



Handbook_{on} Competition Policies and MSMEs in India

Published by



Federation of Indian Micro and Small & Medium Enterprises (FISME)

B - 4/161 Safdarjung Enclave, New Delhi - 110029, INDIA

Telephone : +91-11-26187948, 26712064, 46023157, 46018592

Fax : +91-11-26109470

E-mail : info@fisme.org.in

Website : www.fisme.org.in



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**Handbook on
Competition Policies and MSMEs in India**

Preamble to the Competition Act 2002

An Act to provide, keeping in view of the economic development of the country, for the establishment of a Commission..

“To prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets, in India...”

Handbook on Competition Policies and MSMEs in India

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B-4/161, Safdarjung Enclave,

New Delhi – 110 029

Tel No : 011 - 4717000, 26187948, 26712064

Fax No : 011 - 26109470

Email : info@fisme.org.in

Website : www.fisme.org.in; www.smeindia.net

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The study was carried out by the team comprising Mr. Sharad Bhansali, Mr. Jitendra Singh and Mr. Gautam Shahi of APJ-SLG Law Offices, New Delhi. The accompanying survey was conducted by FISME through Tier-II partners under the project and other associations.

Mr. Augustine Peter (former Economic Advisor, Competition Commission of India) provided valuable inputs in framing the Terms of Reference of the study. The members of the Working Group that steered the process of the study included Mr. K.K. Sharma- Advisor-Law , Competition Commission of India ; Mr. S.K. Nijhawan - from Office of Development Commissioner - MSME) and Mr. Abhijit Das- Officer-in-charge, UNCTAD (India).

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Preface

A competitive environment is essential if resources are to be used efficiently. The competitive markets provide positive incentives for good performance encouraging firms to improve productivity, reduce prices and innovate. They also reward consumers with lower prices, higher quality and wider choice. A competitive environment, therefore, precedes competitiveness and drives it further.

The legal and administrative frameworks- termed as Competition or Ant-trust Policies, aiming fair competition have been in evolution for years in many countries. While moral argument of fairness has always been strong, it is the heightened global competition that has added a new dimension to the debate. Today all nations are chasing competitiveness for which an efficient and effective Competition policy framework has become indispensable.

A Competition policy framework aims to encourage and promote the competitive spirit and culture to enhance the competitive process. It influences the economic policies adopted by Government making them more amenable to competition and provide for the legal instruments needed to curb and penalize anti-competitive business practices.

While a not-so-effective mechanism of Monopolies and Restrictive Trade Practices Act 1969 did exist covering limited aspects, developments with regard to a comprehensive Competition policies in India are of recent origin. Though the Competition Commission of India was established through the Competition Act, 2002 on 14th October, 2003, it could become fully functional only in 2009.

The Micro Small and Medium Enterprises (MSMEs) sector is a big stake holder in the debate. There are around 26 Million MSMEs employing over 60 Million people and accounting for 45% of Industrial output and over 40% of India's direct exports. The MSMEs are largely unorganized are vulnerable to adverse external economic environment.

Besides the big-ticket mergers and acquisitions that Competition policies invariably probe, there are many MSME specific issues. Firstly, abuse of dominance and cartelization by large producers of raw material/ inputs often have negative fallout on MSMEs. Many instances have been reported in the survey which indicate prevalence of anti-competitive practices in supply chains. Secondly, anti-competitive practices are also quite common in public procurement which could crowd out MSMEs by erection of entry barriers. Thirdly, public policies and executive orders could also thwart competition in markets and impede MSMEs' access to inputs and public services rendering them uncompetitive.

The Competition policy dispensation provides for recourse measures against many of such practices. However, the MSMEs are largely ignorant of their rights and responsibilities in the new Competition policy regime. To address the issue, Federation of Indian Micro and Small & Medium Enterprises (FISME), under the project 'Strategies and Preparedness for Trade and Globalization India' which has been coordinated by UNCTAD and sponsored by Department of Commerce (Ministry of Commerce and Industry) and DFID, commissioned a study probing as to how MSMEs could leverage the new Competition policy framework to their advantage.

A survey was conducted as part of the study to gather insights from experiences of MSMEs on various unfair/ anti-competitive practices they encountered while doing business. It also helped build the typology.

The present publication, an output of the study, attempts to explain the principles and the legal framework related to Competition policy in India with the help of caselets collected through case-laws/ surveys to help MSMEs themselves identify such practices both in public and private domain. Further, it explains the remedial measures available under the law to mitigate their hardships and described the process for initiating action.

The initiative is a small step in MSME sensitization process. It is hoped that the publication would be found useful by the stakeholders.

Introduction

1. Competition law, also known as anti-trust law in some jurisdictions is that branch of law which is designed to protect the interest of the consumer by protecting 'competition' in the market. This 'competition' is protected by protecting trade and commerce from restraints, monopolies, price-fixing, and price discrimination. A perfect competition exists in "a completely efficient market situation characterized by numerous buyers and sellers, a homogenous product, perfect information for all parties, and complete freedom to move in and out of the market". Even though perfect competition is a utopian concept, it is used as a standard for measuring market performance

The history of competition law can be traced back to Roman Empire; the modern day competition law has its genesis in the American antitrust statutes like Sherman Act of 1890 and Clayton Act of 1914. But it was only after the Second World War that the American concept of Competition law became widely accepted. European Community incorporated the provisions of Competition law in Treaty of Rome, signed in 1957. Subsequently most of the jurisdictions like China, Brazil, Russia, Singapore, South Korea and Japan established their own competition regimes. Today, over hundred jurisdictions have their competition regimes in place and enterprises cannot afford to ignore this law.

Indian Competition law is closer to European law as compared to American law.

2. Indian Parliament passed the Competition Act in 2002 and it received the President's assent in January, 2003. To fulfil the objectives of the Act, government established Commission with effect from October 14, 2003. Certain provisions of the Act were challenged in the Hon'ble Supreme Court and Hon'ble Chennai High Court. In response, Government promised to carry out certain amendments to the Act. This amendment bill was introduced in

The first modern competition statute was enacted by Canada in the year 1889. It took more than a century for the law to reach India.

Parliament in 2006 and was adopted in 2007. Subsequent to the said amendments, provisions the Act dealing with anti-competitive agreement and abuse of dominance respectively, were notified in May, 2009.

3. Provisions related to Combinations (Mergers, Acquisitions and Joint Ventures) have not been notified till now. The government is considering increasing the threshold limits of the asset value and the turnover for notification of Combinations in order exclude smaller transactions with limited effect on the market from the purview of the Commission.

¹ Black's Law Dictionary

Competition Law in India

1. **Competition Act, 2002**

- 1.1. Competition Act, 2002 ("**Competition Act**") is the Indian Statute which provides for the establishment of Commission to achieve the following goals:

- Prevent practices having adverse effect on competition;
- Promote and sustain competition in the market;
- Protect the interests of consumers; and
- Ensure freedom of trade carried on by participants in markets.

- 1.2. For achieving the abovementioned goals, Competition Act prohibits the following:

- 1.2.1. **Anti-competitive Agreements** – These are agreements between entities in respect of production, supply, distribution, storage, acquisition or control of goods or provisions of services, which cause or are likely to cause an appreciable effect on competition within India. Commonly these agreements are entered into with the following objective:

- Determining prices;
- Limiting and controlling production, supply, markets, technical development, investment or provisions for services;
- Allocating market; and
- Bid rigging or Collusive bidding.

