CHAPTER 5

ACQUISITION/TAKEOVER, MERGER/AMALGAMATION
& DIVISION OF UNDERTAKINGS
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AND DIVISION OF UNDERTAKINGS

INTRODUCTION

Enabling Sections

Section 23 of MRTP Act relates to the approval of schemes of undertakings to which sections 20 (a) & (20 (b) apply, for Merger/Amalgamation and Acquisition/Takeover. All the undertakings registered under MRTP Act have to take permission of the Central Government under MRTP Act for any scheme for Merger/Amalgamation, Acquisition/Takeover. In this chapter we would analyse the proposals disposed under Section 23(4) and 23(8) Acquisition/Takeover and under Section 23(2) Merger/Amalgamation.

ACQUISITION/TAKE-OVER

Section 23(4) of MRTP Act states that:

"If an undertaking to which this Part applies proposes to acquire by purchase, takeover or otherwise the whole or part of an undertaking which will or may result either -

a) in the creation of an undertaking to which this Part would apply; or

b) in the undertaking becoming an inter-connected undertaking of an undertaking to which this Part applies,

it shall, before giving any effect to its proposals, make an
application in writing to the Central Government in the prescribed form of its intention to make such acquisition, stating therein information regarding its inter-connection, with other undertakings, the scheme of finance with regard to the proposed acquisition and such other information as may be prescribed."

and Section 23(8) states:

"Notwithstanding anything contained in any other law for the time being in force, no proposal to acquire by purchase, takeover or otherwise of an undertaking to which this Part applies shall be given effect to unless the Central Government has made an order according its approval to the proposal.

Thus, any undertaking to which MRTP Act applies or would apply consequent to Acquisition/Takeover has to take permission of the Government for effecting the Acquisition/Takeover.

DISPOSAL OF APPLICATIONS BY GOVERNMENT

Since the establishment of the MRTP Act till November 1976, 62 applications had been received by the Government under Section 23(4) and 23(8) (see table 5.1). Till 1973, 51 applications had been received and after that for some reasons only 11 applications were received by the Government. Out of these 62 applications, 20 were withdrawn by the undertakings, 30 were approved, and 7 were rejected. Only 4 cases had been referred to MRTP Commission under this section; 3 in 1972 and one in 1973. No applications were referred to MRTP Commission after 1973.
ORDERS OF GOVERNMENT FOR STUDY SAMPLE

Orders passed by the Central Government under Section 23(4) and 23(8) and reproduced in Company News & Notes from 1970 till August of 1977 were studied. 24 orders of the government had appeared in the Company News & Notes (please see Appendix 5.1 for details of cases regarding Acquisition or Takeover). The yearwise details of approvals and rejections of applications are available in Table 5.2. Out of 24 orders, 2 (8%) were approved without conditions, 17 (71%) were approved with conditions, 2 (8%) were partially approved with conditions. Thus, a total of 21 applications (88%) were approved and 3 (12%) were rejected. Maximum number of orders (11) were passed in the year 1973. Corresponding to the reduction in applications made by the undertakings from the year 1974, the orders passed by the Government also started declining after 1974. Out of our sample of 24 orders, 2 proposals were referred to MRTP Commission, both of which were recommended for approval. However, one of these two proposals, i.e., that of Kamani Tubes Private Limited was subsequently rejected by the Government since the company did not accept the prior conditions subject to which Government was inclined to approve the application. It is evident from the above data, that the role played by MRTPC in evaluating the proposals of undertakings for Acquisition/Takeover has been minimal.

TIME TAKEN BY GOVERNMENT FOR DISPOSAL OF APPLICATIONS

Under Section 30(4) of MRTP Act, for cases not referred to MRTPC, the government is expected to dispose of the applications within 90 days.
(3 months) from the date of application. Table 5.3 shows the time taken by Central Government for disposal of 22 proposals not referred to MRTPC. The data regarding date of order and/or application were not available in the final orders for 10 cases. Thus, data was available for 12 proposals. Only one case was disposed off within the time limit of 3 months. Two cases took between 3 to 4 months, 2 between 4 to 6 months, 1 between 6 to 9 months, 4 between 9 to 12 months, and 2 took more than one year to dispose off. Out of 2 cases referred to MRTPC, data regarding the date of order was not available in one case and the other case took approximately 19 months. Thus, the Government has been taking on an average more than 9 months to clear applications under this section. Considering that most (21 out of 24) applications were approved, the time taken by the Government seems to be excessive.

