1. AN INTRODUCTION AND OVERVIEW

The Competition Act, 2002
   Antitrust Issues 2
   Coverage of the Act—The New Regulatory System 4
   Anti-competitive Agreements 5
   Abuse of a Dominant Position 6
   Combination/Acquisition 6
   The Background Setting Leading to the Act 7
   The Committee's Assessment 8
   WTO Obligations 10

GATS 10
TRIPS 12
   WTO Agreements and the Act 12
   The New Competition Law—Repealing the MRTP Act 13
   Fair Criticism? 14
   The Scheme of the MRTP Act 15
   The Material Provisions of the Law 15
   Concentration of Economic Power 15
   Monopolistic Trade Practices 16
   Restrictive Trade Practice 17
Contents

Registrable Agreements Relating to Restrictive Trade Practices 18
Unfair Trade Practices 18
Enforcement Authorities 18
Implementation of the MRTP Act 19

The Competition Act—An Overview 21
The Law Relating to Competition 21
Anti-competitive Agreements 21
Cartels 23
Abuse of a Dominant Position 25
Combinations 25

Enforcement 26
Authorities Enforcing the Competition Act, 2002 26

Competition Advocacy 35
Draft National Competition Policy 36
Power to Make Rules, Regulations—Sections 63, 64 37
Power of the Commission to Make Regulations—Section 64 37

Some Issues in Enforcement 42
Penalties under the Act 43
Potential for Conflict 44
Areas Needing Further Consideration 49
Telecommunications 49
Competition Issues in Telecommunication Services 50

The Telecom Regulatory Authority of India Act (TRAI), 1997 51
The Functions of TRAI—Aligning with the Competition Commission 51
Professional Services 53
Multidisciplinary Partnerships 54
Competition in Professional Services 57
'Report on Competition in Professional Services' (European Commission) 57
Acts of Persons from Abroad Affecting Competition in India 58
The Future 61
Contents

2. ANTI-COMPETITIVE AGREEMENTS
   The Terms Used
   Section 3—Substance
   Comparative Law
      Competition Law of the EEC
      Modernizing Legislation—EEC
      The Competition Act, 1998, UK
      Competition Law of the US
   Section 3—The Elements
      Section 3(1)—Appreciable Adverse Effect on Competition within India
      Evaluating Appreciable Adverse Effect on Competition within India
      Rules for Determining Effect on Competition
      The Two Rules Under the Competition Act
      Causing Entry Barriers
      Eliminating Competition
      Benefits that may Flow from an Agreement
   Section 3(2)
   Section 3(3) Cartels and Similar Groups
      What is a Cartel?
   Section 3(4)
      Vertical Restraints
   Section 3(5)—Exercise of Intellectual Property Rights and Competition
      Patents
      Adequacy of Section 3(5)
      Obligation under TRIPS
      Evaluating Technology Transfer Agreements Under Competition Law
   US
   EU
   Need to Review Section 3(5)
   Enforcement Provisions
      Orders that may be Passed by the Competition Commission
      Enforcement against Those not Carrying on Business in India—Section 32
Refusal to Licence Copyright Material 193

