



Abuse of Dominant Position and Anti-Competitive Practices

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In the world of business, competition refers to the rivalry among businesses to attract clients, which benefits consumers and the government by reducing costs. While it may sometimes cause losses, it also increases efficiency in decision-making and improves the use of materials in the industry. On the off chance that there is no competition in business markets, at least one firm may attempt to establish a monopolistic framework or oligopoly, which allows them to escape the constant pressure applied by competitors, leading to a loss of consumer welfare that is otherwise available in a fair market. Therefore, improper conduct by a dominant enterprise or attempts by a business to seek strength unfairly (through a controlling framework) are scrutinised under competition regulations. Prevention of the ‘abuse of dominant position’ forms a critical area of enforcement for competition authorities worldwide, along with the prohibition of anti-competitive agreements (horizontal arrangements such as cartels and vertical agreements) and the regulation of mergers (acquisitions and combinations).

These practices are commonly referred to as abuse of dominant position, abuse of market power, or similar terms. Preventing such abuse is a challenging and complex task for competition authorities worldwide for two main reasons. First, certain practices, such as predatory pricing, offering excessive discounts, etc., may amount to abuse of dominance. Second, there is a very thin line between a legitimate attempt by an enterprise to achieve market leadership, which is fully justified from a business perspective, and the unfair use of a dominant position to the detriment of competition in the market. For instance, in India, the MRTP Act initially dealt with the regulation, declaration, and prohibition of monopolistic trade practices (MTP). However, considering the constitutional mandate to prevent concentration of economic power to the common detriment, and keeping in mind the country’s economic reforms during the liberalisation and privatisation era, the Competition Act (hereinafter referred to as ‘the Act’) was introduced.

Keywords: *abuse of dominant position, competition, refusal to supply, relevant market, excessive price.*

INTRODUCTION

Abuse means the wrongful use of force or power, or exercising control beyond what an institution or authority is legitimately provided or directed to have. Under the Competition Act, 2002, abuse is understood as the misuse of dominant power that a party holds during the conduct of business. It can also be defined as the misuse that occurs when an enterprise, or a group of enterprises, exploits its dominant position in the relevant market in an exclusionary and/or unfair manner. The Act provides a detailed list of practices that constitute abuse of a dominant position and specifies the conditions under which such practices are prohibited.

Abuse of dominant position refers to specific types of acts committed by a dominant enterprise that are expressly prohibited under the law. Any conduct amounting to such abuse, as defined in the Competition Act, is unlawful and shall not be permitted when carried out by a dominant firm.

Dominant position may be understood as being in a superior situation compared to others, based on certain factors. This idea of dominance has long existed in Indian society itself, where one group or class was considered superior to others. However, merely holding a dominant position is not inherently harmful unless such power is exploited unfairly. Thus, having dominance is not problematic in itself, but abusing that dominance because of superiority is considered objectionable. According to Section 4 of the Competition Act, 2002, a dominant position refers to a situation where an enterprise operates independently of the competitive forces prevailing in the relevant market in India, and can influence customers, competitors, or the market in its favour. Initially, the provisions of the Act targeted dominant enterprises, which often led to firms being scrutinised merely due to their size. The term 'dominant enterprise' is defined under Section 2(d). Furthermore, Section 4 clarifies that, for this provision, unfair or discriminatory conditions in the purchase or sale of goods and services (sub-clause i) and unfair or discriminatory prices, including predatory pricing (sub-

clause ii), shall not include such conditions or prices that may be adopted to meet competition.

This implies that an enterprise in a dominant position can make independent decisions without worrying about how market forces (customers, competitors, and suppliers) might respond. Merely holding such a dominant position is not prohibited; however, its abuse is. Abuse of dominance harms the market as it suppresses competition, often before other players get a fair opportunity to compete. Misuse happens when a predominant endeavour acts in a way that lessens its adversary's ability to battle or prevents a segment of new ventures, so rivalry is significantly diminished.¹

Competition serves as a driving force in the business industry, as it is widely believed that without competition, markets lack vitality and economic innovation. However, competition can also become dangerous when it gives rise to illegal practices and abuse of power by those entrusted with authority. To ensure a fair and healthy competitive environment, governments across the world have subjected competition to legal regulation. The rules and guidelines established under such regulation aim to provide all players with a level playing field, safeguard consumer interests, and penalise those who misuse their market power. This body of law is generally referred to as competition law. It is known by different names in different jurisdictions – for instance, antitrust law in the USA, anti-monopoly law in China, and competition law in the EU and India.²