INVESTMENT APPLIED FOR, APPROVED AND REJECTED

Table 5.4 shows investment applied for (IAF), approved and rejected in various years regarding Acquisition or Takeover of undertakings. Total IAF for 24 proposals was Rs. 1,103 lakhs, out of which Rs. 584 lakhs was approved and Rs. 474 lakhs (43%) was rejected. Thus while numberwise 12% cases (3 out of 24) were rejected, as much as 43% of the IAF was rejected. These rejection ratios are quite opposed to the ratios of numbers and investment rejected in the case of substantial expansion and new undertakings. However, it may be noted that investment rejected of (Rs. 474 lakhs) is high because of one single major rejection of Rs. 426 lakhs in case of Ballarpur Paper and Straw Board Mills Limited. This company
had applied for acquisition Rs. 43.6 lakhs worth of share of Mandya National Paper Mills Limited, from Government of Mysore. The Government rejected application on the ground that it was not in the interest of the investing company to acquire the shares of Mandya Paper Mills Limited (a Government of Mysore undertaking), since the latter was a losing concern. There were no rejections in the years 1971, 1975 and 1976 and one case was rejected each in years 1972, 1973 and 1974. Thus on an overall basis we find that except for a major rejection in case of Ballarpur Paper and Straw Board Mills Limited no major investment for acquiring shares of other undertakings was rejected under Sections 23(4) and 23(8).

**HOUSE-WISE DETAILS**

Table 5.5 gives data regarding acquisition/takeover for various houses. Amongst the Top '10' houses, House of Tata had one proposal for Rs. 13 lakhs which was approved. House of Thapar had 5 proposals involving an investment of Rs. 482 lakhs, out of which 4 proposals involving an investment of Rs. 56 lakhs were approved, and one proposal involving an investment of Rs. 426 lakhs was rejected. Amongst the houses ranked '11-20', House of Larsen & Toubro had 2 proposals involving an investment of Rs. 64 lakhs, both of which were approved.

'54' other Large Houses made 13 proposals, out of which 11 were approved, and 2 were rejected. House of Khatau had 1 proposal involving investment of Rs. 25 lakhs which was approved. House of Soorajmull Nagurmull had 5 proposals all of which were approved. These 5 proposals involved an investment of Rs. 36 lakhs.
House of G.K.W. had one proposal involving investment of Rs. 12 lakhs which was rejected. House of Rallis had one proposal which was approved. This proposal did not involve any investment. House of Shaw Wallace had 1 proposal involving investment of Rs. 12 lakhs which was approved. House of Modi had 3 proposals, 1 of which was fully approved, and 2 were partially approved. These 3 proposals involved an investment of Rs. 240 lakhs, out of which Rs. 195 lakhs was approved. House of India Carbon had 1 proposal involving investment of Rs. 60 lakhs which was approved.

It is interesting to examine the 3 proposals emanating from House of Modi. Three of the Modi enterprises, Modi Industries Limited, Modi Spinning and Weaving Mills Co. Ltd., and Modipon Limited wanted to acquire shares of Modi Rubber Limited. These three enterprises proposed to acquire Rs. 100 lakhs, Rs. 65 lakhs and Rs. 75 lakhs worth of equity shares respectively of Modi Rubber Limited. The Government fully approved the proposal of Modipon Limited but partially approved the proposals of Modi Industries Limited and Modi Spinning and Weaving Mills Co. Ltd. for Rs. 80 lakhs, and Rs. 40 lakhs respectively. No specific reasons for partial approval of these two cases were given by Government. It may be noted these were the only 2 proposals amongst the set of 24 orders, which were partially approved.