Such an agreement need not be in writing and can be at any stage of production or sale. It may be a horizontal agreement (eg. Cartels) at the same level of production/supply or it may be a vertical agreement. Following are some of the most common examples of anti-competitive agreements:

- agreement to limit production & supply
- agreement to allocate markets

² An agreement amongst players on different levels of production or distribution that affects competition.

- agreement to fix price
- bid rigging or collusive bidding
- conditional purchase/sale (tie-in arrangement)
- exclusive supply/distribution arrangement
- resale price maintenance
- refusal to deal

1.2.2. **Abuse of dominant position** – Dominant position means a position of strength enjoyed by an enterprise in the relevant market in India which allows it to:

- Operate independently of competitive forces prevailing in the relevant market; or

§ Affect its competitors or consumers or the relevant market in its favour.

However, dominance per se is not considered bad by the statute. It's the abuse of this position of dominance that is prohibited. That statute lays down an exhaustive list of actions which will be considered to be abuse of dominance. These are:

- Imposing unfair or discriminatory condition or price in purchase or sale of goods or services; or
- Limiting or restricting:
 - production of goods or provision of services or market therefore;
 - technical or scientific development relating to goods or services to the prejudice of consumers;
 - Indulging in practices which amount to denial of market access;
 - Making unrelated supplementary obligations a condition precedent for entering into a contract; and
 - Using the dominant position in one relevant market to enter into or protect its position in another relevant market.

1.3. **Regulation of Combinations** – Apart from prohibiting the above mentioned anti-competitive actions, Competition Act also

The provisions regarding Combinations have not been notified till now.

empowers Commission to regulate Combinations. Combination has not been defined in the act but includes the following, when they exceed the threshold limits specified in Competition Act in terms of assets or turnovers:

- Acquisition of controls, shares, voting rights or assets;
- Acquisition of control by a person over an enterprise where such person has control over another enterprise engaged in competing business;
- Merger or amalgamation between or amongst enterprises

Any entity which proposes to enter into a Combination has to notify Commission and seek its approval before entering the Combination. If Commission concludes that the proposed combination will cause or is likely to cause an appreciable adverse effect on competition within the relevant market in India, it can either prohibit it or propose suitably modification to the proposal.

2. **Enforcing Authorities**

2.1. **Competition Commission of India** - For the purpose of enforcing its provisions, the Competition Act established the Commission. It consists of a whole time Chairperson and two to six other members who are appointed by the Central Government³. Commission is assisted by Secretary, experts, professionals and officers and other employees of the Commission to ensure efficient performance of its objectives. Commission also has a Director General who assists it in conducting inquiry into alleged contravention of any of the provisions of the Competition Act.

2.2. It is the duty of the Commission to eliminate practice having adverse effect on competition, promote and sustain competition, protect the interests of consumers and ensure freedom of trade carried on by other participants in markets in India. For this purpose, the Commission may inquire into any alleged anti-competitive agreement or abuse of dominance. It can initiate an inquiry on any of the following basis:

- Suo moto action on its own motion
- Receipt of information

³ Presently there are six members along with the Chairperson. The details of the members can be found at http://www.cci.gov.in/index.php?option=com_content&task=view&id=117.

- Reference made to it by Central or State Government or any Statutory Authority.

2.3. **Procedure for inquiry** – On receipt of information or reference or on its own knowledge, if the Commission is convinced that there exists a prime facie case, it shall direct the Director General to investigate the alleged activities. The Director General, under the direction of the Commission, would investigate the matter and submit a report of his finding to the Commission. Based on the report, the Commission gives an opportunity to the parties to present their case during 'ordinary meetings' and passes orders as it deems fit. There is a separate inquiry process for the Combinations which has been discussed in the following paragraphs.

2.4. **Combinations** - In the case of Combinations, above the threshold limits specified in the Competition Act, Commission can pass following orders:

- If Commission is of the opinion that the Combination will not have an adverse effect on Competition, Commission can approve the combination.
- If Commission is of the opinion that Combination will have an appreciable adverse effect on the Competition, it can direct that the Combination shall not take place.
- If Commission is of the opinion that the Combination will have an adverse effect on Competition but such adverse effect can be eliminated by suitable modification, Commission can propose such modifications to the Combination, subject to which the Combination can be approved

2.5. **Competition Appellate Tribunal (“Tribunal”)** – The Competition Act establishes Tribunal to hear appeals against directions, decisions or orders of Commission. The Tribunal also adjudicates on claims of compensation that may arise from the findings of the Commission or the orders of Tribunal itself. The Competition Act also provides for class action suits. A class action suit is a suit where, when any loss or damage is cause to numerous persons having the same interest, on or more of such persons may, with the permission of the Appellate Tribunal, make an application for and on behalf of, or for the benefit of the persons so interested. Tribunal consists of a Chairperson and not more than two other members to be appointed by the Central Government.

Violations

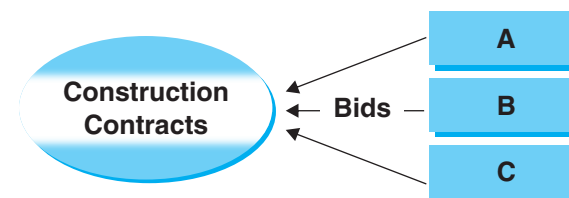
Anti-competitive Activity: **Bid-Rigging**

An agreement, between enterprises or persons engaged in identical or similar production or trading of goods or provision of services, which has the effect of eliminating or reducing competition for bids or adversely affecting or manipulating the process for bidding⁴. It can also be defined as a particular form of collusive price-fixing behaviour by which firms coordinate their bids on procurement or project contracts⁵.

Illustration:

Enterprises A, B and C are bidding for some construction contracts. A, B and C would be guilty of big rigging if they together decide on any of the following:

- To quote identical prices.
- To let one of them bid the lowest in order to allow it to win.
- Not to quote below a certain amount.



In the above example if A, B and C agree on any of the aforementioned acts, they would be guilty of big rigging.

Anti-competitive Activity

Bid-Rigging

Indicative Behaviour

- Have you seen a trend in allocation of bids i.e. the same players get the bids every time ?
- Do you have any evidence to suggest that certain players quote identical prices ?
- Do you suspect that the bids are being artificially kept above/ below a certain price ?

⁴ See Section 3 of Competition Act.

⁵ See OECD Glossary of Statistical Terms

Anti-competitive Activity : **Tie-in Agreement**

Tie-in Agreement : It is an agreement requiring a purchaser of goods, as a condition of such purchase, to purchase some other goods⁸.

Illustration

Consider two markets, one of Pencil and other of eraser. 'A' who is operating in both markets sells pencil only on the condition that the consumer also buys eraser.

Case Study

In the Microsoft Case in European Union, Microsoft was accused of tying in its operating system with internet explorer. Subsequently Microsoft gave a commitment to give consumers in the European Union the opportunity to choose from a variety of browsers to access and surf the Internet⁹.

[The survey elicited the response that "all large manufacturers follow the policy that slow moving items had to be purchased, if MSME had to purchase a fast moving item.]

Anti-competitive Activity **Tie-in Agreement**

Indicative Behaviour

- Is the vendor/ seller trying to force you/ or your target consumer to buy a product B as a condition for buying a product A?

⁸ Explanation (a) to Section 3(4) of the Competition Act.

