 1955; and
- the MRTP Act, `1969.

We shall discuss the relevant provisions of these acts one by one to understand the scope of control uncle- each one of them.

The Industries (Development and Regulation) Act (1951)

Section 15 of the Industries Act empowers the government to investigate the working of a scheduled industrial undertaking when' there is a substantial fall in the volume of production, a marked deterioration in the quality of the product, a rise in the price of any article related to that industry without proper justification and to take suitable measures including control of the price or regulating the distribution.

Section 18(g) empowers the government to pass an order for controlling the prices at which scheduled products or class thereof may be bought or sold.

The Essential Commodities Act (1955)

The Essential Commodities Act, 1955 provides for the control of the production supply and distribution in certain commodities declared as essential under Section 2(a) of the Act, in the public interest. Under Section 3(2)(c) of this Act, the government can fix the price of such a commodity.

The list of commodities that have been under price or distribution control at one time or another under the Essential Commodities Act is fairly large. The list includes products like cattle fodder, coal, essential drugs, oilseeds, paper, petroleum and petroleum products, raw cotton, raw jute, jute textiles, cement, cinema films, matches, certain textile machinery, cycle tyres, tractors, PVC resins, tea, etc.



Public Distribution System: The Government through the public distribution system also aims at controlling and stabilising the prices of certain essential commodities like foodgrains.

Activity 3

What are the different categories of products whose prices are controllable under the above two acts, viz. the Industries Act and the Essential Commodities Act?

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Methods Used to Control Prices

You should, however, note that different methods have been used to control prices of different commodities. Our attempt here is to discuss only direct control measures involving fixation of prices. General measures like credit control, control over exports have been excluded. There are certain cases where only the minimum prices have been fixed and in certain others only maximum prices. To illustrate, in the case of sugarcane, minimum prices were fixed and sugar producers were legally free to pay higher than the minimum. As against this, in the case of some drugs maximum prices have been fixed and the producers or the sellers are free to sell up to the maximum level fixed by the government. Thus a discretion is given to the producers and sellers to lower the prices (below the maximum fixed) and compete in a narrow range. But since the maximum price fixed leaves only a reasonable margin or profit, in practice it is found that such products are sold at the maximum fixed prices only. Some problems of price and distribution controls are Worth mentioning here.

One, there are occasions when prices fixed by the government are kept above the free market level. This may happen when there is a glut in the market due to an unprecedented increase in supplies as in the case of agricultural products. In the absence of the government intervention the free market prices may fall and a number of producers may have to incur losses. As a result of the government fixing the prices above the free market level producers will get the minimum returns and the overall production will not suffer in the long run.

You should, however not forget the fact that a controlled price which is above the market price may lead to waste, inefficiency and misallocation of resources.

There are also occasions when prices fixed by the government are kept below the market level. This may hapⁿen, for instance, when the price of an essential commodity due to temporary setback in supply rises considerably under free market conditions. To protect the interest of the consumer, government may fix a price which will naturally be below the free market price. The impact. of price control may be favourable but what happens generally is that since the controlled price leaves only a low margin of profit, fresh investment in the industry may be discouraged whereby further growth of production becomes difficult.

Whatever may be the nature of control over price, in many cases, for the success of price control the government has to impose further control over the distribution. The usual method of exercising control over distribution is through rationing. There are two objectives which rationing tries to achieve. One, to ensure that essential goods are available, and two, they are available at a price which is not exploitative. It is rationing, in essence which implements price control. The usual advantages and disadvantages of rationing, however, are there. For example, an ineffective control over prices and/or distribution inevitably leads to black market.



Price Fixation Formula

The formula for price determination is based on accounting principles but in its actual working many complexities arise, such as

1. Item of expenditure not to be taken into consideration for determining cost of manufacture,
2. Capacity utilisation,
3. Return on capital employed.

The policy of allowing a return by way of fixed rate on capital employed without considering its other implications has done great harm to the economy in general and the industries concerned in particular. The rate of return once fixed by the government has been enforced on the industries despite the changed money market conditions, for long periods.