Dominant undertakings applied for 2 proposals, both of which were approved. Bengal Safety Razors and H.L. Malhotra enterprise, applied for 1 proposal involving investment of Rs. 69 lakhs, and Philips Carbon applied for 1 proposal involving investment of Rs. 64 lakhs.
Single Large Undertakings did not make any proposals for acquisition of shares or takeover of other undertakings.

ARGUMENTS OF APPLICANTS AND GOVERNMENT FOR APPROVAL

Table 5.6 shows the arguments advanced by applicants, and Government for approval of the cases. Arguments were coded from 1 to 8. Those arguments which could not be clearly coded from 1 to 8 were coded as 11. Out of 24 proposals, data regarding arguments of applicants was available for 10 proposals. Out of 24 proposals, the arguments of the government for approving the cases were not reported in the final orders in 2 cases, in 3 cases the data was missing, and 3 cases were rejected. Thus arguments of government for approval of cases were available for 16 cases for further analysis. In a particular case, more than one argument could be advanced and therefore, the total number of arguments of applicants and government for approval exceeds number of cases available for analysing such arguments.

ARGUMENTS OF APPLICANTS

Two of the major arguments advanced by the applicants were:

a) The investee company was facing financial difficulties and Acquisition will make it a viable unit, and

b) Acquisition will help to reduce foreign shareholding.

Three other arguments advanced were:

a) The acquisition will result in efficiency of export operations

b) There will be no increase of non-resident interest due to acquisition
c) Reserve Bank of India had agreed in principle to allow the remittance of sales proceeds.

Thus we find that the major arguments advanced were that the investee company was facing financial difficulties and that the acquisition will help to reduce the shareholding of foreign companies.

ARGUMENTS OF GOVERNMENT

Out of a total of 18 arguments advanced by Government one was not clearly classifiable. Out of the rest 17 arguments, in 2 cases government also advanced the arguments that the investee company was facing financial difficulties and in 2 cases the arguments advanced by the government was that the acquisition will help to reduce foreign shareholding. In one case it was stated that there will be no increase of non-resident interest direct or indirect, therefore, the proposal was not detrimental to the common interest. In one case it was stated that the purchase price was favourable to the investing company. In another case it was stated that there would be some concentration of economic power but as the acquisition is not detrimental to public interest, the government had decided to approve the proposal. As many as 9 arguments were in the general category where government 'felt' that the proposal is expedient in public interest. In 5 cases it was stated that:

"Prima facie the proposal was expedient in public interest, therefore, government decided to approve the proposal".

in one case,

"Government felt that the proposal was expedient in public interest", 

in two cases,

"Government have come to the conclusion that proposal should be approved",

and in one case

"Government have come to the conclusion that there is nothing prejudicial to the public interest or to the common detriment, if proposal is allowed."

Thus, the data shows that besides stating that the invested company was facing financial difficulties and the acquisition will help to reduce foreign shareholding, 9 arguments out of 17 were 'flat' statements of conclusion regarding expediency in public interest rather than sound arguments of public interest.

**ARGUMENTS FOR REJECTION**

Three cases were rejected by the government, namely,

1) Guest, Keen & Williams Limited's proposal to acquire 1,77,800 shares of Sankey Wheels Limited at Rs. 6.88 per share from Commonwealth Development Finance Co. Limited, U.K.

2) Ballarpur Paper and Straw Board Mills Limited's proposal to acquire 85,17,187 equity shares of Mandya National Paper Mills Limited at Rs. 5 per share from Government of Mysore.

3) Kamani Tubes (Pvt.) Limited's proposal to acquire assets of Pyrotenax India Limited (in liquidation).
In case of Guest, Keen & Williams the government advanced the arguments that granting of proposal will result in giving absolute control to investing company over investee company instead of broad-basing its shareholding and therefore the proposal was rejected. However, it should be noted that in a number of other cases which were approved, a similar situation would have arisen, that of the investing company acquiring absolute control over investee company as a result of acquisition. However, the government chose to reject this particular case on the basis of this particular argument. In case of Ballarpur Paper and Straw Board Mills Limited's proposal, Government rejected the proposal on the ground that:

a) The investee company is a losing concern, and therefore, it is not in the interest of the investing company to acquire former's shares,

b) The proposal would lead to further economic concentration in the hands of the group and is in no way expedient in public interest.