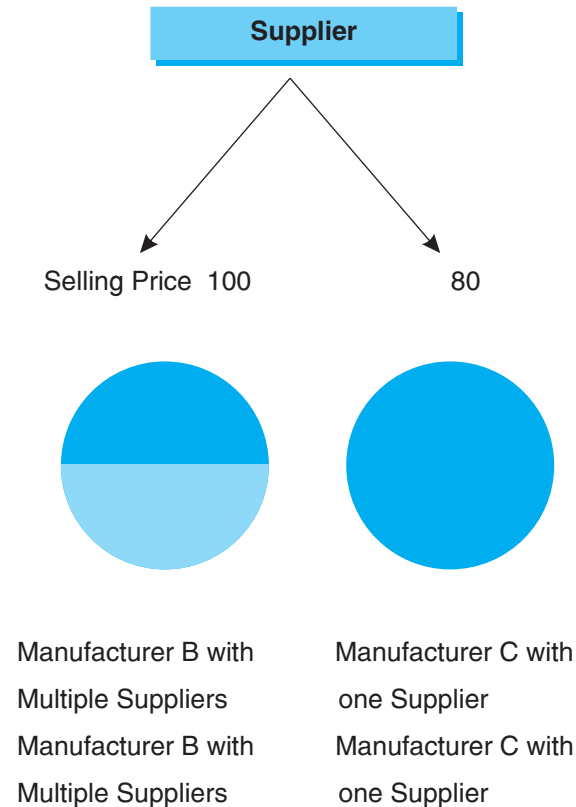
⁹ See Press Release dated March 2, 2010 available at <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/216&format=HTML&aged=0&language=EN>

Anti-competitive Activity : **Exclusive Dealing**

Exclusive Dealing can be in two forms. It can be an agreement by which a single distributor is the only one who obtains the rights from a manufacturer to market the product in a particular territory¹⁰. Or it can be an agreement requiring a buyer to purchase all needed good from one seller¹¹.

Illustration

Supplier Exclusive Dealing - Enterprise A, is a supplier of plastic sheets for making plastic chairs. It gives rebates to plastic chair manufacturers who buy all their raw materials from A.



¹⁰ See OECD Glossary of Statistical Terms.

¹¹ See Black's Law Dictionary, Seventh Ed.

Case Study

Case-1: In the case of Intel¹², it was held that Intel abused its dominant position in the x86 CPU market, inter alia by implementing a series of conditional rebates to computer manufacturers and to a European retailer. The rebates were conditional on computer manufacturers buying all their processors from Intel. This case was initiated on the complaint of a much smaller rival, AMD and led to the imposition of penalty amounting to 1 billion Euros.

Case-2 (Survey): A government agency responsible for procurement of 'tree guards' decides to buy it only from a public sector undertaking at a price which is much higher than the one being offered by the competitors of the public sector undertaking. If this is being done without any justifiable reason, this may be a case of exclusive dealing. Similarly a tender criteria for, Note to Coin Vending Machines which ensures that a particular undertaking wins the tender, may be a case of exclusive dealing.

Anti-competitive Activity **Exclusive Dealing**

Indicative Behaviour

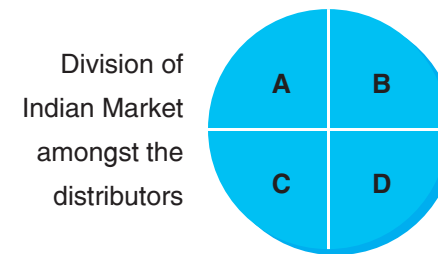
- Is your competitor asking the consumers to buy their entire supplies exclusively from him?
- Is your competitor the exclusive distributor of the Product in a particular market?
- Is your supplier restricting you from approaching other suppliers?
- Is your distributor trying to restrict you from approaching other distributors?

¹² Case COMP/C-3/37990 – Intel

Anti-competitive Activity : **Exclusive Territory**¹³

Caselet

Enterprise A is a manufacturer of laptops who distributes throughout India through its distributors. However, it gives only one distributorship for East, West, North and South India and it does not allow distributors to sell in each other's territory.



Anti-competitive Activity **Exclusive Territory**

Indicative Behaviour

- Is vendor/ seller selling all his goods through exclusive distributorship?
- Is your supplier restricting you from supplying goods in other markets?
- Is your distributor preventing you from selling your product through other distributors in his target market?

¹³ Evidence related to such behavior needs to be collected in order to prosecute the matter.

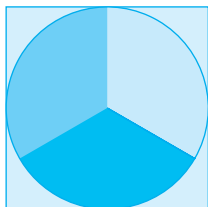
Anti-competitive Activity : **Market sharing cartel**

In a market-sharing cartel the member firms agree only on how to share the market. Each firm then operates only in one area or region agreed without encroaching on the others' territories¹⁴.

Illustration

A, B and C are the three players in the Indian market for lenses. In order to maintain their profits they decided to divide Indian market into three parts exclusively reserved for each of the enterprises and agree not to compete with each other and restrict their operations to their respective geographic market.

Division of the Indian market by the three players.



Anti-competitive Activity **Market sharing cartel**

Indicative Behaviour

- Have you noticed signs that the competitors are restricting their activities to a particular geographical area i.e. they are not trying to enter new territories?
- Are your distributors not willing to operate in each other's markets?

Caselet

Case-1: In Car Glass Producers case¹⁵, Asahi, Pilkington, Saint-Gobain and Soliver held regular discussions with a view to allocating between themselves car glass supplies to car manufacturers in response to their tenders and to keeping the market shares of each individual car glass supplier as stable as possible at the European level. Fines, totalling 1,383,896,000 Euros was imposed on Asahi, Pilkington, Saint-Gobain and Soliver.

Case-2 (Survey): It is alleged by some respondents that the cement manufacturers of India have divided the market and have agreed not to disturb existing customers. If correct, it may be a case of market sharing cartel.

¹⁴ Oxford University Press

¹⁵ See <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/1685&format=HTML&aged=0&language=EN&guiLanguage=en>

Anti-competitive Activity : **Predatory Pricing/ Destroying Price**

Predatory Pricing is a strategy for driving out competitors by selling goods at prices which are less than their cost of production as may be determined by regulations.

Illustration

Enterprise A manufactures pens and is a dominant enterprise in the pen market. Its profit making price per pen is INR 10. However, it sells its pen at a loss making price of INR 9 knowing that its competitors will not be able to match its price. As a result of this A's competitors would be forced to exit the market, after which, A, as a monopolist, would be free to charge any price that it wants.

Caselet

In Tetra Pack II¹⁶ case, Tetra Pack was selling non-aseptic cartons at a loss. It was found to be guilty of predatory pricing.

Anti-competitive Activity **Predatory Pricing/ Destroying Price**

Indicative Behaviour

- Is your competitor selling his products below the cost of production?

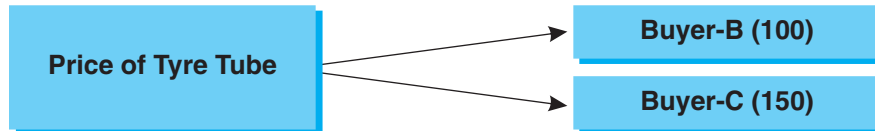
¹⁶ OJ [1992] L 72/1, [1992] 4 CMLR 551.

Anti-competitive Activity : **Discrimination/ Price discrimination**

It is the practice of imposing discriminatory condition or price in purchase or sale of goods or service to customers by a dominant undertaking.

