

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

www.ijlra.com

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INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

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A COMPARATIVE ANALYSIS OF INDIA, THE UNITED STATES OF AMERICA, AND THE UNITED KINGDOM REGARDING "ABUSE OF DOMINANCE IN MARKET PLACE UNDER COMPETITION LAW"

AUTHORED BY - UTKARSH VAISHNAV

ABSTRACT

A key component of competition law in many jurisdictions is the control of abuse of power in the marketplace; different regulatory frameworks and enforcement methods are found in the US, UK, and India. The Competition Act of 2002 serves as the cornerstone of India and grants the Competition Commission of India (CCI) the power to prevent anti-competitive agreements and the abuse of advantageous positions. In contrast, the United States has a thorough antitrust system that includes statutes like the Clayton Act and the Sherman Act, which are implemented by the Department of Justice (DOJ) and the Federal Trade Commission (FTC). Comparably, the Competition Act 1998, which is governed by the Competition and Markets Authority (CMA), is the focal point of UK competition law. Although protecting consumer welfare and promoting competitive markets are the main objectives of all jurisdictions, there are differences in how they define dominance, recognize abusive behaviour, carry out investigations, and recommend remedies.

In India, market shares and the capacity to function independently of competitive forces are usually used to determine dominance. The CCI has the authority to punish abuse, such as exclusionary acts, unfair pricing, and discriminatory treatment. On the other hand, the United States places more emphasis on behaviour than just market share in order to prevent harm to competition itself. To combat abusive activity and restore competitive circumstances, the FTC and DOJ use a variety of tools, such as injunctions, divestitures, and consent decrees. In order to obtain information and implement remedies like fines and behavioural injunctions, the CMA in the UK uses its investigative powers to examine a wide range of anti-competitive acts. These jurisdictions offer important lessons for policymakers and practitioners seeking to improve competition law regimes and promote internationally competitive markets, despite differences in legislative frameworks and enforcement tactics. These jurisdictions share the common objective of advancing competition and consumer welfare.

KEY WORDS: Competitive Market, Federal, Trade, Investigation, Dominance, Unhealthy Competition, Abuse, Power, etc.

AREA OF PROBLEM

- **Overview of Abuse of Dominance and Competition Law:**
Give a basic overview of the concepts of competition law. Describe the importance of abuse of power in maintaining market competitiveness.
- **Conceptual Structure:**
Examine the economic theories—such as neoclassical economics and industrial organization theories—that support competition legislation. Talk about the justification for limiting misuse of power in order to safeguard consumer welfare and advance productivity.
- **The legal systems of the United States, the United Kingdom, and India:**
Examine each jurisdiction's legal and regulatory systems pertaining to competition law. Emphasize important laws, law enforcement organizations, and regulatory strategies.
- **Examine historic cases in the US, UK, and India concerning abuse of dominance.**
Examine and contrast different jurisdictions' legal doctrines, methods of enforcement, and court rulings.
- **Case Studies and Comparative Analysis:** Examine historic cases in the US, UK, and India concerning abuse of dominance. Examine and contrast different jurisdictions' legal doctrines, methods of enforcement, and court rulings.
- **Industry dynamics and market characteristics:** Examine the competitive environments and market structures in related industries, such as technology, telecommunications, and medicines. Examine how technical innovation, entry restrictions, and market concentration affect abuse of dominance.
- **Mechanisms and Remedies for Enforcement:** Analyse how well competition authorities identify and deal with abusive behavior. Talk about the various enforcement tools, such as behavioral treatments, fines, and investigations.
- **Difficulties and New Concerns:** Determine the difficulties in applying competition legislation in the online sector. Examine new topics including algorithmic collusion, platform domination, and data privacy.
- **Implications for Policy and Suggestions:** Make policy suggestions to protect market competition and improve competition enforcement. Think about the necessity of international collaboration, regulatory convergence, and legislative improvements.

- Conclusion: Provide an overview of the main conclusions and revelations from the comparison study. Emphasize the ramifications for future research areas, regulatory policy, and legal practice.