It should be noted that the applicant (a company of Thapar group) was going to acquire shares from Government of Mysore.

In the third case of rejection, i.e., Kamani Tubes' proposal to acquire assets of Pyrotenex India Limited, the proposal was referred by Government to MRTPC, which recommended the approval of the proposal subject to the following conditions:
a) The applicant company shall within one year convert itself into a public limited company.

b) The applicant company shall issue fresh equity for Rs. 24 lakhs in order to finance two-third of the cost of the project proposed to be financed from outside sources.

c) The fresh equity shall be offered in preference to (i) the public financial institutions, (ii) to the persons who are not existing shareholders of the company who are neither directors of the company nor their relatives.

d) The fresh issue shall take place before any bonus issue is made as has been proposed by the applicant company.

Responding to the conditions suggested by the Commission, the representatives of the applicant company stated that,

the condition regarding the conversion of the company into a public limited company was acceptable to them. As regards the other conditions, the representatives of the applicant company indicated that it was not possible for them to accept these conditions because of certain difficulties. They explained that looking to the history of the Pyrotenax India Limited, they did not consider it practicable to raise money in the market. For about 5 to 6 years, the Pyrotenax India Limited, has been incurring losses and in spite of being having foreign collaboration and increased turnover, they had accumulated losses of Rs. 35 lakhs. The project proposed to be undertaken by the applicant company was absolutely new and involved considerable risks. The market for mineral insulated cables had yet to be developed and it would take 4 to 5 years to full production. The applicant company was taking this project as a challenge and it would be difficult to convince the public at this stage to invest money in this project. Moreover, the
project was of a very small size involving an outlay of Rs. 36 lakhs only and it was not a viable proposition to raise two-thirds of this outlay by issue of fresh equity. The company had built up its own resources by its conservative financial policies and it would not be economically sound to issue additional equity as it would amount to burdening the company. In regard to issue of bonus shares to shareholders of the company, it was stated that the company had already issued bonus shares in pursuance of the consent order granted by the Controller of Capital Issues on 30.12.1972. The representatives of the company could agree to accept these conditions in principle and implement the same within a period of two to three years. The representatives of the company expressed their unwillingness to accept this position.

The Central Government finally was of the opinion that as the applicant company is a closely held one with a small capital base, it should take steps to broaden its capital structure and allow the benefits of the proposal also to flow to the public. As, however, the applicant company is not willing to accept the conditions designed to secure that objective, the Central Government is satisfied that it will not be expedient in the public interest to grant approval to the proposal which should, therefore, be rejected.

Thus, it was on the basis of company's inability to issue additional equity that the proposal was rejected. However, it should be noted that for similar cases under this section the other companies were not asked to float additional equity.
CONDITIONS OF GOVERNMENT ORDER

Table 5.7 gives the conditions subject to which the government approved the proposals of the undertakings for Acquisition or Takeover. Out of 24 cases, 3 were rejected; data were missing regarding 3 cases and in 2 cases no conditions were imposed. Thus the conditions of government order are analysed for 16 cases. A total of 47 conditions were imposed in these 16 cases. More often cited conditions were as follows:

i) A statement may be furnished indicating compliance with the conditions laid down in due course (C.No. 9) - 11 cases. This is not a substantive condition.

ii) Proposal would be subject to the approval of other government authorities (C.No. 7) - 7 cases.

iii) As and when applicant company issues fresh capital it should be offered to public till the shareholding of inter-connected companies is brought down to:
   a) 40% and (b) 76% (C.No. 1) - 4 cases.

iv) The applicant should take steps to enable the transferer company to be listed on the stock exchange (C.No. 5) - 3 cases.

v) If the applicant takes any loans from financial institutions they would be subject to the convertibility clause (C.No. 11) - 3 cases.

