

Small & Medium Enterprises (SMEs) & The Role of the Competition Commission of India (CCI)

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Introduction

The Small and Medium Enterprises (SMEs) have been globally recognized as a priority sector for growth and development¹ and India is not an exception to this generality. In India, the Micro, Small and Medium Enterprises (MSMEs) contribute over 45% of the country's industrial production and around 40% of the total exports. Thirteen million MSMEs in India employ over 31 million people. This sector with a total size of US\$140 billion (approx. Rs. 5, 60,000 crores) is the driving force for the long term growth of the Indian economy.²The balanced regional distribution of growth along with development of local skill and resources are added advantage of SMEs which are pivotal in grassroots development, social progress and combating poverty.³ Transforming MSMEs into world class entities has been the theme of Fifth India Global Summit on MSMEs 2008. MSMEs unhesitatingly play a vital role and in fact they are the backbone of the Indian economy and prudence suggests that the backbone not only be protected but strengthened too on a perennial basis.

1.1 The process of liberalization and market reforms since 1991 has brought challenges as well as bouquet of opportunities. The challenges are intense competition both in domestic and overseas markets which makes imperative for the enterprises to maintain, improve and sustain competitiveness through lower cost, improved quality, making available wider choice by initiating various measures including innovation and up-gradation of technology. The opportunities include expansion of business by entering into new markets both in terms of products and geography. An attendant and incidental outcome of the policy of liberalization, privatization and globalization (LPG) is that 'Market' has become the key. What to produce, where to produce, what quantity, of what quality and at which price, with what technology and where to sell - the key to unlock these questions is 'Market'. Thus, there is an immense need to understand the complexities and intricacies of market- by all enterprises- be it a big fortune 500 or SMEs. Policy maker or the regulator also needs to fathom the realities of markets so that approach and efforts sync with the 'market'.

1.2 In a new era of open economies, it is increasingly recognized that large industry cannot afford to sustain in isolation from small industry and this increasingly necessitates them to have long term linkages with the SMEs as small and large industries have distinct places where they succeed on the principle of most efficient scale of economy. The intense competition is increasingly forcing both small and large industries to leverage upon the complimentary strengths of each other in order to survive and thrive. Thus, not confrontation but cooperation is being increasingly witnessed between small and large industries. The UNCTAD's Expert Group noted that there is need to scale up and upgrade the capabilities of the SMEs so that they can become effective partners for transnational corporations (TNCs). It further observed that Business Schools can play a role in facilitating TNC-SMEs linkages to increase their

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¹Excerpts of address by the Chairman, CII-SMEs Forum before the "5th India Global Summit on MSMEs 2008 held in New Delhi on 18-19th March, 2008".

²Excerpts of address by Mr. Jawhar Sircar, Additional Secretary, Ministry of Micro, Small and Medium Enterprises, Government of India in 5th India Global Summit on MSME held in March, 2008.

³A December, 2007 publication of CII "Opportunity India Advantage Indian SMEs – A study on success of Joint Ventures and Technology Collaboration between Indian SMEs and Foreign Companies."

understanding of the linkage programmes.⁴ It is worthwhile to note that a Centre to develop such business linkages is already working for quite sometime at IIM-A.⁵ where philosophy inter-alia of “Live and let other live” is being imbibed.

1.3 A minimum number of small and medium sized enterprises is considered not only a guarantee but also a constituent part of a market economy system. A decentralized competitive market is conditional on the presence of sufficient number of independent decision makers. SMEs increase competition, contribute to a comprehensive and varied supply of goods and services, give customers wider choice, put new ideas to the test and speed up the dissemination of new economic knowledge. Consequently, SMEs contribute in making market structure more democratic and thereby enhance level of competition in markets.