The Process of Dealing with Abuse of a Dominant Position 195

Orders that the Commission may Pass 195

Section 27 196

Discontinuance of Abuse/Penalties 196

Compensation 196

Division of the Enterprise 197

Interim Orders—Section 33 197

4. COMBINATION 201

The MRTP Act 201

Acquisition of Shares 202

The Companies Act, 1956 202

The Securities and Exchange Board of India (SEBI) 202

Mergers—the Companies Act, 1956 203

Why a Merger 204

The Courts’ Approach 205

The Need for Control of Mergers and Acquisitions 207

Combination—the Legal Framework 208

Acquisition/Merger 208

Regulations Setting Out the Procedure Applicable to Combinations 214

Comparative Law 214

The Clayton Act—USA 214

The EC Merger Regulation 215

The Enterprise Act, 2002—UK 217

Regulation of Combinations—Section 6 218

Definitions under the Competition Act, 2002 219

Combination 219

Acquisition 222

Assets 224

Control 225

Enterprise 229

Group 229

Merger or Amalgamation 229

Turnover 229

Control of Anti-competitive Combinations 230
## Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Appreciable Adverse Effect on Competition</td>
<td>230</td>
</tr>
<tr>
<td>Evaluating a Combination</td>
<td>231</td>
</tr>
<tr>
<td>Guidelines for Evaluating Effects of a Merger</td>
<td>235</td>
</tr>
<tr>
<td>on Competition</td>
<td></td>
</tr>
<tr>
<td>US</td>
<td>235</td>
</tr>
<tr>
<td>UK</td>
<td>235</td>
</tr>
<tr>
<td>The 2002 Act</td>
<td>236</td>
</tr>
<tr>
<td>Acquisition</td>
<td>236</td>
</tr>
<tr>
<td>Causing Another Company to Become a Subsidiary</td>
<td>237</td>
</tr>
<tr>
<td>Concentrated Industry</td>
<td>241</td>
</tr>
<tr>
<td>Vertical Integration</td>
<td>241</td>
</tr>
<tr>
<td>Acquisition of Assets</td>
<td>244</td>
</tr>
<tr>
<td>Acquiring Machinery for Standardization</td>
<td>245</td>
</tr>
<tr>
<td>Shares in a Competing Company</td>
<td>246</td>
</tr>
<tr>
<td>Joint Ventures</td>
<td>247</td>
</tr>
<tr>
<td>Agreement Among Joint Venture Partners</td>
<td>248</td>
</tr>
<tr>
<td>Potential Competition—Section 7 of the Clayton Act</td>
<td>249</td>
</tr>
<tr>
<td>Merger</td>
<td>251</td>
</tr>
<tr>
<td>Joint Control—Shareholding and Restructuring Agreement</td>
<td>251</td>
</tr>
<tr>
<td>Merger Eliminating a Competitor</td>
<td>252</td>
</tr>
<tr>
<td>Product Market, End-uses</td>
<td>254</td>
</tr>
<tr>
<td>Telecommunication Services</td>
<td>255</td>
</tr>
<tr>
<td>Internet Access Services</td>
<td>256</td>
</tr>
<tr>
<td>Regulation of Combinations Under the Competition Act</td>
<td>258</td>
</tr>
<tr>
<td>The Process</td>
<td>258</td>
</tr>
<tr>
<td>Section 31—Orders of the Commission on Certain Combinations</td>
<td>259</td>
</tr>
<tr>
<td>Reliefs</td>
<td>260</td>
</tr>
<tr>
<td>Multijurisdiction Mergers</td>
<td>261</td>
</tr>
<tr>
<td><strong>5. Enforcement</strong></td>
<td>275</td>
</tr>
<tr>
<td>Authorities Enforcing the Competition Act, 2002 as Amended by the 2007 Act</td>
<td>275</td>
</tr>
<tr>
<td>Duties, Powers, and Functions of the Commission</td>
<td>275</td>
</tr>
<tr>
<td>Anti-competitive Agreements and Abuse of Dominance</td>
<td>276</td>
</tr>
</tbody>
</table>
**Contents**

Orders which may be Passed by the Commission after Inquiry into Anti-competitive Agreements or Abuse of a Dominant Position 281

Inquiry into a Combination—The Procedure 283

Investigation of a Combination—The Procedure 284

Orders of the Commission on Certain Combinations—Section 31 286

Acts Taking Place Outside India but having an Effect on Competition in India—Section 32 287

Duties of Director-General—Section 41 292

Penalties 293

Power to Award Compensation 294

The Competition Appellate Tribunal 298

Adjudication on Claims for Compensation 299

Awarding Compensation—Section 53N 300

The Procedure for Adjudicating a Claim for Compensation 302

Provision for Representative Actions 303

Comparative Law 304

The Competition Commission, UK 308

US—Enforcement 312

Cross-border Issues and Competition 317

Cooperation Agreements Among States—Bilateral Agreements 321

Epilogue 336

Appendix 339

Bibliography 341

Case Index 345

General Index 349

About the Author 357