The MRTP Act (1969)

Collusive price fixing agreements, resale price maintenance (RPM) and agreements for price control to eliminate competition or competitors are the three main restrictive trade practices in the area of price fixation which attract the provisions of the MRTP Act.

The collusive price fixing agreements or cartels are those agreements wherein sellers agree on certain prices or on the maintenance of a certain price level or on the adoption of certain methods for determining prices cartels may also provide for rebates, commissions or discounts to be allowed to the buyers. The aim and result of every price fixing agreement is maximisation of profits by the participating parties.

Resale price maintenance is the practice by a supplier of prescribing retail or wholesale prices for the resale of his goods by the buyer. The supplier may fix up a minimum or a maximum price. Fixing a minimum price amounts to a restrictive trade practice since it leaves no freedom for the dealer to cut down prices and to enter into a price competition. Fixing a maximum price will not be a restrictive trade practice since freedom is left to sell below the maximum fixed. Note that the RPM can be enforced individually or collectively.

Price fixing to eliminate competition or competitors may also take the form of fixing a minimum price.

The MRTP Commission may, however, exempt the goods of the following description from the operation of the provision relating to minimum resale price maintenance if the commission is satisfied that in default:

- the quality of the goods and variety of the goods would be substantially reduced to the detriment of consumers or users of those goods, or
- the prices at which the goods are sold by retail would, in general and, in the long run, be increased to the detriment of consumers or users, or
- any necessary service actually provided in connection with or after the sale of goods by retail would cease to be so provided or would be substantially reduced to the detriment of consumers or users.

Registration of Trade Agreements

All the above agreements described above and which fall within the definition of restrictive trade practices are required to be registered with the Director General.

Control of Restrictive Trade Practices

The MRTP Commission is empowered to conduct an enquiry into any restrictive trade practice whether registered or not. If, after an enquiry, the MRTP Commission is of the opinion that the practice is prejudicial to the public interest, the Commission may, by order, direct that



- 1) the practice shall be discontinued or shall not be repeated (called 'cease and desist' order);
- 2) the agreement shall be void or shall stand modified in such manner as may be specified in the order.

Withholding Supplies of Goods from a Dealer

Section 40(1) of the MRTP. Act restrains the supplier of goods from withholding supplies of goods to any wholesaler or retailer on the ground that he has or is likely to resell the goods directly or indirectly to a third party at a price below the resale price. The objective of this sub-section is to prohibit other measures by, the suppliers. of goods for maintaining resale prices.

An exception to the above provision is, however, provided by the next sub-section, i.e. Section 40(2). The sub-section lays down that when a dealer uses as 'loss leaders' any goods of the same or a similar description, the supplier thereof can withhold, supplies to the dealer.

Deemed Withholding of Supplies

According to sub-section (3) of Section 40, a supplier of goods shall be deemed to the withholding supplies of goods from a dealer if he:

- a) refuses or fails to supply those goods to the order of the dealer;
- b) refuses to supply those goods to the dealer except at prices or on terms or conditions as to credit, discount or other matters which are less favourable than those at or on which he normally supplies those goods to other dealers carrying on business in similar circumstances; or
- c) treats a dealer, in spite of a contract with such dealer for the supply of goods, in a manner less favourable than that in which he normally treats other dealers in respect of time or methods of delivery or other matters arising in the performance of the contract.

You would probably like to know the objective of the above sub-section. It is to avoid unreasonable price discrimination amongst the various dealers. You should, however, understand this that price discrimination unlike price agreements is not prohibited per se. Only on those cases where it is proved that the price discrimination has the effect of limiting competition or preventing free competition, the marketer shall be deemed to have withheld the supply of goods from the dealer.

But the question that remains is what is the significance of the above section from the point of view of the marketer? It is that the marketers should be extremely careful in the use of price allowances and other terms which should not come under the purview of the above clauses, viz. (a); (b) and (c). The precaution that the marketer should take is to keep detailed cost data so that he could explain price differentials by pointing out the fact that the differential prices reflect different marketing costs in dealing with different target markets.