1.4 The need to preserve, protect and promote SMEs is all the more necessary in economies where market structures are highly concentrated. It will be relevant to state that in India, some of the market structures continue to remain highly concentrated. Six products namely cigarette, wafers, jams/sausages, iodised salt, medium and heavy commercial vehicles, fuel injection pumps, nozzles show high concentration with Herfindhal Hershman Index (HHI)⁶ more than 0.5. There is a rise in concentration in 38 products over a time. Composition of first five players remained the same and the market leader remained the same across two points of time namely 1992 and 2005.⁷ The position in this respect in the public sector is in no way better. For instance, National Thermal Power Corporation (NTPC) accounts for one fifth of the installed power capacity in the country having long term fuel supply agreement with Coal India; in transmission of power, Power Grid Corporation (PGC) transmits 45% of power generated in India; Container Corporation of India (Concor), is the only major player involved in the movement of containerized cargo via railways.⁸ Indraprastha Gas Limited (IPGL), a JV of ONGC, GAIL and Govt. of Delhi is the sole supplier of CNG in Delhi market. Such dominance, not only creates an entry barrier for others but dominance enables them to indulge in exploitative practices towards users and exclusionary practices towards small players.

1.5 Once there is a consensus that the MSMEs are the backbone of the economy, three pronged approach is inevitable to achieve the mission of protecting & promoting the MSMEs, namely:

- 1) Policy initiatives and measures by the State ;
- 2) Initiatives and efforts by the MSMEs and the Trade and Industry Associations; and
- 3) Benign and pragmatic approach of the Competition Commission of India (CCI) in maintaining the competitive process in markets, in India.

⁴ Report of the Expert Group Meeting on Best Practices and Policy Options in the promotion of SMEs-TNC Business Linkages held on 6-8th November, 2006. Unctad's Document TD/B/COM.3?EM.28/3 dated the 22nd December, 2006.

⁵ Centre under the Chairmanship of Prof Rakesh Basant at IIM, A –Times of India of 1st August, 2008.

⁶Market concentration is measured by the Herfindhal Index, one of the most commonly used indicators of concentration. Herfindhal Index which is taken as the sum of squares of market shares of all the firms serving the market, attains maximum value 1 when there is only one player. As the number of players/firms in the market increases, Herfindhal Index declines and approaches zero.

⁷Market Study March, 2007 “The State of Competition in the Indian Manufacturing Sector” by Prof. T.A. Bhavani & Prof. N. R. Bhanumurthy of the Institute of Economic Growth, University of Delhi and sponsored by the Competition Commission of India.

⁸ A news item under the caption “Monopoly-the Trump Card” appeared in the Economic Times of 21st July, 2008.

2. Policy Initiatives and Measures by the State:

The Government is committed to promote the growth and development of the micro and small enterprises and to enhance their competitiveness so that these enterprises contribute to accelerate the expansion of productive employment in the country. It seeks to fulfill its mission by formulating policies and designing/implementing support measures in the field of credit, technological upgradations, marketing, entrepreneurship development etc. and undertaking effective advocacy for these purposes.⁹

2.1 Some of the recent policy reforms for SME sector in India are¹⁰:

- A single comprehensive legislation for the promotion, development and enhancement of the competitiveness of the MSME sector- Micro, Small & Medium Enterprises Development (MSMED) Act, 2006 which came into effect from October, 2006,
- National Manufacturing Competitiveness Council (NMCC) is set up to energise and sustain the growth of the manufacturing industry. New promotional packages for MSMEs and focus on development of clusters,
- Revised strategy of lending including establishment of Small Enterprises Financial Centres for strategic alliance between branches of banks and SIDBI located in 388 clusters,
- SME Fund of US \$ 2.27 operationalised and proposal to double the credit flow to MSMEs in the next five years,
- Promotion and financial support for credit-cum-performance rating in the MSME sector in India, to facilitate greater and easier flow of credit from banking sector to SMEs,
- The National Commission for Enterprises in the Unorganised Sector (NCEUS) has been set up as an advisory body and a watchdog for the informal sector to bring about improvement in the productivity of these enterprises,
- Facilitation of technology transfer through Technology Bureau for Small Enterprises (TSBE),
- Accelerating initiatives to address various developmental needs for the MSMEs in the 11th Five Year Plan.
- "Scheme of Fund for Regeneration of Traditional Industries (SFURTI),
- Guarantee coverage under credit guarantee for Small Enterprises expanded substantially,
- Limited Liability Partnerships Act on the anvil.¹¹