It is clear from the above conditions imposed that the government is not considering the proposals under MRTP Act for acquisition/takeover substantially different from the manner in which the Government would have considered the proposals from companies under Section 294 of the Companies Act for approvals regarding acquisition in normal course.
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MERGER OR AMALGAMATION OF UNDERTAKINGS

INTRODUCTION

Enabling Section

Section 23(2) of MRTP Act states:

"If any undertaking to which this part applies frames a scheme of merger or amalgamation with any other undertaking, or a scheme of merger or amalgamation is proposed between two or more undertakings, and, if as a result of such merger or amalgamation, an undertaking would come into existence to which clause (a) or clause (b) of Section 20 would apply, it shall, before taking any action to give effect to the proposed scheme, make an application to the Central Government in the prescribed form with a copy of the scheme annexed thereto, for the approval of the scheme".

Thus, any undertaking which is registered under Section 20(a) or 20(b) or is registerable consequent to merger or amalgamation is required to take permission of Central Government under MRTP Act, before such merger or amalgamation can be consumated.

DISPOSAL OF APPLICATIONS

Table 5.8 shows yearwise, the number of applications received by the Government under Section 23(2) regarding merger or amalgamation till August of 1977. A total of 32 applications were received, out of which six were withdrawn, 21 were approved, and 3 were rejected. 4 cases were referred to MRTP Commission. However, none of the cases were referred to MRTPC after 1973. The 3 applications rejected by Government were in
year 1970—71. None of the applications under this section were rejected by Government after year 1971.

SAMPLE FOR THIS STUDY

Orders passed by the Central Government under Section 23(2) reproduced in Company News and Notes of 1970 till August 1977 was studied. Table 5.9 shows the orders of Government, yearwise, from 1971 till August of 1977. Whole set of 12 applications were approved, 6 without conditions and 6 with conditions and none were rejected. None of the cases of this set of 12 applications were referred to MRTP Commission. Appendix 5.II gives details of these 12 cases.

TIME TAKEN BY GOVERNMENT FOR DISPOSAL OF PROPOSALS

Table 5.10 shows the time taken by Central Government for disposal of applications regarding merger or amalgamation. Out of 12 proposals, data about dates of application as well as date of order was available in 11 cases. Out of these 11 cases, none of them was disposed off within the time limit, 3 applications took 4 to 6 months, another 4 between 6 to 9 months, and one application between 18 to 24 months. It is quite obvious that the government has been taking much more time than stipulated by the act even though all the proposals were approved under this section.

ORDERS OF GOVERNMENT - HOUSE-WISE

Table 5.11 shows distribution of orders of Government - 5 out of 12 applications were from Top '10' houses - 2 from house of Birla, one from House of Mafatlal, and 2 from House of JK Singhania. Another 5
applications were from houses ranked '11 to 20'. Houses of Larsen and Toubro, and Mahindra and Mahindra made one proposal each. House of Macneill and Magor had 2 proposals. 3 applications belonged to '54' other large houses, one each from House of Rallis, Parry, and Madura Coats. As mentioned before all these applications were approved. There were no applications from single large undertakings or dominant undertakings for merger or amalgamation under Section 23(2) of MRTP Act. It may be noted that no investments are involved in proposals for merger or amalgamation.

ARGUMENTS OF APPLICANTS AND GOVERNMENT FOR APPROVAL

Table 5.12 shows arguments advanced by applicant and government for approval of applications.

ARGUMENTS OF APPLICANTS

A total of 28 arguments were reported in 12 cases by applicants. Maximum number of arguments (15) were regarding merger/amalgamation resulting in efficiency of operations i.e. production operations, marketing operations and export operations. In 2 cases the argument was advanced that as a result of amalgamation there will be no increase in assets. In another 2 cases it was stated that it would be possible to utilise the resources of transferer company for expansion, and in 2 cases it was stated that the amalgamation would help to increase employment. In one case each following arguments were advanced:
a) 'On amalgamation the resultant company will become subject to Indian laws and thus will be able to expand in priority sectors'.

b) 'Amalgamation will save the transferer company from disadvantages arising out of smallness'.

c) 'There will be no increase of non-resident interest, direct or indirect due to merger/amalgamation'.