Anti-competitive agreements: Competition can serve as a channel for enterprises to allocate resources – such as investing in R&D for product innovation, reducing costs to attract more customers, or dedicating human resources to efficiency-driven practices. However, it is often easier for a corporation, especially when acting together with other firms, to prevent, restrict, or distort competition. Anti-competitive agreements may occur between direct competitors, known as horizontal agreements, or between firms operating at different levels of the production and supply chain – such as manufacturers, distributors, and retailers – referred to as vertical agreements.

¹ Competition Act 2002, ss 4(2)(a)- 4(2)(e)

² Competition Act 2002, s 19(4)

HISTORY OF ABUSE OF DOMINANT POSITION

According to this definition, the government created laws to balance the authority granted during business competition. The abuse of dominance often arises when enterprises become excessively greedy in their pursuit of profit. Merely holding a dominant position does not harm anyone, unless such power is exploited unfairly. Thus, having a dominant position is not inherently negative; however, abusing that position because of superiority is considered objectionable.

Few philosophers have explained how the abuse of dominance has been observed in the economic sector, for example:

Lawrence J White: The author stated that competition policy plays a vital role in promoting economic growth. In her review, she discussed various aspects related to the importance of competition strategy in driving economic development, including fair pricing policies, efficient financial markets, effective investment, regulatory mechanisms, protection of property rights, and a stronger rule of law.³

Yong Huang and Bading Wu: The authors explained China's Fair Competition Review and examined the introduction, shortcomings, and solutions under China's *New Dawn of Antitrust*, elaborating on the current state of the Competition Law Policy (CLP) in China while addressing its flaws and possible reforms. For example, they highlighted the recognisable obstacles to competition policy posed by different policymakers.⁴

Amitabh Kumar and Farhad Sorabjee: The author has explained the role of the Competition Commission of India (CCI) and also reviewed *The Cartels and Leniency Review*. In this work, the author conducted a detailed analytical study, emphasising that the CCI is empowered as the primary regulator to address all forms of anti-competitive behaviour across sectors under Section 7 of the Competition Act.⁵ However, there are various issues to which the CCI needs to respond quickly.

³ Lawrence J. White, 'The Role of Competition Policy in the Promotion of Economic Growth' (2008) NYU Working Paper No 2451/26028

⁴ Yong Huang and Bading Wu, 'China's Fair Competition Review: Introduction, Imperfections and Solutions' (2017) 3 Competition Policy International, Antitrust Chronicle

⁵ Competition Act 2002, s 7

Payel Chatterjee and Simone Reis: In *The Cartels and Leniency Review*, the authors conducted a detailed analytical study. They emphasised that the Competition Commission of India (CCI) is empowered as the primary regulator to address all forms of anti-competitive behaviour across all sectors under Section 7 of the Competition Act.⁶ However, there are various issues to which the CCI needs to respond quickly.

All the researchers have attempted to explain how abuse of dominance affects competition law, showing that this problem is being faced globally. For example, certain practices carried out by one or more enterprises may amount to abuse of a dominant position and are therefore prohibited. Such prohibitions are set out in Article 82 of the EC Treaty and Article 18(1) of the Competition Act (the Chapter II prohibition). Under EC Regulation 1/2003, also known as the Modernisation Regulation, national competition authorities (NCAs) and courts of the Member States are required to apply and enforce Article 82 alongside national competition law whenever the market in question is covered by Article 82.

Examples of how abusive power and control may manifest in a dominant position within the business sector:

- Emotional Abuse;
- Economic Abuse;
- Minimising, Denying and Blaming;
- Threats and Intimidation;
- Using Privileges;
- Using Children poses Threats.

From the above, it is evident that considerable research has already been carried out in this area of concern. However, there remains a need for more comprehensive work to understand how the threat of abuse of dominant power can negatively impact the business sector, often resulting in significant losses to the economy. Recognising these risks led to the formulation of the Competition Act, 2002, in India, as well as similar legislative frameworks worldwide.⁷

⁶ *Ibid*

⁷ Competition Act 2002, s 66

THE EFFECTS OF ABUSE OF DOMINANT POSITION

Unfair Trade Practices: Accordingly, abuse of dominant position occurs when an enterprise, either directly or indirectly, imposes unfair or discriminatory conditions in the sale of goods or services, or charges unfair prices, including predatory pricing, in the purchase or provision of goods and services.