2.2 The MSMEs Act, 2006¹² inter-alia seeks to facilitate the promotion, development and enhance the competitiveness of the MSMEs. The measures as envisaged by the Act, includes the following:

⁹Citizen Charter of the Ministry of Micro, Small and Medium Enterprises, Government of India available at www.msme.gov.in

¹⁰Extracts from the Chapter 2 'The Indian SME Engine' of CII's publication 'Opportunity India Advantage Indian SMEs'.

¹¹The SMEs are generally carried on as sole proprietorship or partnership firm. The liability of proprietor or partners is unlimited in the sense that it extends beyond the business assets and also covers privately owned and business unrelated property, which can be attached for paying the debtors in case of bankruptcy. Similarly, if proprietor or one of the partner dies business is automatically dissolved. If a business is to be continued a new entity must be formed. These drawbacks will not be there if business is carried under the banner of LLP.

¹² Act No. 27 of 2006 published in the Gazette of India Extraordinary on the 16th June, 2006. The Act came into force with effect from 2nd October, 2006.

- (a) Provisioning for technical upgradation, marketing assistance or infrastructure facilities and cluster development of such enterprises with a view of strengthening of backward and forward linkages;
- (b) Progressive practices and policies in respect of credit to these enterprises;
- (c) Preference Policies in respect of procurement of goods and services, produced and provided by these enterprises by the Government and its aided institutions;
- (d) The buyer shall make payment to the supplying MSMEs before the appointed day and in no case the period of payment shall exceed 45 days and that any delay thereafter shall give rise to liability to pay compound interest as notified with monthly rests.¹³

2.3 Beside the single legal framework, the Ministry of Agro & Rural Industries and the Ministry of Small Scale Industries have been merged into a single Ministry, namely, the Ministry of Micro, Small & Medium Enterprises¹⁴ so as to provide unitary command and cohesiveness in implementing the law.

2.4 The Government has identified three thrust areas for increasing competitiveness namely technology (including quality), skills development and finance. It has since launched the National Manufacturing Competitiveness Programme (NMCP). The problems of credit, technology and market access are being addressed by focusing on clusters as they provide collective guarantee.¹⁵ These measures are laudable but not enough. The voice of SMEs needs to be heard on following issues:

- Policies need to be SMEs oriented. The emphasis should be on promotional measures and not on protective measures as the latter are not likely to persist for long. Moreover such measures are anti-consumers and not helping the small entrepreneur¹⁶. All Governmental policies will have to be viewed through the competition lens to ensure that consumer interest and welfare and economic efficiencies and development dimensions are not pejected.¹⁷
- The initiatives should not be perceived as concession or favour rather a necessity in view of SMEs contribution to the economy. Moreover, the concessions should be real and not merely 'sing a song';
- Access to key inputs or supplies is generally by dominant players with the result the supplies are made at uncompetitive price (not being determined by market forces) and the resultant effect is 'uncompetitive SMEs. A study conducted by the NSIC in 1979/80 showed that the SSI suffered a disadvantage of not less than 15% in input costs alone¹⁸;
- In recent years, banks and other institutions in developed countries have launched a number of innovative approaches which have not only increased the size of

¹³ In accordance with the MSMED Act, 2006, the Ministry of Corporate Affairs has issued a Notification No. GSR 719(E) dated the 16th Nov., 2007 requiring disclosure of principal and interest thereon on delayed payments due to MSEs separately in the annual statement of accounts. The CBDT vide circular No. 12/2006 of 14th Dec., 2006 envisages that the interest payable or paid by any buyer in terms of Section 23 of the MSMED Act shall not be allowed as a deduction in the computation of income. The rate of interest is notified by the RBI pursuant to "The Interest on Delayed Payments to Small Scale & Ancillary Industries Undertaking Act, 1993".

