
UNIT 20 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

- 20.1 Introduction
- 20.2 Regulatory Role of the Government
- 20.3 Role of Government in Marketing in Developing Economies
- 20.4 Government Control and Marketing Decision-Making Process
- 20.5 Impact of Government Control on Product Decisions
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20.1 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.

20.2 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.

20.3 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.

- 1) Through normal regulative activities including price controls, control of product quality and quantity, controls over market participation, sales taxation, and antitrust regulations.
- 2) 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.
- 3) 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 (CCI)**, 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.

20.4 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 forcés. 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.¹

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.

The Bureau of Industrial Costs and Prices was established by the Government in 1971. Its job is to conduct enquiries about industrial products and recommend prices.

The Agricultural Prices Commission was set up in January 1965 to advise the government on pricing policies for agricultural commodities.

The Government has also framed rules like the Prevention of Food Adulteration Rules, 1955 and the Standards of Weights and Measures (Packaged Commodities) Rules, 1977 to enforce the provisions of the related acts. The enforcement of these Acts is the responsibility of the Central and the State Government.

The MRTP Commission has been established by the Government under section 5 of the MRTP Act, 1969. The Commission may inquire into any restrictive trade practice (i) upon receiving a complaint of facts which constitute such practice from any trade or consumers association having a membership of not less than twenty-five persons or from twenty-five or more consumers, or (ii) upon a reference made to it by the Central Government or a State Government, or (iii) upon an application made to it by the Registrar of Restrictive Trade Agreements (RRTA), or (iv) upon its own knowledge or information (also known as suo moto inquiries).

As far as monopolistic trade practices are concerned, an inquiry can be made either upon a reference made by the Central Government or upon its own knowledge or information.

A complainant is different from an informant since the latter is not recognised by the Act. In such cases the MRTP Commission have to decide whether any informant in any case is a person interested in the subject matter of the proceedings.

In respect of complaints received from consumer and trade associations directly, the MRTP Commission has to make a preliminary investigation through its Director General of Investigation to satisfy itself that the complaint deserves a full-scale inquiry.

Public interest groups have also grown up during the last one decade or so. These groups influence both government as well as business to pay more attention to consumer ~~rights~~. They even take the matter to a law court to get justice to affected consumers ~~against~~ unfair dealings on the part of business enterprises.

Activity 1

Three purposes of government control have been spelt out earlier. Read carefully the reasons for government control as listed with Article 39(b) and (c) of the Constitution of India and classify these reasons under these three purposes, viz. to protect companies from each other, to protect consumer from unfair business practices, and to protect the larger interest of society against unbridled business behaviour.

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20.5 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 I, 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, II 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 or 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 effecting competition or it may have such a potentiality. In either case it is characterised 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.

