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## Competition Law for Micro, Small and Medium

Advani & Co. Articles

### MSME's : backbone of the Indian economy

India has a long standing policy of promotion of Small and Medium Enterprises (SME's) and has recently passed the Micro, Small and Medium Enterprises (MSME's) Act in 2006 to stimulate their growth. MSME's deserve such attention due to the massive growth and employment they generate. Micro, small and medium enterprises as per act are defined based on their investment in plant and machinery (for manufacturing enterprise) and on equipment for enterprises providing or rendering services.

MSME's represent one of the fastest growing industrial sectors in the world. Their contribution to employment, innovation and economic growth is being increasingly recognised. MSME's constitute an overwhelming majority of all businesses in most countries e.g. over 99% in Canada, United Kingdom and Switzerland and about 90% in Korea and Malaysia (FICCI 2002).

Recent statistics show that thirteen million

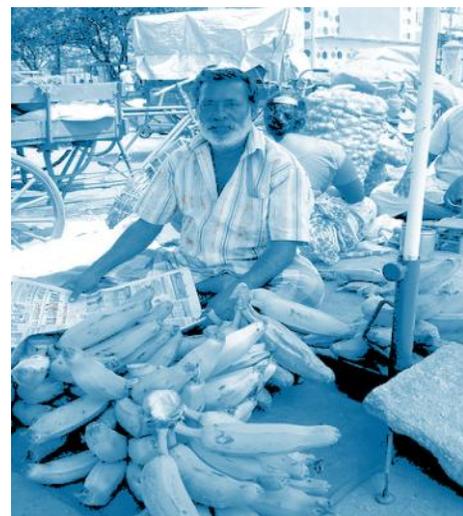
MSME's exist in India which employ over 31 million people and have a turnover of US\$140 billion (Rs. 5, 60,000 crores approx.).

MSME's though popular and prevalent in several market segments are not the sole entities which exist. Post-liberalisation India has witnessed a growth in large industry and multinational corporations. With the scales of businesses which are enjoyed by these corporations, MSME's are increasingly feeling threatened as their operational margins are eroded. There are also concerns of large transnational corporations and industry players indulging in anti-competitive behavior.

Recent OECD studies suggest that these concerns may not be wholly unfounded. The study which utilizes the Herfindahl-Hirschman Index (HHI) in order to assess the degree of market concentration found that applying the HHI threshold to census data at similarly detailed levels of industry

classification shows that India's share of highly concentrated industries is more than three times higher than that of the United States or China, and twice as high as that for Germany.

This suggests that there is scope for anti-competitive behavior in many manufacturing industries. Today MSME's are increasingly looking towards anti-competition law to correct market distortions and malpractices. With the active enforcement of the Competition Act, 2002 these market distortions and malpractices can be addressed effectively.



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Classification	Manufacturing Enterprises	Service Enterprises
Micro	Rs. 2.5 million / Rs. 25 lakh	Rs. 1 million / Rs. 10 lakh
Small	Rs.50 million / Rs. 5 crore	Rs. 20 million / Rs 2 crore
Medium	Rs 100 million / Rs 10 crore	Rs. 50 million / Rs 5 crore

## competition law generally

The Competition Act though legislated in 2002 was kept in abeyance with the sections of the enactment containing the substantive powers of the competition commission not being notified till recently.

However with the notification of the substantive powers of the CCI and the appointment of Hon'ble (Retd.) Justice Mr. Arijit Pasayat as the presiding mem-



### cornerstones

There is troika of actions which are regulated and prohibited by Competition law generally. These include firstly the regulation of mergers. This is an ex-post action which takes post-merger based on the threshold limits as specified under the enactment in terms of the combined revenues or market share.

The second major branch of activity which is prohibited by competition law is the abuse of dominant position in a market. Actions here are not based on pure dominance but rather the abuse of that position. Here dominance is not determined on a rigid arithmetical formula, but on economic factors which may be prescribed under the Competition Act. Common examples of abuse of dominant position include, discriminatory pricing, limiting production and denying access.

ber of the Competition Appellate Tribunal, competition law is seen as the new panacea for MSME's.

The 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.

With the wide ambit of the Act, it applying to any form of business and enterprise, investigations may be initiated and actions may be taken against large, micro or small businesses.