¹⁴ Notification dated the 9th May, 2007 amending the Government of India (Allocation of Business) Rules, 1961.

¹⁵ Extracts of Address by Secretary, Ministry of MSMEs, Government of India at 4th India Global Summit on MSMEs held in Australia on 22-23rd Nov., 2006.

¹⁶ Abid Hussain Committee Report, 1997.

¹⁷ Expert Group, 1999 constituted by the Ministry of Commerce, Government of India to study interaction between trade and competition policy pursuant to Singapore Declaration, 1996.

¹⁸ Extract from letter dated 14th May, 2000 by President, Federation of Asson. Of Small Industries of India addressed to High Powered Expert Committee on Competition Policy & Law (Raghavan Committee).

finance/lending but the same has been profitable¹⁹In the 5th India Global Summit on MSMEs held in March, 2008, focus to have more VCs offerings and to develop Alternative Investment Markets (AIM) in India on the lines of London, AIM were deliberated. Micro credit, consumption credit and health insurance beside need for improving overall investment climate and higher level of investment by the Government in economic infrastructure were also highlighted;

- Simplification of regulatory environment as these entrepreneurs neither have skills nor resources to comply with excessive and outdated regulations. Lessening of cost of compliance is a must under competitive environment. Rules and regulations for business are still complex in India deterring entry;²⁰
- Failure of business is a natural corollary of open liberalized economy and the failing SMEs should not be equated with crime and it makes imperative to have benign bankruptcy or insolvency laws for this segment of business;
- Review of policy relating to influx of technology, professional services which are impediments to the growth of export of services;
- Spread awareness as the need for and usefulness of protecting the intellect properties and linkages with Research and Development Institutions.
- Policy framework to be reviewed at periodic intervals.

2.5 It must be remembered that all policy initiatives and measures are aimed to strengthen the disadvantaged enterprises, to enable them to have level playing, to afford them equal opportunity to participate in the economy and thereby promote a greater spread of ownership. Nonetheless, the SMEs increase competition, contribute comprehensively in the GDP, ensure varied supply of goods and services, give customers wider and customised choice, put new ideas to the test and speed up the dissemination of new economic knowledge.²¹ All these lead credence to say that “SMEs are beautiful as well as precious too”.

3. Efforts by MSMEs and the Trade & Industry Associations

SMEs lag behind larger firms in performance because of macro-micro constraints. The micro factors are (i) bureaucratic red tape that inhibits business start ups and operations, and (ii) access to finance. The firm specific constraints are (i) weak management, (ii) low skills workforce, (iii) outdated technology and (iv) poor market information.²² The result is that many SMEs remain small and experience high rate of business failures beside low productivity and little success exporting.

3.1 SMEs need to understand the realities. Competition has been heightened and there is consistent and continuous need to become efficient, quality focused and innovative. Further, law or policy of a State can help or protect only up to a limit and beyond that they (SMEs) have to navigate themselves. SMEs should not forget that they have distinct advantage over large firms in terms of flexibility, cost effectiveness and replicable approach by locally available resources.

3.2 There is need for a mindset change to consider developing products for the bottom of the pyramid. The need is to drive an innovative and inventive mindset. Entrepreneurship skills

¹⁹ Unctad's Document UNCTAD/ITB/TEB/Misc.3 of 2001 on “ Improving the Competitiveness of SMEs in developing countries- Role on Finance in enhancing the Enterprise Development.”

²⁰ India ranks 134 in Doing Business as per 2007 Survey of World Bank that covers 175 countries.