21.7 IMPACT OF GOVERNMENT CONTROL ON PROMOTIONAL DECISIONS

Promotional mix which includes advertising, sales promotion and personal selling is Another element of the marketing mix with respect to which it is essential for the marketing executive to know the implications of his own decisions.

A marketing executive has to be particularly careful with the legal implications of objectionable promotion. To be on the safe side he must satisfy himself on three counts in respect of persuasive communication, viz.

- Is the message or communication fraudulent?
- Does the message or communication misrepresent?



- Is the message or communication opposed to public policy?

The specific legal constraints which affect decision-making in the area of promotion will now be discussed. The following arrangement will be used in discussing the relevant provisions of the various Acts.

- MRTP Act
- Income-tax Act
- Trade and Merchandise Marks Act
- Prevention of Food Adulteration Rules
- Standards of Weights and Measures Rules
- Drugs and Magic Remedies Act
- Sales Promotion Employees Act

Unfair Trade Practices

The sachar committee in its report submitted in 1978 recommended pertaining to MRTP Act, and have highlighted the need for introduction of suitable provisions to curb unfair trade practices with a view to protect the consumers from practices adopted by trade and industry by way of resorting to misleading advertisements and sales promotion techniques thereby duping the consumers. This led to include the amendment of MRTP Act, in the year 1984 "Part-B-unfair trade practices" was added to chapter V. Section - 36A, 36B, 36C, 36D and 36E are relevant for the purpose of understanding the main provision relating to unfair trade practices.

Unfair Trade Practice

Means a trade practice which for the purpose of promoting the sale use or supply of any goods or for the provision of any services adopts any unfair method or unfair or deceptive practice including any of the following practices, namely:

- A The practice of making any statement orally or in writing or by visible representation which :
- i) falsely represents that the goods are of a particular standard quality, quantity, grade, composition, style or model;
 - ii) falsely represents that the services are of a particular standard, quality or grade;
 - iii) falsely represents any rebuilt, second hand, renovated, reconditioned or old goods as new goods;
 - iv) represents that the goods or services have sponsorship, approval, performance, characteristics, accessories, uses or benefits which such goods or services do not have;
 - v) represents that the seller or the supplier has the sponsorship or approval or affiliation which such seller or supplier does not have;
 - vi) makes a false or misleading representation concerning the need for or the usefulness of, any goods or services;
 - vii) makes to the public a representation in a form that purports to be (a) a warranty or guarantee of a product or of any goods or services; or (b) a promise to replace, maintain or repair an article or any part thereof or to repeat or continue a service until it has achieved a specified result, if such purported warranty or guarantee or promise is materially misleading or if there is no reasonable prospect that such warranty, guarantee or promise will be carried out;
 - viii) materially misleads the public concerning the price at which a product or like products or goods or services, have been, or are, ordinarily sold or provided, and, for the purpose, a representation as to price shall be deemed, to refer to the price at which the product has been sold or services have been provided by the person by whom or on whose behalf the representation is made;
 - ix) gives false or misleading facts discouraging the goods, services or trade of another person.



A statement, made in any one of the following ways, shall be deemed to be a statement made to the public by the person who had caused such statement to be made, viz :

- expressed on an article, offered or displayed for sale, or on its wrapper or container,
- expressed on anything attached to, inserted in, or accompanying such an article, or an anything on which such an article is mounted, and
- contained in or on anything that is sold sent, delivered, transmitted or in any other manner what so ever made available to a member of the public.

B Permits the publication of any advertisement whether in any newspaper or otherwise, for the sale or supply at a bargain price, of goods or services that are not intended to be offered for sale or supply at the bargain price.

C Permits:

- a) the offering of gifts, prizes or other items with the intention of not providing them as offered,
- b) the creation of impression that something is being given or offered free of charge when it is fully or partly covered by the amount charged in the transaction as a whole, and
- c) the conduct of any contest, lottery, game of chance or skill, for the purpose of promoting, directly or indirectly, the sale, use or supply of any product or any business interest.