Lack of Trust and Commitment: Abuse of dominance also arises when an enterprise concludes contracts conditional upon the acceptance of supplementary obligations by other parties, where such obligations, by their very nature or according to commercial practice in that field, have no connection with the subject of the contract.

Restriction of Market Growth: This occurs in a market where an enterprise or group, directly or indirectly, imposes conditions that limit the production of goods or hinder technical or scientific development, thereby affecting the creation of products or services.

Distortion of Market System: Whenever an enterprise exploits its dominance in one relevant market to enter or protect its position in another market, it amounts to abuse of dominant position.⁸

ABUSE OF DOMINANT POSITION UNDER THE COMPETITION ACT, 2002

A predominant circumstance in most of the contest's legal framework isn't itself an illegal position. There may be varied explanations for the strength of any firm in any market, like a technological edge, a strong start in business, an extraordinary standing, and so forth. Nevertheless, it is the maltreatment of one's predominance that is prohibited under the regulation. Prevailing firms need to share a special responsibility to act in a trustworthy manner at all times. Such firms need to comply with regulations that are intended to support competitors, clients, and the market from any kind of harmful monetary practices. The main objective of maltreatment of predominance has four potential limits, generally speaking.

The essential goal is to protect the market from prevailing firms when such firms decrease yield and raise costs, which are inconvenient for purchasers. The subsequent goal is to protect the market from prevailing firms when such firms use rivals to gain the capacity to decrease

⁸ Competition Act 2002, s 4(2)(a)(i)

production and increase costs. For example, a prevailing player diminishes its costs lower than the data suggests with the intention of driving an enemy from the market or discouraging a rival from entering the business community, so that it can later impose higher charges – a practice known as predatory pricing. In simple terms, the prevailing position can be better understood as a genuine situation of power created by any enterprise that allows it to act independently of the market forces of demand and supply to fix the prices of its products. The law on abuse of dominant position under competition regulation essentially involves examining the oppressive conduct of a monopolist, or a dominant player in markets with significant market power, either by restricting competition or by imposing unfair terms on its clients.

Relevance of the Geographical Market: This limits the market space for conducting business, and affirms dominance where some clients end up facing restrictions or limitations in trade practices, as it is the essential to delimit the genuine boundaries of the relevant market. In such assessments, proponents assert that similar conditions of competition prevail across the entire business community. However, there may be genuine or practical reasons for a product to compete only within a restricted segment of the economy.

Relevance of the Market: The first and perhaps the most fundamental step under abuse of dominance regulation is to define the exact market in which the alleged anti-competitive or abusive dominant firm is operating. This identified market, often termed the "relevant market," forms the basis for assessing competition, as it is within this space that competitive forces are evaluated. Without such delineation, it would be impossible to measure the extent of power a firm holds over its competitors and consumers.

Relevance of the Product Market: In simple terms, the relevant product market can be described as consisting of products that are interchangeable or substitutable. It is essential that before one can assume an undertaking holds a dominant position in any business space, the boundaries of that market must first be defined. This is done by examining the product strategy of goods that compete with those of the undertaking under consideration.

SECTION 4 OF THE INDIAN COMPETITION ACT, 2002

The section⁹ explains how abuse of a dominant position affects the balance of power within a particular business segment. It clarifies that, under this provision, imposing unfair or discriminatory conditions in the purchase or sale of goods or services (as referred to in sub-clause (i)) and imposing unfair or discriminatory prices in the purchase or sale of goods (including predatory pricing) or services, are considered forms of abuse.

In sub-provision (ii) of the Act, the law excludes such discriminatory conditions or pricing that may be adopted *to meet competition*. Further, it covers situations involving the acquisition of control by a person over an enterprise when that person already has direct or indirect control over another enterprise engaged in the production, distribution, or trade of similar, identical, or substitutable goods or services. In such cases, if the enterprise over which control is newly acquired, together with the enterprise already controlled by the acquirer, operates in the same or substitutable line of goods or services, the conduct may fall under the scope of abuse of dominant position.¹⁰

Due to section 4 of the *Competition Act, 2002*, the law creates a framework to prevent the **abuse of dominant position**. This section does not prohibit dominance in itself; a firm can be dominant in the market, but it **prevents the misuse of such dominance** in ways that harm competition or consumers.