IllustrationA

Dominant Firm Enterprise A is a manufacturer of tyre tubes and dominant in the market. It supplies tyres in Delhi. Enterprises B and C are buyers of tyre tubes in Delhi. A supplies tyre tubes to B at INR 100 per tube and to C at INR 150 per tyre tube even though there is no difference in the cost of supplying the tyre tubes. Further this discrimination is without any justification.



Such a practice makes it impossible for C to compete with B in the market and has the effect of eliminating competition.

Caselet

In Virgin/British Airways¹⁷ British Airways was found to be guilty of offering loyalty rebates which resulted in Travel agents in the same circumstances receiving different levels of rebate.

[Survey: Tender conditions, like high annual turnover of the entity, which are not relevant to the sale of product concerned, may be considered a case of abuse of dominance by imposing discriminatory conditions.]

Anti-competitive Activity **Discrimination/ Price discrimination**

Indicative Behaviour

- Is the supplier trying to charge you prices which are higher than the prices he offers to your competitors?
- Is your supplier trying to impose certain conditions on you for supply of goods, which he is not imposing on your competitors, for no justifiable reasons?
- Is your distributor trying to impose certain conditions on you for buying your goods, which he is not imposing on your competitors, for no justifiable reasons?

¹⁷ OJ[2000] L30/1, [2000] 4 CMLR 999.

Anti-competitive Activity : **Price-fixing cartel**

Price fixing cartel occurs when two or more firms agree to raise or fix the prices in order to increase their profits by reducing competition. It is an attempt at forming a collective monopoly.

Illustration

A, B and C are three real estate agents in Malviya Nagar. In order to reduce price competition between themselves, they decide to charge a commission of INR 15,000 from every deal that they facilitate.

Caselet

In Bank Charges for Exchanging Euro-zone Currencies – Germany¹⁸, Banks were found to be guilty of fixing charges for exchanging currencies in the Euro Zone. Five banks were fined a total of 120.8 Euro.

[Survey: If the manufacturers of products e.g. polysters, polymers, titanium dioxide have been increasing the prices simultaneously, there is a possibility of a price-fixing cartel if it can be proved that there was meeting of minds between the competitors. If the manufacturers of product have agreed to hike the prices upward when the international prices are rising, but not to reduce them with the fall in international prices, it may be considered a price-fixing cartel.

If the polyester film manufacturers are increasing prices simultaneously and randomly, if it can be proved that the competitors are doing it in terms of an agreement.]

Anti-competitive Activity **Price-fixing cartel**

Indicative Behaviour

- Have you noticed a spurt in the price increases in the market for the concerned product?
- Are all players increasing the prices at the same time?
- Have you seen a trend regarding the price increase in the market?

¹⁸ OJ[2003] L 15/1, [2003] 4 CMLR 842.

Anti-competitive Activity : **Refusal to deal**

It is an agreement which restricts or is likely to restrict, by any method the persons or classes of person to whom goods are sold or from whom good are bought¹⁹.

Illustration

Enterprise A is an enterprise in the market for lead which is used to make pencils. Enterprise B is a major manufacturer of pencil in the market but its production is dependant on supply of lead by enterprise A. Enterprise A suddenly refuses to supply lead to B because a new subsidiary of A, C has entered the Pencil market in direct competition to B.

Caselet

In *Commercial Solvents v Commission*²⁰, Zoja produced a drug used in the treatment of tuberculosis. For the production of this drug it was dependant upon supplier of raw material, amino-butanol. Commercial Solvents was the dominant supplier of this amino-butanol. When it refused to supply amino-butanol to Zoja, it was found to be guilty of abusing its dominance and ordered to resume supply. It may be noted that this refusal by Commercial Solvents coincided with the emergence of Commercial Solvents' own subsidiary in the market for anti-tuberculosis drug.

Survey: If the cement manufacturers of India have agreed not to disturb existing customers and refusing to sell goods to each other's customers, it may be a case of refusal to deal.

Anti-competitive Activity **Refusal to deal**

Indicative Behaviour

- Have your suppliers/ service provider agreed not to supply goods/ services to you?
- Have your distributors agreed not to deal with you?

¹⁹ See Explanation (d) of Section 3(4) of Competition Act, 2002.

²⁰ Cases 6/73 & 7/73 [1974] ECR 223.

Anti-competitive Activity : **Resale Price Maintenance/ Mark-ups**

It is a situation in which the supplier forces the distributor/retail seller to sell the good to the customer at prices stipulated by the supplier. It includes an agreement to sell goods on condition that the prices to be charged on the resale by the purchaser shall be the prices stipulated by the seller²¹.

Illustration

Enterprise A is a manufacturer of Mobile phones which it sells through its retailers. As a condition of giving out retailership, it forces its retailers to sell its mobiles at prices determined by A. Retail sellers do not have the freedom to engage in price competition with other retail sellers.

Caselet

In *Volkswagen AG*²², the famous car manufacturer instructed its German dealers in 1996-97, to show price-discipline and not to sell the new model 'Passat' at prices considerably below the recommended retail price. Volkswagen AG was considered guilty of indulging in Resale Price Maintenance and was fined Euros 30.96 million.

Anti-competitive Activity

Resale Price Maintenance/ Mark-ups

Indicative Behaviour

- Is your supplier trying to restrict your ability to regulate the prices that you offer to your customer?
- Is your supplier dictating the prices at which you should sell your product to your consumer?
- Is the supplier trying to lay down a floor rate for the prices of the goods sold by you?

²¹ See Explanation (e) of Section 3(4) of Competition Act, 2002.

²² See <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/01/760&format=HTML&aged=0&language=EN&guiLanguage=en>

Anti-competitive Activity : Margin Squeezing

It is an attempt by vertically integrated undertaking holding a dominant position in the upstream market to prevent its downstream competitors, who are not vertically integrated from achieving an economically viable price-cost margin²³.

Illustration

Enterprise A supplies wood, essential for making paper to paper making enterprises B & C. While B is a subsidiary of A, C is an independent enterprise. A and B together price the final goods i.e. paper in a manner that makes it impossible for C to compete with B.

**Anti-competitive Activity
Margin Squeezing**

Indicative Behaviour

- Is your competitor vertically integrated?
- Is your competitor undercutting your prices?



Now suppose, B is inefficient and transforms wood into paper at the cost of Rs. 15 while C does the same process at the cost of Rs. 10; But both are able to sell the product at 100 in the market, C is suffering from margin squeezing and can demand a better input price.

Caselet

In Napier Brown-British Sugar²⁴ case British Sugar was dominant both in the market for sugar beet and in the market for the derived product viz. sugar sold in retail market. It was found to be guilty of reducing the price of retail sugar by more than the cost of transforming the raw material in order to drive sugar merchants including Napier Brown from the retail level of the market. It also specifically undercut Napier Brown's prices in respect of certain customers. It was fined 3 million Euros.

²³

²⁴See OJ [1998] L 284/41, [1990] 4 CMLR 196.

Consequences of Violation

1. Consequences of Violations

1.1. Commission has been given broad powers for restraining anti-competitive activities and penalizing the precursor of such activities. Enterprises and their officers should understand in no unclear terms that the consequences of anti-competitive activities can be devastating for the future of the enterprise, as a whole, and individual officers responsible for such activities.

European Commission imposed a record fine of €1.06 billion on Intel for abuse of dominant position in May 2009...