²¹ Extracts from Background Note OECD Policy Roundtables “ General Cartel Bans: Criteria for Exemption for Small and Medium –sized Enterprises” 1997

²² Presentation by Gladys Lopez Acevedo of World Bank on 02.04.2008 on “ SMEs Support Programme in Latin America”.

are key to excel. An entrepreneur needs to have traits of being believer, opportunist and keep alternate vision²³. The challenges are varied and many but essence is to keep on trying.

3.3 They should not crave for protection and in fact there is need to think big in order to take advantage of policy of liberalization. The key advantages that place India on the global landscape include mammoth size of domestic market, knowledge society, young population, promotional investment policies, constitutionally guaranteed legal infrastructure and strategy to pursue regional integration and free trade agreements and SMEs need to make use of the advantages..

3.4 The trade and industry associations should take up common cause with the State and its Authorities. The associations need to adopt forward looking approach and evolve new strategies to meet the challenges of their members. Such approach may make the journey of the SMEs comfortable.

3.5 Fortunately, the Confederation of Indian Industry (CII) is already facilitating and assisting the MSMEs in focusing on total quality management (TQM) and total productive maintenance for the cluster programs. The CII and the Department of Scientific & Industrial Research (DSIR) of the Government of India are undertaking a project called Technology Export Development Organisation (TEDO) in collaboration with the Centre for the promotion of imports from developing countries for SMEs to improve and facilitate their competitiveness to EU, Middle and African Nations.²⁴ The Federation of Indian Micro and Small & Medium Enterprises (FISME) have recently submitted a Memorandum pointing a serious concern relating to “abuse of dominance and cartelization of large firms” and have urged the Government to make the CCI functional at the soonest.²⁵

4. Dimensions of the Competition Act, 2002

4.1 India is on the threshold of ushering into new modernized competition regime as the enforcement and regulatory provisions of the Competition Act, 2002 (which have been put on wait since 2003) are likely to be made effective by the Government of India shortly. As is known, the Act is applicable to business or enterprise- be it big, medium, micro or small; irrespective of its being in private hands or in public sector including Government; notwithstanding of its being carried on as a sole proprietorship, firm, body corporate (incorporated in India or outside India), cooperative society, a trust or a local authority. Thus, it has a wide canvas. The four laudable objectives of the law are:

- (a) to prevent practices having adverse effect on competition;
- (b) to promote and sustain competition in markets;
- (c) to protect the interests of consumers; and
- (d) to ensure freedom of trade carried on by other participants in markets, in India.

4.2 The Competition Commission of India, a body established by the Government of India on 14th October, 2003, is mandated by law to :

- (a) prohibit anti competitive agreement which causes or is likely to cause a appreciable adverse effect on competition on market within India,
- (b) prohibit abuse of dominant position by enterprise or group,

²³ ‘Stay Hungry, Stay Foolish’ authored by Rashmi Bansal, an Entrepreneur Alumna of IIM, Ahmedabad.

²⁴ A news item under the caption “CII, DSIR join hands for SMEs project” in Economic Times of 31st July, 2008.

²⁵ FISMEs Monthly Bulletin of April-May, 2008

- (c) regulate combination where total value of assets or turnover of the parties to combination exceeds the threshold limits prescribed in the Act,
- (d) to create awareness and impart training on competition issues through advocacy, and
- (e) to render opinion on competition issues on a reference or otherwise as prescribed in the law..

4.3 The CCI beside prohibitory directions, is also empowered to impose penalties. The orders can be passed only after an Enquiry and that it is assisted by the Director General in carrying out investigations into the alleged or likely infringements of the Act. An appeal against an order passed by the CCI or power to award compensation to an aggrieved person etc to offset the loss caused as a result of anti competitive practice, vests in the Competition Appellate Tribunal (CAT). An appeal against an order/direction of CAT lies in the Supreme Court.