There is no limitation for bringing actions even against government entities, cooperative societies, trusts or local authorities.

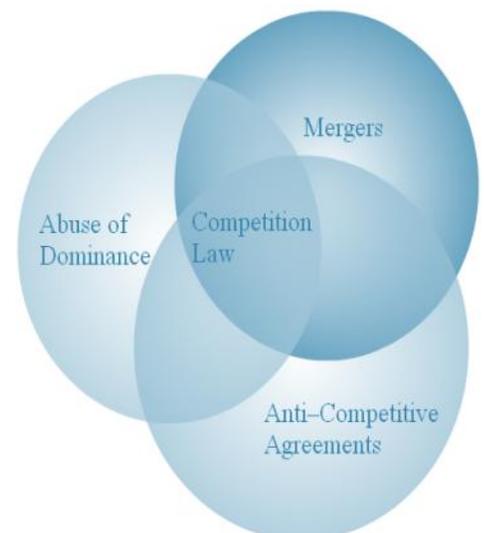
The final activity which is prohibited is anti-competitive agreements. This includes, (a) Horizontal Agreements including cartels, e.g., price fixing, limiting production, sharing markets, bid-rigging; and (b) Vertical Agreements e.g., tie-in, exclusive supply/ distribution, refusal to deal. Here cartelization is regarded as the severest form of anti-competitive agreements and they are heavily penalized by anti-competitive regulators.

On a complaint being for any of the conditions listed below an inquiry is initiated by the CCI where it is assisted by the Director General in carrying out investigations into the alleged or likely infringements of the Act. After an inquiry a report is tendered whereby a prohibitory order may be passed against anti-competitive practices and/or a penalty may be imposed. An appeal against

The enactment establishes separate regulatory and adjudicatory bodies similar to enactments such as the Telecom Regulatory Authority of India Act, 1997.

The regulatory body is the CCI, which is tasked with, (a) prohibiting anti competitive agreements which causes or are likely to cause appreciable adverse effect on competition on market within India; (b) prohibit abuse of dominant position by enterprise or group; (c) regulate combinations 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.

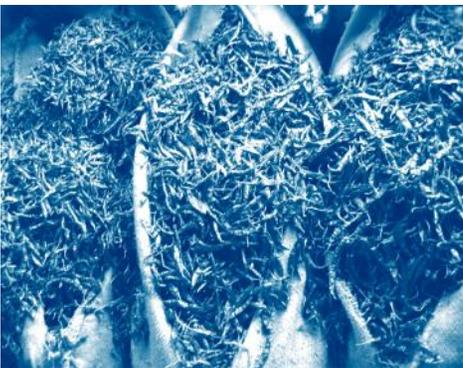
an order passed by the CCI or power to award compensation to an aggrieved person etc. to offset the loss caused as a result of anti competitive practice, vests in the Competition Appellate Tribunal (CAT). An appeal against an order/direction of CAT lies in the Supreme Court.



## prescriptions

The first and the most important prescription for MSME's is that the competition Act with its platitude is applicable to them. The focus of the enactment is not purely on the size of the enterprise but also business practices which have appreciable effects in the market.

Though it may be difficult to slot individual MSME's, when taken aggregated in a relevant market the competition act may be applicable.



While it may not be likely some Medium enterprises will need to examine whether they are in a dominant position to cause an appreciable adverse effect on competition.

Another relevant prescription is the knowledge that the competition law applies to sourcing inputs. The scope of the Competition act with respect to consumer disputes is wider than the Consumer Protection Act, 1986 and includes goods purchased or services availed irrespective whether the purchase is for personal or commercial purposes. When MSME's are sourcing materials and key inputs the competition law will apply. In case of market abusive behavior by a source supplier applications may be made before the CCI.

For the anti-competitive practices outlined in this publication applications

can be made by the MSME or even the trade association by filing information complaining of the anti-competitive practice. There is also the option of filing objections and applications with the CCI on the publication of a public notice of enquiry on or a proposed merger or acquisition.

A MSME can also make applications to complain against a government policy which disturbs a level playing field. However, such applications cannot be made directly by the MSME but is based on an application filed with the concerned Ministry of Central/State Government which can make a reference to the CCI. The opinion rendered through this process though is strictly only advisory in nature may result in the modification of the anti-competitive government policy.

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