1.2. In case Commission concludes that there has been contravention of statutory prohibitions, it can pass any or all of the following orders:

- It can direct the violating entity to discontinue and not to re-enter such agreement or discontinue the abuse of dominant position.
- It can impose such penalty as it deems fit upon each of the persons or enterprises which are parties to such agreements or abuse. However, such penalty can be up to ten percent of the average of the turnover of the guilty party for the last three preceding financial years.

Cartelisation is considered the most serious anti-competitive activity. They are difficult to detect and prosecute. Hence, the law limits the degree of evidence required to prosecute a cartel.

- In case of cartels, Commission can impose, upon all the participants of the cartel, a penalty of up to three times of the profits for each year of continuance of such agreement.
- It can give directions for modifying the agreement.
- Pass order or give directions as it may deem fit.

1.3. Further, if Commission finds that the contravening entity is a member of a group of companies, and that other

Car glass producers in Europe were fined a record €1.3 billion for engaging in cartelisation

members of the group were also responsible for or in any way contributed to the anti-competitive activity, then the above mentioned orders can also be passed against such group members.

- 1.4. Competition Act also has provisions for class action suits which can be filed against an entity found guilty of violating competition law, for any loss or damage suffered as a result of such violation. Any person can approach the Competition Appellate Tribunal with the findings of the Commission and claim damages resulting from such violation.
- 1.5. Failure to comply with orders/directions of the Commission - In case of a failure to comply with its order or direction, Commission can impose fine on the guilty party, which may extend to INR 1 Lakh for each day for which such non-compliance occurs, subject to a maximum of INR Ten Crore. If the person concerned does not comply with the orders or directions issued or fails to pay the fine imposed, Commission can lodge a complaint with Chief Metropolitan Magistrate, Delhi who can punish the offender with imprisonment term which may extend to three years or with fine which may extend to Rs. Twenty Five Crores. Further, any person can make an application to the Competition Appellate Tribunal for an order for the recovery of the compensation from the offending person/enterprise, for any loss or damage suffered by such person as a result of violation of directions issued by the Commission or contravening, without any reasonable ground, any decision or order of the Commission.
- 1.6. No Corporate Veil - Competition Act, enables Commission to look at the individuals behind the corporate veil. Commission will deem both individual and the company guilty if at the time at which contravention was committed, the said individual was in charge of and was responsible to the company for the conduct of its business. He/she would be liable to be proceeded against and punished in accordance with law.
- 1.7. Consequences of violations related to combinations - If an entity fails to give notice of the proposed combination to Commission and seek its approval, then the Commission can impose a penalty on the resulting

It may be noted that in the exercise of IP rights, a person can only impose 'reasonable' conditions. Moreover, his actions may still constitute abuse of dominance, for which he may be prosecuted.

combination. Such penalty may extend to one percent of the total turnover or the assets of the resulting combination, whichever is higher.

2. **Exceptions**

- 2.1. There are two major exceptions and they are also specific to anti-competitive agreements. They have been discussed in the following paragraphs:
 - 2.1.1. **Exercise of Intellectual Property Rights:** Intellectual Property Rights are a major exception to the prohibition on anti-competitive agreements. Competition Act, does not restrict the right of a person to restraint any infringement of, or to impose reasonable conditions, as may be necessary for protecting his rights under the Intellectual Property related statutes like the Copyright Act, 1957, Patents Act, 1970 etc.
 - 2.1.2. Export Cartels – Competition Act also exempts the right of a person to export goods from India to the extent to which the agreement relates exclusively to the production, supply, distribution or control of goods or provision of services for such export.

Legal Recourse

1. Procedure for Filing Information

1.1. In case you detect any of the following activities in the market, you can file an information with the Commission either directly or through your authorised Representative:

- Bid-rigging cartel
- Price-fixing cartel
- Market sharing cartel
- Bundling/ leveraging
- Tying agreement
- Exclusive dealing/exclusive territory
- Predatory pricing/ destroying price
- Price discrimination
- Refusal to deal
- Resale price maintenance/ mark-ups
- Margin squeezing

1.2. Following are the instructions for filing the information:

Communication details

- The information must contain the name and address of the enterprise(s) alleged to who you suspect of violating competition law or indulging in activities mentioned above.
- The information must contain your address, telephone number, fax number and the electronic mail (“email”) address along with your preferred mode of service.

Contents of Information

Information should contain the following two main elements:

- Statement of the fact detailing the acts or omissions that violate competition law.
- Relief sought or interim relief sought – it may be noted that Commission cannot give damages. Only Tribunal has the power to give damages.

- Information can be signed by the individual himself/ herself, including a sole proprietor of a proprietorship firm, the Karta in the case of a Hindu Undivided Family, the Managing Director and in his or her absence, any Director duty authorized by the board of directors in the case of a company – It may be noted that the counsel can also append his or her signature to the information.

Filing Details

- Information should be addressed to Secretary, Competition Commission of India.
- Information should be typed in Arial 12 fonts on one side of A4 size paper white bond paper in double space with 2” margin on the left and 1” Margin on all other sides.
- Any document relied upon should be filed as exhibits or annexes. Such exhibits or annexes should be neat and legible photocopies or scanned documents duly certified as true copies.
- A total of ten copies of the information should be filed. (This is subject to change depending on the prevailing practice at the Commission).

Fees

Information filed should be accompanied with the fee specified in the regulations. The amount of fee depends on the nature of entity filing the information. It can be paid by tendering a demand draft or pay order or banker’s cheque, payable in favour of “Competition Commission of India (Competition Fund)”, New Delhi. Presently the stipulated fee is as under:

It can also be paid through Electronic Clearance Service by direct remittance to the Competition Commission of India (Competition Fund), Account No. 1988002100187687

- Individual or Hindu undivided family or Registered Non-Government Organisation or Consumer Association or Co-operative Society or Trust – INR. 5000
- Firms or companies having a turnover in the preceding year up to Rupees one crore – INR 20,000
- If the entity does not come under any of the above two categories – INR. 50,000.

Government Policies and Opportunity for Reference

It may sometimes happen that a policy, industrial or trade, adopted by a statutory authority may have an anti-competitive effect on the market. The Competition policy framework does cover government measures affecting both firm's behavior as well as economic and industrial structure.

In such a situation following information may be of use to MSMEs:

Opportunity for Reference

Restrictive Policies: Industrial/ Sectoral Policies

Policies of a statutory authority which either creates a monopoly or unduly favour specific segment of producers/ suppliers at the expense of others or prevent competition in market in violation of the provisions of the Competition Act.

Illustrations

Statutory Authority in a particular state authorises on one enterprise 'A' to collect and dispose solid waste at a price determined by 'A' itself.

In a bidding process, statutory authority puts tender conditions which exclude MSMEs even though the conditions are not relevant to project under consideration.

A Sectoral Regulator comes out with a policy that restricts the ability of MSME's to compete effectively in the market.

Trade Policies (Import/ export restrictions) :

Trade policies which may include tariff and non-tariff barriers which benefit few large domestic producers in violation of the provisions of the Competition Act.

Illustrations

Non-tariff barriers in the nature of 'quality standards' which harm the interest of MSMEs or tariff barriers which benefit the domestic producers but end up harming MSMEs

Approach

Following two approaches are recommended:

- Reference by the Commission: When proceedings are ongoing in a case before the Commission, parties may raise an issue that any decision

which the Commission has taken or proposed to take, would be contrary to any provision of this Act whose implementation is entrusted in a statutory authority, then the Commission may make a reference in respect of such issue to the statutory authority.