4.4 The scope and ambit of 'consumer' is wider than that which is envisaged in the Consumer Protection Act, 1986 and includes in its purview any one who buys 'goods' or avails of 'service' notwithstanding the purpose- it may be personal or commercial- is a 'consumer' for the purposes of this Act. Accordingly, every business house irrespective of its size or mode of ownership is a 'consumer' when it procures products and can have redress of its grievance against anti-competitive business practice of others.

4.5 The law is benign for consumers and helps the enterprises which are on the right side of the law. SMEs are consumers in so far as procurement of key inputs are concerned and it is an enterprise in so far marketing of its products is concerned. In this write up an attempt is made to suggest as to how SMEs should ensure that they are compliant of the law and also how best they can mitigate their grievances against anti competitive practices of others beside how coordination and consultative process between Government and the CCI can be helpful in taming anti-competitive conducts flowing from the public action.

5. What the SMEs need to know:

5.1 The law is applicable to SMEs The focus of law is not on "size of the enterprise" which could be in terms of assets/turnover or investment in plant and machinery etc. but on "effect of business practice on competition in the relevant market in India". However, it is unlikely that SMEs would unwittingly fall foul of the law. On individual basis, since SMEs lack market power, their actions are not likely to have appreciable adverse effect on competition in market in India.

5.2 Moreover, the exclusions and exemptions from the applicability of law are likely to dilute the effectiveness of competition law which is increasingly believed to be benign for consumers, enterprises as well as economies. However, a power does vest in the Government to grant exemption from the applicability of law (partly or fully for a specified period) under certain circumstances including on the ground of public interest. It is expected that exemption will be an exception and not a rule. It will be relevant to state that the competition law seeks to improve economic efficiency by prohibiting anti competitive conducts and is not meant to stimulate or introduce competition artificially.

5.3 Since, SMEs are subject to applicability of law, they should not enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provisions of services which causes or is likely to cause an appreciable adverse effect on competition within India. SMEs need to examine as to whether it enjoys 'dominant position in the relevant market' and in case the answer is in the affirmative, it must not indulge in conduct

which is abusive in terms of the Act.²⁶ In the event of infringements, the CCI can pass not only prohibitory directions but also impose penalty as prescribed in the law.

5.4 It is unlikely that merger/amalgamation between SMEs will attract the provisions of the Act as the total value of combining parties is not likely to exceed the threshold limits or turnover or assets as prescribed in the law. An SME is not likely to acquire but there is great preponderance of it being acquired. In that eventuality, in case the total value of turnover or assets of acquirer and the target SME exceeds the limits, the responsibility to comply with the filing of notice with the CCI devolves on the acquirer and not on the target SME.

6. What actions SMEs can take:

6.1 An SME or an Association can file information in the prescribed form with the CCI and request for enquiry against any delinquent enterprise in case the latter is allegedly indulging in anti competitive practice/agreement or abuse the dominant position. An SME can also file objection with the CCI in response to a public notice or otherwise against any proposed acquisition, merger or amalgamation as sometimes a survival of SME is threatened. Thus, there is an obligation on the CCI to listen to the aggrieved SMEs. An SME can also apply for award of compensation to offset the loss or damage caused to it as a result of conducts which are held to be the infringements of the law. By doing so, it can protect itself and deter bigger

²⁶ Section 4(2) of the Act states as follows:

(2) *There shall be an abuse of dominant position under sub-section (1), if an enterprise or group –*

(a) *directly or indirectly, imposes unfair or discriminatory –*

(i) *condition in purchase or sale of goods or services; or*

(ii) *price in purchase or sale (including predatory prices) of goods or service.*

Explanation – For the purposes of this clause, the unfair or discriminatory condition in purchase or sale of goods or service referred to in sub-clause (i) and unfair or discriminatory price in purchase or sale of goods (including predatory price) or service referred to in sub-clause (ii) shall not include such discriminatory condition or price as may be adopted to meet the competition; or