- Making the finalisation of agreements subject to acknowledgement by different parties to strengthen commitments which, by their inclination or as per business usage, have no association with the subject of such agreements.
- Using its predominant situation in one pertinent market to enter into, or safeguard, other pertinent markets.
- Restricting or limiting specialised or logical development relating to labour and products to the bias of customers.
- Restricting or limiting the creation of merchandise or the arrangement of services, or the

⁹ Competition Act 2002, s 4

¹⁰ *Coal India Ltd vs Competition Commission of India* Civ App No 2845/2017

market.

- Straightforwardly or by implication, imposing unnecessary or unfair costs in buying or dealing (including savage costs) of merchandise or services.

ABUSE OF DOMINANCE

The dominance implies that something is in a better situation as compared to others, given certain elements. This idea of predominance was, however, pervasive in Indian culture itself, where one caste was viewed as better than others. On a broader level, under abuse of dominant position, abusive leadership of prevailing firms can be associated with exploitative and exclusionary practices; however, specific kinds of misuse include aspects of both.

The obscure practices cover those which result in straightforward or positive demands off the mark or one-sided rates in the arrangement or procurement of items or organisations. Under exclusionary practices covered under maltreatment of predominance, it consolidates those practices of the prevailing firm that limit specific new development, production, entry of present firms, and related activities.

In any case, remaining in a good position doesn't hurt anybody unless an individual is taking advantage of such power. Along these lines, having a predominant position can't be viewed as bad in essence. Nonetheless, abusing such a position in light of its prevalence is thought of as lacking.

Unfair Condition: The demonstration of explicitly or unquestionably demanding off-the-mark or one-sided terms in the purchasing or selling of products or organisations is similarly covered under obscure practices recorded as maltreatment of strength, because a show of driving such ludicrous or unreasonable conditions harms the customers. A lot of events of maltreatment under which advantageous inappropriate circumstances are imposed by a primary firm are considered to be exclusionary practices instead of a tricky one.¹¹

Discrimination of Price: Uneven pricing happens where clients in assembled spaces of the market are required to pay one-of-a-kind charges for obscure things or associations. In one area, the firm could charge one cost, while at the same time, charge incorrectly higher charges

¹¹ *Mcx Stock Exchange Ltd v National Stock Exchange of India Ltd and Ors* CCI Case No 13/2009

for the same thing in an interacting region. The single bearing is to investigate charges in business places in the whole economy to determine if one commitment is, by all appearances, preposterous. In this strategy, there are obstacles in the reality that particular businesses take altogether different usage plans. The incoherencies in responsibility, progressing strategy, and client tastes could influence excellent worth totals without the presence of any abuse.

Predatory Pricing: Another tricky practice is that of savage pricing, which involves selling an item or organisation at a lower price than the cost of production, to eliminate all competitors in the market, or to create fake limits to expansion for competitors, or to make it incomprehensible for the entry of possible new competitors. This heartless assessment is one of the parts of obscure practices highlighted, covering rivalry.¹²

Excessive Price: Outrageous estimating is considered a manipulative maltreatment and isn't exactly equivalent to the exclusionary mistreats, since, in the former, the higher charges themselves are seen as problematic; on the other hand, under the latter, prohibitive charges or advanced costs are the result of the exclusionary practices.

Exploitation, Abuse of Dominance: Manipulative abuses of transcendence energetically seem like money-related ages stressed over limiting frameworks. The fact that a monopolist could cause significant anxiety is that by experiencing the same thing to further develop income by decreasing production and charging a higher price for his product over a utilitarian scale. Through ensuring this sort of a rise in costs, the monopolist firm will mislead its buyers. In unequivocal cases, this show of sneaky, abusive lead is, confusingly, put aside as a solidly affecting challenge.¹³

Among the features, the Competition Act, 2002, with its provisions dealing with abuse of dominance provisions, signified an enormous departure from that of its paradigm, for instance, the MRTP Act. Section 4 of the Competition Act, 2002, determines that no enterprise will maintain its dominant position. The dominant position is explained as a position of strength enjoyed by an enterprise in the relevant market in India, which enables it to operate

¹² *Google LLC & Anr v Competition Commission of India & Ors* Competition App (AT) No 01/2023

¹³ *Fast Track Call Cab Pot. Ltd v Competition Commission of India & Ors* Competition Appeal (AT) No 19/2017

independently of competitive forces prevailing in the relevant market or to affect its rivals or, on the other hand, customers or the relevant market in its favour.