Reference to the Commission: In course of proceeding before any statutory authority, a party may raise an issue that any decision which such statutory authority has taken or proposes to take is or would be, contrary to any of the provisions of this Act, then such statutory authority may make a reference in respect of such issue to the Commission.

It may be noted that in such cases, the opinion given by Commission to the statutory authority or by statutory authority to the Commission shall not have any binding effect but only persuasive value.

MSMEs and Competition Policy: A way forward

Though the Indian Competition Act does contain many provisions which are of direct interest to **MSMEs**, there are a few areas where a MSME specific dispensation in Competition Policy framework would be more helpful in improving their capability to compete with much bigger competitors and in ensuring a level playing field.

i. **Special Provision in Merger Provisions**

MSMEs may often get into a combination in order to fulfil their funding requirements. These may be in the nature of mergers or joint ventures. A provision which makes an exception from merger notification, if one of the parties to a combination is an MSME would ensure that MSME related transactions do not face procedural constraints vis-à-vis Competition law. Moreover, considering that most of the MSME related transactions would not have an appreciable adverse effect on competition in the relevant market, such a provision would be compliant with the objectives of the Competition law.

ii. **De Minimis in abuse of dominance**

Even an MSME may be considered dominant in a small market. MSMEs can advocate for a de minimis rule laying down threshold in order to ensure that MSME cannot be considered a dominant enterprise in a particular market.

iii. **Settlement Procedure**

Settlement Procedures ensure that parties avoid lengthy investigation and expensive litigation. Provisions for settlement have been made in competition law statutes in other countries. However, Indian Competition Act, does not provide for any kind of settlement procedure. In light of this, MSMEs can advocate for a provision for settlement at least with respect to the MSMEs.

iv. **Special Provision for claiming damages**

Under the present dispensation, the process for claiming damages is much more prolonged. A person who has suffered damages due to anti-competitive activities has to approach the Competition Appellate Tribunal with an order of the Commission to seek damages. MSMEs can advocate

a special provision which can allow Commission to give damages to MSME within a certain pecuniary limit. In the alternative the said provision can give a timeframe within which Competition Appellate Tribunal should decide a damages case filed by an MSME.

v. **Rule against abuse of Economic Dependence**

In many cases an MSME may be economically dependent (for raw material, credit, distributorship etc) on another big enterprise which may not satisfy the dominance under the Competition Act. In such a circumstance, the big enterprise can exploit this economic dependence by forcing the MSME to agree to terms benefitting itself. Hence, MSMEs can request a provision, similar to Germany's abuse of economic dependence provision in order to protect MSME's interest in the given scenario.

vi. **Powers to the Commission to comment on the Policy Issues**

It is possible that statutory authorities in India may come up with policies which may be anti-competitive. In such a situation, Commission should have the power to advise the relevant statutory authority against implementation of such policies. Hence, MSMEs can request for provisions which allow a person to approach the Commission, in order to bring such anti-competitive policies, proposed or existing, to its attention. The provisions should also allow the Commission to take suo moto notice of the matter and advise against it.

Leading Law Firms in the field of the Competition Law

Sr.	Name	Address	Contact Information
1.	APJ – SLG Law Offices	F-21, Geetanjali Enclave, New Delhi 110017, India	Tel : +91-11-26692007, 26692008, 26693232 Fax : +91-11-26691878, Email: tradelaw@apjslg.com
2.	Vaish Associates Advocates	Flat No. 5, 10, Hailey Road, New Delhi-110001, India	Tel : +91-11-42492525 Fax : +91-11-23320484 Email: delhi@vaishlaw.com
3.	Khaitan and Co.	801 Ashoka Estate 24 Barakhamba Road New Delhi 110 001, India	Tel : +91 11 4151 5454 Fax : +91 11 4151 5318 Email: delhi@khaitanco.com
4.	Seth Dua and Associates	C – 56, Neeti Bagh, New Delhi, 110049	Tel : +91 11 4164 4400 Fax : +91 11 4164 4500
5.	Amarchand Mangaldas and Suresh A. Shroff and Co.	216, Okhla Industrial Estate, Phase III, New Delhi, India.	Tel : +91 11 2692 0500 Fax : +91 11 2692 4900
6.	Luthra and Luthra Law Offices	103, Ashoka Estate, Barakhamba Road, New Delhi - 110 001	Tel : +91-11-4121 5100 Fax : +91-11-2372 3909 Email: delhi@luthra.com]
7.	Economic Laws Practice	4, World Trade Centre, Barakhamba Lane, Connaught Place New Delhi, Delhi 110001	Tel : 011 41528400 Email: delhi@elp-in.com
8.	Lakshmi Kumaran and Sridharan, Attorneys	B-6/10, Safdarjung Enclave, New Delhi – 110 029, India	Tel : +91 (11) 2619 2243, 4129 9800 Fax : +91 (11) 2619 7578, 4129 9899 E-mail: lsdel@lakshmisri.com
9.	Singhani and co.	G 107 Himalaya House, 23 Kasturba Gandhi Marg, New Delhi 110 001	Tel : +91-11-2331-8300 Fax : +91-11-2373-1400 E-mail: new-delhi@singhaniana.com

Leading Law Firms in the field of the Competition Law

10.	Dua Associates	222-226, Tolstoy House 15, Tolstoy Marg New Delhi - 110 001	Tel : +91 (11) 2371 4408 Fax : 2331 7746, 2335 7097 Email: duadel@duaassociates.com
11.	Adhrit Legal	1687, Sector 29, NOIDA, NCR of Delhi	Tel : 0120-2451137
12.	Trilegal	A – 38, Kailash Colony, New Delhi	Tel : +91 11 41639393
13.	Jyoti Sagar and Associatesz	84E, C-6 Lane (off Central Avenue), Sainik Farms, New Delhi 110 062, India	Tel : +91 11 4311 0600 Fax : +91 11 4311 0617 Email: newdelhi@jsalaw.com

Competition Commission of India (CCI)

For enquiries relating to Competition Act, and Regulations, 2002 and for correspondence to designated authority under regulation 2(f) and 5 of the Competition Commission of India (Lesser Penalty) Regulation, 2009, please write to:

Mr. S.L. Bunker
Secretary

Competition Commission of India

The Hindustan Times House
18-20, Kasturba Gandhi Marg,
New Delhi – 110 001

Tel. : + 91 – 11 – 23704651

Fax : + 91 – 11 – 23704652

Email : cci-bunker@nic.in

Annexure- A

Highlights

Survey of MSME experiences of Unfair Trade Practices & Anti-Competitive Policies

[Note: The comments reproduced below are received from MSMEs and their associations. While many clearly named large companies as well as public authorities, in the interest of probity, individual names are withheld. The objective of the 'highlights' section is to expose the reader to the prevailing anti-competitive practices in the view of MSMEs, especially the dominating themes.]

Trade Policies (Import/ Export restrictions)

"Anti Dumping Duty on Injection Moulding machine on application a large producer has deprived MSMEs from procuring cost effective machinery from China and from upgrading technology through affordable means"

"Anti Dumping Duty levied on Polypropylene on the application of a petrochemicals company has created a monopoly for domestic industry, thereby preventing MSMEs access to regular, competitive and quality imports".

"Yarn & Cotton - Without considering our local consumption Govt. allowed for export."

"we are into exports ... the Central Government has imposed Anti Dumping Duty on one of our major raw material. Due to this the import becomes unviable and we are forced to buy local product at higher rate though foreign products are available at lower rates. When all our international competitors have access to cheaper raw material how do we compete with them?"