D Permits the sale of supply of goods intended to be used, or are of a kind likely to be used, by consumers, knowing or having reason to believe that the goods do not comply with the standards prescribed by competent authority relating to performance, composition, contents, design, construction, finishing or packaging as are necessary to prevent or reduce the risk of injury to the person using the goods.

E Permits the hoarding or destruction of goods, or refuses to sell the goods or to make them available for sale, or to provide any service, if such hoarding or destruction or refusal raises or trends to raise or is intended to raise, the cost of those or other similar goods or services. If on an inquiry the MRTP Commission finds that the practice is prejudicial to the public interest or to the interest of any consumer(s) generally, it may pass a cease and desist order and declare such agreement void or modify it.

Expenditure on Advertising and Sales Promotion

The provisions of the Income-tax Act, 1960 keep a check on the advertising expenditure and expenditure on distribution of samples by limiting the deduction from the income of the company.

Use of Trade Marks in Advertisements

The Trade and Merchandise Marks Act, 1958 specifies that no such trademark should be used which is likely to be deceptive or confusing, or which is scandalous or obscene or which may hurt the religious susceptibilities of the people in India.

Declarations on Labels and Packages

The Prevention of Food Adulteration Rules, 1955 requires certain declarations to be made on the labels and packages of the product. It also specifies the language, and size of types used for declaration, forms of labels, etc.

The Standards of Weights and Measures (Packaged Commodities) Rule, 1977, lays down the area, size and letter, etc. for principal display panel on the package.

Advertisement of Drugs and Medicines

The advertising decisions of marketers of certain drugs are influenced by the provisions of the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954. The Act 66 prohibits the publication or issue of advertisements tending to cause the ignorant



consumer to resort to self-medication with harmful drugs and appliances.

Besides, advertisements for certain drugs for preventing diseases and disorders like epilepsy, prevention of conception, sexual impotency, etc. are prohibited. It also prohibits advertisements making false claims for the drugs.

Pharmaceutical Companies and Sales Force Decisions

The **Sales Promotion Employees (Conditions of Service) Act, 1976**, applies to pharmaceutical companies only. However, government can apply it to any industry. Its major influence is on the Sales Force decisions. The provisions of this Act regulate the service conditions of sales personnel and endow on them the benefits largely accruing to the industrial workers under industrial legislation of the country.

Through the above provisions the government attempts to regulate the information that the manufacturer must provide regarding the product, the claim that can be made, the ways and means which can be used to promote the product, and the expenditure that can be incurred on promotional activities.

Ban on Bargain Sale by Zapata - Case History

A Bombay based dealer in textile, Pannama Textiles, was prohibited by the Monopolies and Restrictive Trade Practices Commission (MRTPC), from conducting through misleading advertisements bargain sale of textile goods.

The dealer was first found to have conducted the bargain Sale under the name 'Zapata' at YWCA and was later found to have been carrying on such bargain sale at New Delhi Municipal Committee Hall at Panchkuian Road, New Delhi.

In the 'bargain sale' the dealer was found to have sold spurious or sub-standard suiting, etc. falsely claiming them to be of well-known brands manufactured by companies like Raymond Woollen Mills, grasim Industries and Bombay Dyeing. The prohibition order was given following an investigation into the advertisement by the Director General of Investigation and Registration of MRTP.

The enquiry into the advertisement by the Directorate-General of Investigation revealed the 'Suitings' being sold under the famous brand names were in fact manufactured by some unknown concerns even though the labels on the cloth showed them to have been manufactured by the well-known textile companies. The bargain price uniformly at Rs. 65/- in all varieties of cloth was in reality much lower than the ex-factory price of those varieties of cloth with the well-known brand name.

Similarly, in respect of pillow covers, bed-sheets, the investigation revealed that though the price was cheap, they were found to be of shorter than the usual sizes, and thereby it was exploiting the gullible public.

21.8 IMPACT OF GOVERNMENT CONTROL ON CHANNEL AND DISTRIBUTION DECISIONS

We will now take up legislative provisions as they affect channel and distribution decisions. The impact of government regulations is really significant in this area.