Subsequently, India required a model of competition regulation that would have been generally fitting to its level and period of economic progress and development, which differed both quantitatively and qualitatively from that of the developed economies of the world. As a result of these reasons, India adopted a 'sui generis' approach in enacting the Competition Act, 2002, as expected and characterised, keeping the necessities and requirements of the Indian economy.¹⁴

As history has shown us, no piece of legislation can be held as perfect, even more so in the field of rapidly changing market dynamics. It is necessary to create a timeframe to achieve improvement. India can cover that improvement in a short period by learning from the workings of the EU and US competition frameworks. Thus, we can believe that the CCI will need to help the Indian economy to harness the power of competition for the benefit of society and the neighbourhood.¹⁵ No matter what, the presence of fluctuating working arrangements of competition regulation, in the form of that of the US and later the EC model, India could not afford to adopt an imitation of either of these systems. As these arrangements of competition regulation are particularly grounded in their respective economic development and have their peculiarities of the nation, combining these setups.

This part expounded on the creation of examples of competition regulation by newly created nations, particularly India, after the LPG framework. As shown by global affiliations and various competition subject matter experts/writers, several objectives are the sole explanation for the choice of the CLP framework among countries. These objectives are: to establish a free and fair market structure, support economic growth, ensure government protection of consumers and firms, provide greater investment opportunities, and offer innovative and quality products. Asia's three significant economies, India, China, and Japan, have also generally adopted and incorporated CLP into their domestic order.

For example, in *Neera J. Malhotra v North Delhi Power Ltd*,¹⁶ the CCI communicated that Section 4 doesn't preclude a firm from turning into a dominant one or holding an

¹⁴ *Competition Commission of India v Schott Glass India Pvt. Ltd.* Civ App No 5843/2014

¹⁵ Competition Act 2002, s 4; UK Competition Act 1998, s 18

¹⁶ *Neeraj Malhotra v North Delhi Power Ltd* Case No 06/2009

overwhelming position, but it puts a remarkable responsibility on such enterprises, expecting them to avoid abusing and misusing their dominant position. Further, the Act provides exemptions for any activity that relates to the sovereign functions of the government, including those related to energy, finance, defence, and space.¹⁷

In *R.G Movies v Secretary, Commercial Taxes and Registration Department*,¹⁸ the Competition Act, 2002 was not pertinent as the collection of taxes is a sovereign function of the government and wouldn't fall within the scope of the Act. Generally, abuse of dominance can be exclusionary or exploitative. Exploitative ones refer to exorbitant pricing by the enterprise to obtain imposing business model advantages. Exclusionary abuse refers to unfair conduct where a dominant firm forces the consumer to buy a bundled product, or the dominant firm refuses to supply the product or services to the clients. Section 4(2) of the Competition Act, 2002 covers both exclusionary and exploitative practices.¹⁹

CONCLUSION

In conclusion, the opposition has expressed that a dominant position by itself isn't void, yet no enterprise is entitled to abuse its dominant position. In this manner, it isn't dominance, but its abuse, which is prohibited by law, and it is reasonable to infer that Section 4 of the Act is a meaningful provision that explicitly restricts abuse of a dominant position. Thus, the burden of proof for any claims falls upon the CCI to demonstrate the presence of dominance and the abuse of such a dominant position.

Due to sound economic positions, the enterprises could exercise such dominant circumstances to limit competition, preventing various players from progressing and removing their place in the market. The Competition Act, 2002, monitors such unfair trade practices to safeguard a healthy market approach. The above situation, where dominance isn't checked, has expanded the scope of abuse. Therefore, the more feasible part is supposed to have control over enterprises exercising their dominant power. Finally, competition should ensure an advantage for both producers as well as consumers in the market.

¹⁷ Bharat Budholia et al., *Vertical Agreements and Dominant Firms Laws and Regulations India 2025* (ICLG 2025)

¹⁸ *R.G Movies v Secretary, Commercial Taxes and Registration Department* WP No 9925/2015

¹⁹ Competition Act 2002, s 4(2)