"...to some extent large domestic producers are absolutely managing on concocted figures to get anti dumping duty applied and immensely benefiting at the cost of by small manufacturers and others"

Govt. Purchase/ Public Procurement

" The State Government bodies do not follow the Circular of Ministry of MSME

(No. F.No.22(1)/2003/EP&M dated 29.07.2003) issued by the Development Commissioner, Nirman Bhavan, New Delhi and do not provide any benefit to MSMEs. [The circular asks for issue of tender sets free of cost to MSMEs; exemption from payment of Earnest Money; Waiver of Security Deposit upto the Monetary Limit for which at the units registered: and Price Preference upto 15% over the quotation of large-scale units. In addition to the above, 358m items are also reserved for exclusive purchase from SSI sector.]

"Restrictions to keep MSME out from participating in the Tenders issued by the Govt. Undertakings / Departments are very common ..."

"A public undertaking in Uttar Pradesh arbitrarily.. put a condition of minimum annual turnover of Rs 25 crores during previous 3 years in their tender. Yet another undertaking in the same state fixed the turnover requirement at Rs 20 crore, significantly enhanced Earnest Money and pegged security money at 10% of the purchase order."

"We have observed that ... Govt. purchase requirements are routinely diluted to suit the eligibility of large/ multinational companies".

"We have a tender document paper in which a public department in Maharashtra has fixed annual turnover of Rs.25 Crores as eligibility to participate in tender. Which is impossible for any MSME ."

"The plastic water tanks manufactured by local manufacturers are not purchased by the few Central departments even if these are cheaper and ISI marked but purchased from a specific brands at high price"

"Some PSUs in their Tenders require a minimum of 5 years experience as qualification of tenderer ...it is denying an opportunity to a new unit even if it may have latest technology."

"The unfair pre-eligibility conditions while floating tenders are used as a means to exclude the Small Industries.... They also bar the new entrants from government supply."

" There are quite a number of SSIs specialized in certain domains of products like auto leaf springs, bandage cloth, mosquito nets etc., having good track record of earlier supplying to government ... but because of unfair pre-eligibility conditions they cannot supply".

"...Some states clearly debar units outside their state from participating in certain tenders"

"Evaluation system of tender processing... some take into consideration only

basic rates or some include Sales Tax/ VAT which are variables in different states..this results in discrimination of the locals units vs. units of other states”

’Chief Secretary of a state ordered that entire purchases of Tree Guards be made from another state PSU at a much higher rates compared to what was procured from Small Scale Industry earlier”

“ Even if my unit is ISO certified and my material is being used by contractors of National Highway Authority satisfactorily, the state PWD continues to discriminate against me in purchasing Bitumen Emulsion”.

" A central PSU based near Hyderabad fixes hourly rates for some operations through nation wide tendering. Many MSMEs are ancillary units dependent upon the mother unit but are exploited. Not only are they hand-twisted to agree for very low rate but are also paid late contrary to the delayed payment provisions of MSMED Act.”

“In defence purchase – irrespective of quality or quantity, branded products are preferred. The MSMEs which are manufacturing unbranded items are thus prevented from entering as vendors in defence procurement, even though their products are with better quality.”

Public Services

“The experiment of privatization of Electrical distribution to only one company in an area has resulted in poor services and exploitation of the consumers..the live examples can be seen at (two places in UP). The private agencies did not establish any generating capacities and are acting as a middle man between State power utility and the consumers.”

“(Why) an MSME, engaged in both exports and Imports cannot use its export earnings at the same rate to meet its import commitments? The banks credit the export earnings at a lower rate and charge a higher rate for its import remittance.”

"Electricity service is huge block in industrial development. It must be privatized immediately.

“.. banks are insisting for BASEL rating in order to extend credit facilities to SSIs for exposure exceeding 5 to 8 crores depending upon bank to bank. The Banks insist for the third party rating and credit rating agencies are charging anywhere

between Rs 1.25 to Rs2.50 lacs and this is a lot of money for MSE to bear. For an SSI it is really difficult to afford to pay the exorbitant bank charges on appraisal/sanction and documentation charges of the bank and on top of that pay another Rs1.25 to Rs2.50 lacs to the third party rating agency”

“..the interest rates and service conditions by all PSU banks are set in a narrow band and they act as a single large monopoly.”

General Government Policies

“Difference in Tax rates in different states render industries uncompetitive... for making purchases by Govt. departments the rates are compared inclusive of Taxes..and material coming from outside the state attracts only 2% CST”

“ For distribution of Coal to MSMEs in a state only one PSU is authorized. It is a monopoly.. does not serve customers but indulges into all kind of corrupt practices”

“Tax Laws favoring new industries are discriminating...and must be removed. The practice breeds corruption and unscrupulous companies thrive.”

Zinc sulphate – a micro nutrient fertilizer, is entirely manufactured by MSEs. A nutrient based scheme is launched recently to subsidize large fertilizer producers for fortifying their fertilizers with Zinc. It has suddenly rendered large MSMEs uncompetitive

“There is only one Hazardous Waste Treatment, Storage & Disposal Facility (TSDF) in the state authorized to collect waste...it is asking MSME to become its member at a very high fee whereas as per rules there should not be any such binding”

"In the case of foundry and plastic processing and solid waste management policies, various state governments and their pollution control boards follow policies that at great variance from that of the Central Pollution Control Board...these differences have affected manufacturing from one state to another.”

“Why some states are allowed to continue with Octroi and Entry Tax making ... products uncompetitive”

" We are registered MSME unit dealing in Coin Vending Machines / Dispenser machines. There is a cartel of two foreign Companies who do not allow any

other supplier to come into the market through a series of unfair practices... like getting the eligibility criteria fixed which would allow only these two companies to be a supplier”

“Government has come with a Regulatory Authority only for service industry like Telecom, Insurance, etc. But for manufacturing sector there is no such Regulatory Authority...it is needed particularly in critical areas such as petrochemicals”

“The Karnataka Transparency in Public Procurement Act (KTPP Act 1999) deprives NSIC & its registered units to avail of the exemption of concessions like exemption of EMD & Security Deposit etc., provided by the Government of India”

Unfair practices / Abuse of dominance

“As per observation (of this association), major polymer producers are working as a cartel in fixing their prices.... the downstream processing industry has become very large and so is the consumer base.. there is an urgent need for appointment of a Regulator for the Polymer Industry”

“All commodities like Steel, Copper, Plastic etc. are controlled by a few large corporate houses. They change the prices and availability at their conveniences. PSUs engaged in the manufacture of the same commodities also follow the footsteps of the corporate houses with an aim to maximize profit and not for the purpose the PUSs have been established.”

“A large producer of PP, LDPE takes advance alongwith purchase order but do not deliver the material immediately if there is any price increase in pipeline. Then it asks for the increased amount at the time of actual delivery. This is not the case when any reduction in the price is anticipated. (Whether the price is going to increase or decrease they only know it in advance and therefore they take undue advantage of the situation, specially of small scale buyers) “

“There is a continuing practice of all major polymer producers to cancel booked order on the eve of price change..then orders are booked afresh and executed at enhanced price. This is against the fair commercial practice. In this connection, it may be pointed out that for international order booking suppliers execute the booked orders at booked price irrespective of later price change. Here also competition commission intervention is necessary”

“ All of the major polymer producers are extending quantity linked discount to encourage bulk lifting. Small Scale & micro units are unable to avail of these discounts because of financial constraints and have to buy raw material as much higher prices than available to bulk buyers. This is discriminatory restrictive practice on which the intervention of Competition Commission is called for.”