The overall objective of regulation of this element of the marketing mix as with respect to other elements is to promote the healthy marketing environment in the country. More specifically the regulatory framework relating to channel and distribution decisions aims:

- to prevent restrictions on free flow of goods and services
- to promote competitive conditions in industry by preventing all restrictive elements like tie-up sales, boycott, exclusive dealing, full line forcing, etc.
- to promote efficiency of the industry's manufacturing and distribution units,



- to prevent trade agreements which often protect less efficient firms, the efficient ones alone are able to survive, and
- to protect the consumer.

The relevant provisions of the concerned Acts which affect decision-making in this area shall now be discussed. The concerned Acts are:

- Industries Act
- Companies Act
- MRTP Act
- State Sales Tax rates.

Passing of Orders for Selling of Stock

Section 18 G of the Industries (Development and Regulation) Act, 1951 specifies that if an individual has in stock any essential commodity, the government may order him to sell the whole or a specified part of the stock to such person or class of persons as may be specified in the order.

Sole Selling Agency Arrangement

Section 294 of the Companies Act, 1956 regulates the appointment and terms of the selling agency. A selling agent can be appointed at a time maximum for a period of five years-and the agreement can be renewed each time for a period not exceeding five years.

According to Section 294-AA of the Companies Act the Central Government is empowered to declare by notifying in the Official Gazette that the sole selling agents shall not be appointed in cases where in its opinion the demand for goods or services or a certain category is substantially in excess of the production or supply, and, therefore, services of such sole selling agents are not necessary for creating a market.

The sole selling agents, however, have been forbidden in industries like cement, paper, Vanaspati, etc.

The impact of above provisions will be that they will affect a company's choice in selecting its distribution channels.

Restrictive Trade Practices

The MRTP Act, 1969 prevents channels arrangements that tend to substantially lessen competition, create monopoly and are otherwise prejudicial to public interest. In the perspective of these objectives the Act prevents arrangements like exclusive distributorships, territorial restrictions, full line forcing, etc., in many situations. These are treated as restrictive trade practices under the Act.

These arrangements are as under:

Refusal to Deal or Exclusive Dealing

If there is an agreement between a producer and distributor to the effect that the latter should not sell to particular buyers or to a particular class of buyers, it is an arrangement for exclusive dealing.

Where two or more enterprises enter into an agreement that one or both will deal exclusively with the other and shall not deal with third parties in respect of specified commodities or services or class of technology, such an agreement becomes a restrictive trade practice. However, in a case it was held that exclusive dealership agreement for sale and distribution of commercial vehicles promotes rather than retards competition. [Telco Ltd. vs. Registrar of Restrictive Trade Agreements (1977)].

Thus Exclusive dealing is one type of restrictive trade practice. As is clear from the above provisions, here, the buyer agrees not to handle the products of other suppliers



who compete with the seller or the seller agrees not to sell to other buyers. Such arrangement, as is obvious, obstructs the development of a competitive market for the product in question and thereby injuriously affects the public interest as supply and price will depend on the discretionary policy of the manufacturer or the distributor.

A number of companies in India have developed exclusive arrangements to channelise their products.

Such a situation exists, for example, when exclusive dealings lead to specialisation and improvement in after sale service. To illustrate, in the case of a product like vehicle a dealer specialises in his own type of vehicle with all the attending advantages of trained personnel, special service stations, workshops and spare parts. In other words, the benefits of after-sale service become more effective from the point of view of the customer if there are exclusive arrangements. Proper training of mechanics and securing of genuine spare parts and accessories definitely become easier if the dealer is an exclusive dealer. In effect, the exclusive dealing arrangement, no doubt, enhances the chances of manufacturer in the competition by emphasising the distinctive nature of the product and also by highlighting the facilities and adequate supply of genuine parts and accessories.

You should, however, note that the nature of competition cannot be considered in a Vacuum or in a doctrinaire spirit. The concept of competition is to be understood in a commercial sense.