In case of Government major arguments advanced were that merger/amalgamation would result in efficiency (6) and the general argument that:

a) 'Prima facie the proposal was expedient in public interest, therefore, government decided to approve the proposal'.

b) 'Government felt that the proposal was expedient in public interest'.

c) 'Public interest will be served as the merger/amalgamation would facilitate the growth in national income consistent with policy guidelines of government'.

d) 'Government have come to the conclusion that proposal should be approved'.

e) 'Government have come to the conclusion that there is nothing prejudicial to the public interest or to the common detriment if proposal is allowed'.

In 2 cases it was stated that as a result of amalgamation there will be no increase in assets and in one case it was stated that:

"On amalgamation the resultant company will become subject to Indian laws and thus will be able to expand in priority sectors".
From the analysis of arguments advanced by government it becomes clear that no special analysis regarding the effect of merger on public interest was undertaken before deciding the applications. For a majority of cases the arguments of the applicant that merger/amalgamation will result in efficiency of operations was accepted.

**CONDITIONS OF GOVERNMENT ORDER**

Table 5.13 shows the conditions imposed by Government subject to which proposals of merger/amalgamation were approved. Out of 12 proposals no conditions were imposed in 6 cases, and for the other 6 cases, 14 conditions were imposed. The highest frequency (4) was for the condition that the applicant should take steps to enable the company to be listed on stock exchange. In 2 cases, purchase price of shares was specified. In one case each the following conditions were imposed.

1. "Within a period of one year from amalgamation, the foreign holdings shall be brought down to 40%".
2. "No bonus shares shall be issued by the transferer company till the amalgamation is completed."
3. "Restrictions on dividends to be declared on preference shares".
4. "The transferee company shall be incorporated as a public limited company".

2 conditions related to the approval being subject to approval of other Government authorities. An analysis of these conditions for the limited set of data available shows that the conditions imposed are
similar to what the applicants would have been asked to apply with, under the provisions of Section 372(4) of Companies Act regarding merger/amalgamation, even if the applications were not considered specially under MRTP Act under Section 23(2).

**SUMMARY**

**Acquisition/Takeover**

For Acquisition/Takeover, out of 24 cases only 3 were rejected and none of the cases were rejected after the year 1974. Only 2 cases were referred to MRTP Commission, both of which were recommended for approval. However, one of these 2 cases was subsequently rejected by Government as the company did not agree to the conditions subject to which the government intended to approve the proposals.

The major arguments advanced for approval of applications related to the investee company facing financial difficulties and that the acquisition will help to reduce foreign share holding. Major rejection (investment-wise) was for the Thapar house case which was intriguing especially, since the shares were intended to be acquired from Government of Mysore of a losing concern. The role of MRTP Commission has been negligible regarding approval of proposals for acquisitions/takeover.

**Merger/Amalgamation**

All of the 12 applications, the orders regarding which were reported in Company News & Notes, were approved. None of these applications was
referred to the MRTP Commission. The major arguments of the company related to the increase in efficiency of operations consequent to merger. No strong arguments besides these were advanced by the government for approval of these applications. The role of MRTP Commission has been negligible regarding disposal of cases for merger/amalgamation.
ENABLING SECTIONS

Section 27 (Part B - Chapter III) of MRTP Act empowers the Central Government to make a reference to the MRTPC if it is of the opinion that working of an undertaking (registered under 26 of the MRTP Act), is prejudicial to the public interest, or has led, or is leading, or is likely to lead to the adoption of any monopolistic or restrictive trade practices for an enquiry as to whether it is expedient in the public interest to make an order:

(a) For the division of any trade of the undertaking by the sale of any part of the undertaking or assets thereof; or

(b) for the division of any undertaking or interconnected undertaking into such number of undertakings as the circumstances of the case may justify.