(b) *limits or restricts -*

(i) *production of goods or provision of services or market therefor; or*

(ii) *technical or scientific development relating to goods or services to the prejudice of consumers; or*

(c) *indulges in practice or practices resulting in denial of market access in any manner; or*

(d) *makes conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts; or*

(e) *uses its dominant position in one relevant market to enter into, or protect, other relevant market.*

Explanation – For the purposes of this section, the expression –

(a) *“dominant position” means a position of strength enjoyed by an enterprise, in the relevant market in India, which enables it to –*

(i) *operate independently of competitive forces prevailing in the relevant market; or*

(ii) *affect its competitors or consumers or the relevant market in its favour.*

(b) *“predatory price” means the sale of goods or provision of services, at a price which is below the cost, as may be determined by regulations, of production of the goods or provision of services, with a view to reduce competition or eliminate competitors.*

(c) *“group” shall have the same meaning as assigned to it in clause (b) of Explanation to Section 5.*

enterprise from adopting abusive or anti competitive practice and consequently SMEs can enter the markets and trade more freely. An Association of the SMEs can also take up the cause on behalf of its Members directly with the CCI or can take up the cause with the concerned Department or Statutory Authority which can make a reference to the CCI for an enquiry into alleged infringement.

6.2 Many a times policy or law of the State or rules or regulations made thereunder results in uneven level playing field or create barrier to entry/exit or deny market access. Often, it is unintended too. In any of such eventuality, an SME or their Association can make a request to the concerned Ministry of Central/State Government to make a reference to the CCI for advisory opinion which the latter is mandated to provide within 60 days. Opinion though advisory in nature but empirical evidence suggests that it is often very efficacious in bringing a reform in public action as after all it is an opinion of a specialized body in competition issues.

7. Role of the Central/State Government:

Central or State Governments need to develop consultative process and have review of its existing/contemplated policies/law and get them examined from the perspectives of competition principles. It can do so by making a reference for advisory opinion which can be handy in making the policy/law compliant with competition Act. It can also make a reference for enquiry as and when it is of view that an SME or group thereof is affected of anti competitive practice of other enterprises. It must be noted that unlike under the MSME Act, 2006, there is no classification criteria under the Competition Act, 2002. Any person or enterprise can have protection from other infringing person or enterprise under the Act.

8. Role of the Competition Commission of India (CCI):

8.1 A statutory duty to prohibit anti competitive agreement, abuse of dominance beside blocking of anti competitive acquisition/merger devolves on the CCI. It is also responsibility of the CCI to tame anti competitive elements flowing from public action- be it policy or law of the state or regulation of the statutory authority. The effective enforcement of these regulatory provisions coupled with advocacy and advisory measures will make the markets more competitive and the such environment will enable the SMEs to have their inputs of better quality at lower cost which will in turn enable them to be more competitive in markets.

8.2 Through effective enforcement of law, the CCI can make difficult for big companies to impose artificial entry barriers or deny market access thereby helping SMEs to enter the market and compete more freely. The predatory behaviour by a dominant enterprise or group is prohibited under the Act. The restriction on such practices by the CCI will enable SMEs to pull on in the market and will also attract new players to enter into the market..

8.3 The CCI needs to undertake intensive and extensive advocacy with the State as to the need for and usefulness of competition principles and extend assistance in review of their policies and laws. It needs to create awareness and impart training in respect of competition issues and principles so that the Ministry of the MSMEs at the Centre and concerned Department of the State Government, in consonance with its policy of advocacy, create awareness and build strong competition culture amongst SMEs. A research commissioned by the Office of Fair Trading (UK) in 2005 revealed that while big business is enjoying increasingly high level of understanding and knowledge about competition law and reaping the benefit-smaller companies are lagging behind. Just 49% of the organizations employing up to 19 persons were claimed awareness as compared to 80% of those with more than 200 employees.