The names of some of the companies which have developed exclusive arrangements to channelise their products are:

- Raymond Mills
- BPL India Ltd.
- Godrej Ltd.
- Maruti Udyog Ltd.
- Titan Industries Ltd.
- Bata India Ltd.
- Lee Cooper Jeans

Anti-Competitive and Trade Restrictive Arrangements declared void by the MRTP Commission-Case Histories

Cadbury India Ltd., Bombay: Clause 5 in the agreement entered into with the distributors, namely, "during the currency of this agreement, you will not distribute any competitive brand" was declared void and withdrawn by the company.

Usha Sales (P) Ltd., New Delhi: The Commission ordered that "the practice of appointing or having exclusive dealers for the sale of fans in all towns in India with a population of a lakh and less shall be discontinued and shall not be repeated".

Tata Oil Mills Co. Ltd., Bombay: Clause 15 of the agreement entered into with its registered stockists restricting them to deal in competitive brands was declared void.

Hindustan Lever Ltd., Bombay: Clause 9 of the agreement entered into with its redistribution stockists restricting them from selling goods outside the prescribed territory was considered restrictive trade practice and declared void.

Tie-up or Tie-in or Full-line Forcing

Another type of restriction is what is popularly known as tying arrangement which may be in the nature of clubbed sales or full-line forcing.

The tie-up agreements are those by which the supplier imposes on the buyer the condition that the buyer is bound to accept a second or several additional products supplied by the same seller, e.g. where the seller of a camera insists that only the film



made by him should be used for taking pictures from this camera then this is a tie-up sale or if a manager of a restaurant insists that some drinks must be ordered with the lunch or dinner then this is a tie-up sale. That is one purchase is tied-up with another. An extreme form of tying arrangement is full-line forcing which means forcing the buyer (dealer) to buy all his requirements only through the particular supplier.

A policy is usually adopted when a manufacturer finds that some product items on its product-line move very slowly and fail to catch up with the movement of fast-selling items resulting in unsold stocks of such items.

Intermediaries always resent such a policy because it makes them work much harder to dispose of such slow moving items. They, however, generally submit to such a compulsion owing to, first, the profit potential of and the opportunity provided by fast moving items, and, second, the inclination to imitate the manufacturer's policy while selling to dealer. For example, a manufacturer who manufactures a wide range of dye-stuffs enters into an agreement with his distributor that the distributor will take the whole range of dye-stuffs in specified quantities as might be decided by the manufacturer. Tying arrangements also occur where one product is the subject of scarcity either due to production constraints or deliberately contrived shortage or is subject to price control under law. The tied products are usually those whose supply exceeds the demand. Tying arrangement yields monopoly profits to the manufacturer as there is no competitive market and to that extent are prejudicial to public interest.

Examples of cases where such a Policy was declared void by MRTP Commission

Carona Sahu Co., Ltd. (1975): Clause 2 of the agreement the company had entered into with its dealers was considered as one of 'full-line forcing and declared void'. The clause read, "the dealers hereby agree and bind themselves to purchase from the company in wholesale footwears offered and/or supplied by the company during the existence of this agreement".

Gestetner Duplicators (P) Ltd., (1975): The company was directed to forthwith discontinue its policy of tying-up sale of stencils, inks, spare part's and cabinets along with the sale of duplicators.

Collective Agreement

All agreements or understandings between manufacturers or suppliers of goods which tend to obstruct competition may be considered as collective agreements. These are also known as collusive agreements or cartels. It may be a quota cartels. It may be a quota cartel in terms of territories, volume of sales, customers, etc. Agreements between buyers are also treated as collective agreements.

Discrimination in Dealing

Agreements may be formed for giving some preferences like special discounts, rebates, bonus or other concessions to some enterprises over others, when such discrimination is not warranted by differences in the circumstances of the transaction. Rebates can broadly be classified as aggregated rebate, loyalty rebate and natural rebate.

When the rebate is calculated in terms of all purchases made with a group of designated sellers, it is called aggregated rebate. A loyalty rebate is one which is granted to a purchaser who purchases exclusively from one or more specified sellers for a given period. A natural rebate is granted to a purchaser in the firm of additional products of the kind purchased.