“Large manufacturers hike their prices upward when the international prices are rising and when international prices are coming down, they do not follow the downward movement... and get anti-dumping duties levied to make imports more expensive”

“Indian polyester film manufacturers have formed cartel and they have been increasing prices every month during last six months they have increased prices from Rs 100 to Rs 180 per kg all downstream industries are crying and suffering loss”

“Titanium Dioxide – this product is an important raw material for paints and plastics. In India, the two major producers- one state PSU and one a large corporate house, have been increasing their prices in tandem.. forcing many small producers to the brink as they cannot import small quantities. In order not to lose their large buyers these two companies give them bulk discounts”

“White Cement – In India there are only two major players. Both these companies have bifurcated their customers (,markets) and they do not disturb each others’ existing customers. For last two years they have been regularly increasing their prices to actual users.”

“When machines seized from the small units are auctioned by KSFC, KSSIDC & NSIC buyers form cartel and the struggling entrepreneur is denied the opportunity of lifting the machines at that price.

“ plastic woven sacks manufacturer produce 10% of their production as scrap and they sell the scrap highly undervalued to save tax credits and generate black money... the question is why this is done on all India basis through dictate of an association?

“Our Unit in Parwanoo Himachal Pradesh is unable to negotiate transport arrangements privately. This is unfair. Even in Gurgaon this is the same practice. They allow outside trucks to enter their territory but charge an entry fee, hence making it economically unviable . Transport service is imposing unjust and unreasonable conditions only because of their cartel”

“ We have been victim of extreme predatory pricing by our multinational competitors and all attempts to highlight this trend to customers have failed to capture any interest because of the short term advantages to the customer.”

“Large manufacturers change prices at the same quantum and at the same time and also ensure that the product availability is also tight, thereby creating artificial scarcity, which will lead to acceptance of artificial prices”

"All large manufacturers follow the policy that slow moving items had to be purchased, if MSME had to purchase a fast moving item.

“Large MNCs have forced closure of the local soft drink manufacturers (in Tamilnadu – Kalimark, Bovonto, etc.) by selling initially at very low cost and then increasing the prices abruptly”

Annexure-B

List of Respondents (Associations/ MSMEs)

SI	Name	Station
1	All India Plastic Industries Association	Delhi
2	Chhattisgarh Laghu and Sahayak Udyog Sangh	Bilaspur
3	Federation of Industries of India	Delhi
4	Adityapur Small Industries Association	Jamshedpur
5	Federation of Andhra Pradesh Small Industries Association	Hyderabad
6	Karnataka Small Scale Industries Association	Bangalore
7	Madhya Pradesh Laghu Udyog Sangh (MPLUS)	Bhopal
8	Goa State Industries Association	Goa
9	Bihar Industries Association	Patna
10	Gujarat State Small Industries Federation	Ahmedabad
11	Mahakoushal Association of Women Entrepreneurs	Jabalpur
12	Faridabad Small Industries Association	Faridabad
13	Tamil Nadu Small & Tiny Industries Association	Chennai
14	Association of Women Entrepreneurs of Karnataka	Bangalore
15	Federation of Small & Medium Industries	Kolkota
16	Kerala State Small Industries Association	Cochin
17	Association Of Lady Entrepreneurs of Andhra Pradesh	Hyderabad
18	Vidarbha Industries Association	Nagpur
19	Indian Chamber of Commerce	Kolkota
20	Agra Footwear Manufacturers and Exporters Chamber	Agra
21	Small Scale Industries Owners Association (Gulbarga District)	Gulbarga
22	ELCINA Electronic Industries Association	New Delhi
23	Banthar Industrial Pollution Control Company	Kanpur
24	Medak Small Scale Entrepreneurs Association	Hyderabad
25	Indian Industries Association	Lucknow
26	FICCI New	Delhi
27	Chamber of Industrial & Commercial Undertakings	Ludhiana
28	Federation of Andhra Pradesh Chambers of Commerce & Industry	Hyderabad

29	Federation of Indian Mineral Industries	New Delhi
30	South India Imported Machine Knitters Association	Tirupur
31	Okhla Industries Association	New Delhi
32	India Lead Zinc Development Association	New Delhi
33	Patidar Polymers Pvt Ltd	Hyderabad
34	Aartech Solonics Limited	Bhopal
35	Dwarka Industries	Jalgaon
36	Asveensforging pvt limited	Chennai
37	Future Techniks Private Limited	Chennai
38	Healcare Devices Limited	Rewari
39	Jupiter Automotive (P) Ltd.	Delhi
40	RotostoreRanchi41Kitty Industries Pvt. Ltd	Ludhiana
42	Godavari Paints Pvt. LtdMumabi43Auto Fibre Craft	Jamshedpur
44	Apple Weighinfra Limited	Ahmedabad
45	Kanohar Electricals Ltd.	Meerut
46	Chakradhar Chemicals Pvt. Ltd.	Muzaffarnagar
47	Dayachand Engineering Industries Pvt. Ltd.	Muzaffarnagar
48	Goel Engineers (India)	New Delhi
49	Shashi Cables Ltd.	Lucknow
50	Amith Cashew Industries	Udipi

FEDERATION OF INDIAN MICRO AND SMALL & MEDIUM ENTERPRISES (FISME) - AN INTRODUCTION

FISME came into being in 1995 as a Federation of geographical and sectoral associations of Small and Medium Enterprises (SMEs) in India spread across districts and states. It was established as National Alliance of Young Entrepreneurs (NAYE) in 1967- when Indian government started monumental initiatives for small industry promotion. India was a different country then, inward looking, interventionist and hugely protectionist. NAYE had a contextual agenda which suited that era. After India's embarking upon liberalization in 1991 and its accession to WTO in 1995, it called for a fundamentally different approach for SME promotion. NAYE along with 8 state level associations gave birth to FISME to lead SMEs in the changed economic realities.

Its mindset, mission and activities have been shaped by these national and global developments. It focuses primarily on trade and market access issues and reforms with the twin objective of establishing entrepreneurial and competitive environment at home and greater market access for Indian SMEs in India and abroad.

The key thematic areas of work at FISME constitute:

- a. Internationalization of SMEs- which reflects in our activities such as networking with SME associations abroad and organization of trade fairs, trade delegations, hand-holding-training, BDS development among others.
- b. Mainstreaming of trade issues among SMEs and their associations- engaging us in continuous research, sensitization on trade issues and organization of collective initiatives
- c. Strong orientation for reforms in regulatory environment and promotional policies in tune with changing world trade order to enhance competitiveness of SMEs vis- -a-vis their larger domestic counterparts and foreign firms- engaging us in research, bringing out policy and position papers and organization of campaigns.

FISME is widely perceived as the progressive face of Indian SMEs and is regarded as such by Government of India. Member of quasi-judicial body of 'Advisory Committee' formed under MSME Act 2006 and Member of Board of Trade (Ministry of Commerce and Industry), it is well represented in and consulted by SME policy making set up in the country. FISME works in close cooperation with major multilateral and bilateral bodies in India UNIDO, ILO, UNCTAD, DFID, GTZ among others.

Currently, as Tier-I partner, it is leading 22 provincial SME bodies (in 18 states) under multilateral project 'Strategies and preparedness for trade and globalization in India' supported by UNCTAD, DFID and Ministry of Commerce & Industry.

More at <http://www.fisme.org.in>