Thus, the MRTP Act empowers the Government to order Division of undertakings after it receives recommendations of MRTPC. However, MRTPC cannot independently initiate enquiries in this regard.

THE FIRST CASE

In May 1974, for the first time since the inception of MRTP Act, Government referred the case of Jyaleepa Cotton Mills Ltd., Gujjar
GROUP UNDERTAKING) to MRTPC for recommendations regarding 'Division' of the undertaking. Soon after the MRTPC started its enquiry into this case, the company filed a writ petition before the High Court of Delhi challenging the reference of the case to MRTPC by Government. High Court stayed the proceedings and subsequently admitted the petition of the company. At the time of writing this report, the enquiry into this case was still stalled on account of the writ petition filed by the company. Thus, while no recommendation has been given in this case by MRTPC and no final order has been passed by Government under Section 27 (and for that matter in any other case), it would still be instructive to study the type of reference made by Government and the manner in which the Government arrived at the 'opinion' that working of the undertaking is prejudicial to the public interest, and thus referred the matter to MRTPC. Following is a summary of the order of Government referring the case to MRTPC.

"In case of Jiyajeeao Cotton Mills Ltd., an order was passed by the Government that it was of the opinion that the working of this company, of which Saurashtra Chemicals formed a division, was prejudicial to the public interest for the following reasons:

That the undertaking was enjoying dominant position in the production of soda ash, and had failed to broaden its capital structure to enable the public to participate in the high growth and profitability by taking advantage of the said dominant position and national resources, mainly for the benefit of the persons who controlled and managed the undertaking.
On the basis of the above statement, Government formed the opinion that:

"Therefore, it was necessary to reduce the concentration of economic power being used by the BIRLA group to further their interest by controlling purchases, sales, investments, and personnel policies etc. Therefore, to ensure steady industrial growth without scope for concentration of economic power to the common detriment, the Government referred this matter to the MRTP Commission for further enquiry as to whether it was expedient in the public interest to make an order.

(a) For the division of any trade of the undertaking by the sale of any part of the undertaking or assets thereof;

(b) for the division of any undertaking or interconnected undertaking into such number of undertakings as the circumstances of the case may justify.

Thus, basically on the ground that the undertaking was dominant in soda ash and had failed to broaden its capital structure, Government formed the opinion that working of the undertaking was prejudicial to public interest and referred the matter to MRTPC and recommended it found fit for division of undertaking.

It might be instructive to point out that just a few months before the Government referred the case of Jiya Jee Rao Cotton Mills Ltd. (of which Saurashtra Chemicals is a division) to MRTPC under Section 27, the Government without reference to MRTPC had approved the expansion under Section 21 of MRTP Act of Saurashtra Chemicals' Soda ash capacity from 1,82,500 tonnes to 2,92,000 tonnes per annum. This proposal had involved
an investment of 750 lakhs. The Government had passed the order allowing for this substantial expansion on 11th November 1973. It may be mentioned that before approval of substantial expansion Saurashtra Chemicals already had 36% of the market share (as stated in the Government order itself). Moreover, in the above mentioned order of Government dated 11th November 1973, while approving the proposal of Saurashtra Chemicals (Prop. Jiyajee Rao Cotton Mills Ltd.) Government did not impose any condition related to broadbasing the capital structure. The above analysis raises the question of propriety of referring the case of Jiyajee Rao Cotton Mills Ltd. for division, when same Government itself few months before had approved the expansion of capacity by 60% of the undertaking without raising any question about broadbasing the capital structure.

However, it would be useful to examine this case further once the MRTPC has given its recommendation and the nature of final order which the Government might pass.

THE SECOND CASE

On 2nd December 1975, Government referred another case involving 3 companies under Section 27 (Division of undertaking) to MRTPC for its recommendation. In this case as well, the companies concerned had filed petition in the Delhi High Court challenging the referral of case by Government to MRTPC.

MRTPC is yet to give its recommendation in this case as well. There were only two referrals made by Government under Section 27 to MRTPC since the MRTP Act was enacted till August 1977. In both cases, the recommendations of MRTPC as well as order of the Government are awaited.