If the discounts are given at a uniform rate on the basis of turnover of a specified volume when it represents cost of saving being passed on to the buyer, it does not amount to a restrictive trade practice. But payment of differential discounts and commissions on the basis of quantum of sale is a restrictive trade practice. If, however, extra 'discount is provided on bulk orders and it is justified on the context of savings made, it does not amount to a restrictive trade practice. Mere rebates or discounts etc., on sales will not amount to restrictive practices unless they become discriminatory.



Sole Distributorship and Allocation of Markets

Agreements for the appointment of sole selling agents usually region-wise and sometimes for the whole market precludes the possibilities of competition between sellers and its a restrictive trade practice. In the case of RRTA vs. Spencer & Company Ltd., (1978) allocation of territory for distribution, sale, installation, and after-sales service of refrigerators by the manufacturer to his authorised dealers was held to be a restrictive trade practice.

Boycott Practices

Trade associations may arrive at an arrangement whereby their members are made to agree upon certain policies like not to fill in or apply for any tender without approval from the Association and not to execute the orders of any customers directly without reference to the Association and may decide:

- a) to refuse to deal with non-complying members and non-member competitors, and
- b) to refuse to buy from suppliers or to sell to purchasers who had dealings with the erring members.

The boycott practices may take the form of withholding supplies, refusing trade terms, imposing penalties, etc.

21.9 SUMMARY

A number of legislative measures both Central and State affect the functioning of enterprises in different ways. In this Unit our focus has been mainly on discussing those laws which affect major marketing decision areas in a firm, viz., product, price, promotion, channels and distribution. Three Acts stand out of this myraid of laws interfering with every activity of markets, viz, the Monopolies and Restrictive Trade Practices Act; 1969, the Consumer Protection Act, 1986 and the Industries (Development and Regulation) Act. Foreign Exchange Regulation Act is another piece of legislation which regulates dealings affecting foreign exchange resources of the country and the proper utilisation thereof in the interests of the economic development of the country.

The objective of the MRTP Act is to control monopolies and concentration of economic power and curb monopolistic, restrictive and unfair trade practices and these have relevance from the point of view of decision-making with respect to all the 4 Ps of the marketing mix. The Act, however, does not apply to public undertakings, government managed private undertakings, financial institutions and cooperative societies.

The Consumer Protection Act is the latest in the field and its enforcement would be really difficult for marketers to ignore the interests of consumers in taking decisions about different components of the marketing mix. The Consumer Protection Act unlike the MRTP Act does not exclude or exempt from the purview of the regulatory measures the public enterprises, financial institutions and cooperative societies. That is in their case also the regulatory provisions will apply if their marketing practices are found to be against consumer or public interest.

The Industries Act also is one of the major economic laws of the country which has been designed to regulate the industrial activity. It is through this Act that the industrial policy of the country is implemented. Under the Act a company cannot manufacture a product listed under the first schedule of the Act despite all the factors favouring its production until it can obtain a licence for it from the Central Government.

Certain legislations which affect marketing decisions like the Indian Contract Act, 1872, the Indian Sale of Goods Act, 1930, the Companies Act, 1956, the Trade and Merchandise Marks Act, 1956, and the Bureau of Indian Standards Act, 1986, apply to every undertaking, irrespective of the nature of product sold or service rendered.:

As against these there are other laws which seek to regulate marketing decisions of undertakings engaged in specific industries only. Some of these are the Industries



(Development and Regulation) Act, 1951, the Prevention of Food Adulteration Act, 1954, the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954, the Essential Commodities Act, 1955, and the Sales Promotion Employees (Conditions of Service) Act, 1976.