A campaign was launched to increase their understanding so that SMEs can seize opportunities that competition brings.²⁷

8.2 An information furnished by the SMEs for suitable action against an alleged delinquent enterprise needs to be examined by the CCI in the right perspective. A research carried out in UK reveal that while one in three SMEs are aware of anti competitive activities in their business but only 22% report price fixing agreements amongst competitors and only 9% would report against larger competitor trying to push them out of the market by cutting its pricing to below cost. There is need to appreciate the handicaps of the SMEs in establishing the case of pricing below cost against larger and financially sophisticated business.²⁸ Intimidation is another factor which ought not be underestimated. It is important that simple administrative procedures are adopted so that the Competition Authority can be accessible to small and emerging business, it should not be terrain for the assertion of big business interests.²⁹

8.3 The SMEs are apprehensive, and to an extent rightly so, that they will be subject to unnecessary complaints and they would be incurring significant time, money to prove that they are innocent. The CCI needs to appraise the SMEs, their Association and the concerned Ministry as to how it will filter out most trivial, frivolous or malicious complaint especially against SMEs. Volume of commerce affected is one of the criteria adopted in Canada which justify use of enforcement resources on higher priority cases involving larger sectors and markets. The cardinal principle is that the " Competitors", regardless of size, make up the fabric of competitive markets and therefore, do deserve protection under the competition law.³⁰ Such principle needs to be view of the CCI.

8.4 Joint purchasing often brings economic benefits especially when it is by SMEs. They do so through centralized ordering, combined warehousing or distribution functions. In examining such joint purchase, many jurisdictions look into several aspects such as whether participants continue to compete against each other, the financial interest of participants, SMEs can act independent decision makers and whether the arrangement give sensitive business information of other parties.³¹

8.5 Setting of recommendatory prices by an association of SMEs may not be presumed to have appreciable adverse effect on competition especially when such arrangement brings net public benefits. Sometimes, transparent joint bidding by SMEs may be pro competitive to counter the anti competitive bidding of a big enterprise.

9. Conclusion:

Protecting fragmented and disorganized SMEs interest in the context of highly concentrated market structures is a formidable challenge. However, a coherent policy and concerted actions on suggested measures by the policy makers, trade associations, SMEs, the CCI and fans of free and fair competition in markets in India can make significant contribution in strengthening the SMEs.

The Government is committed to promote the growth of SMEs and to enhance their competitiveness. Likewise, the CCI is mandated to preserve the competition process, ensure freedom of trade by frowning upon dominance by eliminating their exclusionary and exploitative practices, obliged to protect the consumers which includes SMEs. Keeping in view the level of

²⁷ Campaign under the caption " SMEs missing out on benefits of competition" launched by Sir John Vickers, Chairman, Office of Fair Trading (OFT), UK.

²⁸ Press Release of OFT under the caption "SMEs should do more to tackle price fixing".

²⁹ Creamer 1998

³⁰ 'The Role of South African Competition Law in supporting SMEs' by Kim Kampel , Case Manager, Competition Tribunal, South Africa.

³¹ FAQs for SMEs evolved by Competition Policy Review Committee, Hongkong.

awareness as to principles and dimensions of competition and that the CCI is yet to gain experience in all these aspects, It makes imperative that a Working Group, having representations of different stakeholders, be set up, to deliberate on issues of interest of SMEs and to take forward its considered suggestions to accomplish the common goal.

Further, both the Government and the CCI have a mandate to pursue their objectives through 'advocacy'. In the premises, pending development of jurisprudence by the CCI, a need is to spread two way awareness as to competition principles, the uniqueness of SMEs, and the need for and usefulness of having competition in markets amongst policy makers, legislatures, those involved in interpreting the law, consumers, association of consumers/trade. Let a message be registered with the MNCs, TNCs and SMEs that "Growing together is better than growing alone".