

Competition Policy & SMEs

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Over view of the SME sector

Historical data

- 8000+ products
- contribution: 35% to exports, 40% to Industrial Production
- Employment : second largest after agriculture

Census on SSIs (2001-02)

- 10.5 mn units (1.4 mn* regd, 9.1 mn** un-regd) 01-02 Census
(Current estimates 13 Mn)
- Total employment: 25 Mn
- Total gross output : Rs. 2.8 Trillion
- 97% are Prop./ partnership firms

Key constraints

- Access to adequate and competitively priced inputs viz. Finance; Power; Steel; Cu, Al, plastic raw material..



Objective for Competition framework

Competition Policy

- To preserve and promote competition as a means to ensure efficient allocation of resource in an economy.
- To bring harmony in all government policies for resulting in competition and consumer welfare
- To maintain the competition process

"Competition Policy relates to introduction and fostering of competition principles in executive policies of government"

Competition Law

- To provide legal recourse against public or private behaviour that results into stifling of competition in an economy



Why Competition Framework: Context of External Liberalization - I

Trade liberalization & Regulatory Reform

“Trade liberalization alone is unlikely to be sufficient as a guarantor of competition in all circumstances” Why?

- A large number of markets (e.g., non-tradeables or tradeables with high transportation costs) remain local in nature; not subject to import discipline
- Even in regard to tradeable goods, and where formal trade barriers have been removed, competition can be affected by a host of government or other measures including regulations, standards and licensing requirements; and
- Ability of imports to discipline the exercise of market power can be affected by a wide range of anti-competitive practices of firms. e.g. firms may divide up markets through price-fixing or geographic market-sharing cartel agreements, or vertical market restraints
[UNCTAD (1997b)]



Why Competition Framework...- II

FDI

While FDI liberalization can help to enhance the contestability of markets, it is not a sufficient condition to achieve this result. ...
... effective competition laws and enforcement machinery are necessary to ensure that pre-existing statutory obstacles to contestability are not replaced by anti-competitive practices of firms, thus negating the benefits that could arise from liberalization. [WI R97]

e.g. FDI regime was progressively liberalized since 1991, but no major +ve change occurred till the establishment of TRAI

Privatization

“No fundamental change will occur.. Privatization will simply replace a public monopoly with a private one unless deregulated industries are subjected to the alternative discipline of competition law .. to prevent the continuation and/or re-establishment of monopolistic market structures. [WTO] E.g. Privatization in sectors such as Power, Steel, Copper and Aluminium etc.



Absence of Competition Policy: Cause of lack of corresponding internal liberalization in India-I

- Rampant abuse of Anti-Competitive Agreements and Dominance by both large private sector and PSUs in Indian markets
- Characterized by all kind of unfair trade practices: Collusion and cartelization; discriminatory, unfair and predatory pricing; Denial of market access

a. Most tainted sectors

Steel, Aluminum, Copper and Plastics raw material and Cement

- **Critical service sector** Power sector; Banks and Financial Institution; Monopoly in Export Finance (ECGC); Container movement (CONCOR) etc.



Absence of Competition Policy: Cause of lack of corresponding internal liberalization in India-II

Public procurement

- **No comprehensive Act; procurement is governed by General Financial Rules;** (*Acts go through mandatory Parliamentary/ public scrutiny*)
- **Crowding out of SSIs is widespread in tenders through unrealistic pre/post qualification terms;**
- **'bundling' of orders; tougher standards than of BIS;**
- **un-favourable payment or supply terms; by increasing entry cost** (*Substantial registration charges e.g. RDSO's costs Rs. 1,50,000; BIS Rs. 50,000 annually for each product*)
- **Situation much worse in States. (except in states that have enacted Acts on Procurement**



Consensus globally..

...Therefore, the global experience has been that in absence of strong and effective Competition Policy framework, neither the external nor internal liberalization produce desired results.



CP and SME promotion: Objections from purists

i. Reservation Policy:

Reality: Out of 8000+ products, only 35 products reserved

ii. Public Procurement: “SSIs are given preference”

Reality: Central purchase is less than 1% from SSIs; Bulk of procurement is by PSUs which give neither purchase nor price preference; Contrast it to 20% mandatory set aside in US for Small business; 5~7% in EU.

iii. Plethora of Tax Exemptions granted to SSIs

Reality: Excise exemption is only substantive exemption; this is an option for charging no excise upto a threshold like in IT or VAT. Units bear heavy cost burden for exercising this option. Most progressive units do not exercise the option.

iv. Priority Sector Lending

Reality: 85% of SSIs (census) do not have access to any form of institutional funds! During last 10 years, banks credit to the sector halved from 16% to less than 8%!



Legislative yearning for level playing field for SMEs across the globe: Some examples

..“the promotion of competition requires ensuring that SMEs have an equitable opportunity to participate in the economy. [Canada’s Competition Act]

Competition Act, is viewed as a means of ensuring that SMEs have an equitable opportunity to participate in the economy....” [South African Tribunal]

“aim[s]...to provide improved protection to SMEs as compared to larger companies capable of abusing their market power.” [Swiss Competition agency]

(CP) Regulations aimed at “creating a foundation on which parties to transactions who have different economic power can compete freely and fairly on a level playing field.”[KFTC]

“..the elimination of barriers to entry promotes small enterprise”. [Turkish Authority]

‘competition legislation achieves the purpose of promoting competition by protecting SMEs from larger rival firms that engage in anticompetitive conduct [Australian Competition and Consumer Commission (“ACCC”)]



CP and SMEs: South African example: Study*

- Explicit objective in CP: “Ensure that SMEs have an equitable opportunity to participate in the economy”
- Public interest clause on M&A affect: “impact on the ability of small and black owned enterprises to be competitive”
- Experience of South Africa:
 - - 61% of complaints received on ‘abuse of dominance’
 - - 72% of these complainants were from SMEs
- Commission’s remarks: ‘the high-percentage of SMEs cases is indicative of non-regulatory barriers that small firms face and the need to regulate the conduct of dominant firms”
- Analysis of low success of SME cases: Time constraints; Cost; Threat n intimidation; Poor cases (lack of knowledge as to how the substantive provisions could be implemented)
- Suggestions:
 - Fast tracking of SME cases
 - Victimization provision affording protection to SME complainants
 - Support SME associations to bring complaints and also to participate in hearing of M&A cases



** The Role of South African Competition Law in Supporting SMEs by Kim Kampel, Case Manager, Competition Tribunal Kimk@comptrib.co.za; www.comptrib.co.za*

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Situation in India

Status:

- MRTP defunct; CCI- non-functional
- Cartels having a field day
- Lawlessness prevails

Urgency:

- Political leadership has to rise to urgency the matter demands and make all out efforts to establish rule of law by making CCI functional
- Stake-holders need to realize that in era of globalization and liberalization effective Competition Policy mechanism is the corner stone for efficient functioning of markets



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