All these Acts affect decision-making in relation to different elements of the marketing mix. The following are some examples to illustrate these. In the area of the product the government control may affect decision-making with regard to product-line expansion, product quality and safety, provision of adequate and efficient services, packaging, labelling and branding, sizes and shapes of packages, information to be given on the wrapper of container, claims with regard to sponsorship, performance characteristics, etc., warranty or guarantee provisions and the after-sales service. The decisions that may get affected in the context of regulation of pricing practices by the Government may concern collusive price fixing agreements, resale price maintenance and agreements for price control to eliminate competition, or competitors and also excessive, deceptive, bargain or bait pricing. So far as advertising, sales promotion and personal selling is concerned; the government tries to regulate activities like false, misleading and deceptive advertising, bait advertising and sales promotion devices. The other decision areas concern the use of deceptive or confusing trade marks, use of advertisements to cause the ignorant consumer to resort to self-medication with harmful drugs and appointments and regulation of the service conditions of sales personnel of pharmaceutical and other industries that may be covered. The main aspects in relation to which the government tries to exercise control in respect of channels and distribution decisions relate to restrictive and unfair trade practices like hoarding and cornering of goods, refusal to sell goods to provide services, etc., and arrangements like sole selling agency agreements, tie-up sales, boycott, exclusive dealing, territorial restrictions, full line forcing, resale price maintenance, etc. The marketer must ensure that his decision in all these fields conform to the relevant Provisions of the various Acts and Statutes.

21.10 KEY WORDS

Guarantee and Warranty: The guarantee is the general policy of the manufacturer with regard to defective products. Often used as a promotional device, it usually makes broad promises (such as offering "complete satisfaction")• that may or may not be legally binding. The warranty, however, must specify the exact terms under which the manufacturer will repair or replace its merchandise. Consumers often misunderstand the limits of a warranty or fail to read presale posted warranties and may accidentally misuse the products.

Small-scale and Ancillary Units: A **small-scale industry** is defined as an undertaking having investments in plant and machinery whether held on ownership basis or by lease or by hire purchase not exceeding Rs. 35* lakhs in value. An ancillary industry is defined as an undertaking having investment in fixed assets in plant and machinery not exceeding Rs. 45 lakhs** and engaged in (i) manufacture of parts, components, sub-assemblies, toolings, or intermediaries; or (ii) rendering of services and supply or proposing to supply or render 50 per cent of their production or total services, to other units for production of other articles.

Service: Means service of any description which is made available to potential Users and includes the provision of facilities in connection with banking, financing, insurance,, transport, processing, supply of electrical or other energy,. boarding or lodging or both, entertainment, amusement or the purveying of news or other information [Section 2 (0) of the Consumer Protection Act, 1986]

* Raised from Rs. 10 Lakhs to 20 Lakhs on July 23, 1980 and further raised since March 16, 1985. 72

** Raised from Rs. 15 Lakhs to 25 Lakhs on July 23, 1980 and further raised since March 16, 1985.



Administered Prices: The term is often used in the context of regulation of prices by the Government. It may assume two forms: One, the price may be set by some Government agency like the Bureau of Industrial Costs and Prices (BICP) or the Tariff Commission, and in that case the firm has no choice but to abide by it. Two, the price may be set by a firm within the framework or on the basis of a formula given by the Government.

21.11 SELF-ASSESSMENT QUESTIONS

- 1) Enumerate and explain with examples the various public policy instruments which has a direct bearing on the 4Ps of marketing mix.
- 2) Identify and comment on the legislations which have been designed keeping in view the growing need for consumerism.
- 3) Do you think that consumer protection Act, 1986?
 - a) has relevancy in today's context with knowledgeable consumers.
 - b) is an additional challenge to deal with effectively by the marketing manager critically elucidate the above two statements.
- 4) As a Business entrepreneur would you perceive consumerism as a Business ethic or a social responsibility. Comment
- 5.) Identify and list out the legislations that would attract a medium scale consumer manufacturing and marketing company.

21.12 FURTHER READINGS

Amarchand, Government and Business, Tata McGraw-Hill Publishing Company Limited, New Delhi.

Bare Acts pertaining to all the relevant legislations covered in the Unit.

MRTP law and practice - S.M. Dugar

Consumer Protection Act, 1986, Government of India Publication.