AREA OF STUDY

- Overview of Competition Law and Abuse of power:
Describe abuse of power and how it affects market competitiveness. Give an overview of the legislative frameworks governing competition in the US, UK, and India.
- Regulatory bodies and legal frameworks:
Examine and contrast each jurisdiction's legal and regulatory structures pertaining to competition law. Determine which law enforcement organizations are in charge of dealing with abuse of power.
- Judicial interpretations and case studies:
Examine significant instances of misuse of power in the US, UK, and India. Consider judicial definitions and methods for characterizing and dealing with abusive behaviour.
- Market Features and Industry Dynamics:
Examine the distinct market configurations and competitive dynamics in pertinent sectors, such as telecommunications, healthcare, and technology. Examine how innovation, entry hurdles, and market concentration either encourage or inhibit abuse of power.
- Mechanisms and Remedies for Enforcement:
Analyse how well enforcement measures work to prevent and correct abusive behaviour. Discuss the appropriateness and availability of remedies like as punishments, injunctions, and divestitures.
- New Difficulties in the Digital Sector:
Examine the difficulties presented by online marketplaces and digital platforms in light of dominance abuse. Consider topics like algorithmic collusion, data privacy, and how network dynamics contribute to the consolidation of market power.
- Reform Initiatives and Policy Implications:
Analyse the comparative analysis of competition law enforcement's policy implications. Make suggestions on how to improve the efficiency of regulations, encourage competition, and protect the interests of consumers.
- International Harmonization and Cooperation Initiatives:
Evaluate the possibility of cross-jurisdictional harmonization of competition law

concepts and international collaboration. Examine programs designed to promote cooperation between authorities that oversee competition and encouraging uniformity in enforcement procedures. Conclusion and Next Steps:

- Provide an overview of the main conclusions and revelations from the comparison study. Describe potential directions for further study and policy formation in the areas of abuse of dominance and competition law.

HYPOTHESIS

Due to different legislative frameworks, regulatory structures, market dynamics, and enforcement methods, abuse of dominance rules are enforced differently in India, the United States, and the United Kingdom. Variations will be clarified by a comparative analysis, which will also provide insights into the effects on market competition and the efficacy of regulations.

RESEARCH METHODOLOGY

- **Literature Review:**
Perform a thorough analysis of scholarly works, legal manuals, case law, and regulatory papers concerning abuse of dominance and the application of competition laws in the US, UK, and India.
- **Choosing a Case:**
Find pertinent case studies from the three jurisdictions that deal with abuses of dominance in important industries. Give priority to seminal cases that have a big impact on regulatory practice and competition law jurisprudence.
- **Information Gathering:**
Compile quantitative and qualitative information on a few chosen cases, such as market analysis, court verdicts, regulatory decisions, and enforcement activities. To guarantee data accuracy and dependability, use scholarly publications, legal databases, and official sources.
- **Comparative Analysis:**
Examine how abuse of power is governed by the legal systems, regulatory frameworks, and enforcement strategies in the US, UK, and India. Determine the similarities and variations between court interpretations, enforcement strategies, and legal concepts in various jurisdictions.
- **Comparing different countries:**

Compare the results and methods of competition law enforcement in the US, UK, and India to global norms and best practices. Analyse the relative advantages and disadvantages of each jurisdiction's strategy for dealing with abuse of power.

- **Analysis of Policies and Suggestions:**

Create policy recommendations to strengthen competition law enforcement, encourage market competition, and protect consumer welfare based on the research findings. Think about how new developments like globalization and digitization may affect regulatory objectives and strategies.

- **Peer review and validation:**

To increase the research paper's credibility and dependability, validate study findings through expert comments and peer review. To make the study technique stronger, address any methodological flaws and include recommendations for enhancements.

OBJECTIVE

This research study aims to perform a thorough comparative examination of abuse of dominance in marketplaces across the United States, the United Kingdom, and India under competition law. In order to find differences, similarities, and important elements affecting regulatory reactions to monopolistic activity, the study will analyze legal frameworks, enforcement strategies, and case studies. The ultimate goal of the study is to shed light on the efficiency of competition law enforcement and how it affects market competitiveness across various jurisdictions.

SCOPE AND SIGNIFICANCE

SCOPE

- **Comparative Analysis:** Look closely at incidents of abuse of dominance and competition law enforcement strategies in the US, UK, and India.
- **Legal Frameworks:** Examine the main laws, enforcement organizations, and court rulings that make up the legislative and regulatory frameworks that control competition law.
- **Market Dynamics:** Examine how industry-specific characteristics, competitive environments, and market structures affect the frequency and kind of abusive behavior by dominant enterprises.
- **Enforcement Mechanisms:** Assess how well judicial remedies, investigation

techniques, and enforcement mechanisms work to prevent and address abusive behavior.

- **Emerging Challenges:** Examine how competition law enforcement may be affected by new issues in the digital economy, such as platform dominance, data privacy, and algorithmic collusion.

SIGNIFICANCE:

- **Policy Insights:** Offer regulators, legislators, and legal professionals insightful information about the advantages and disadvantages of competition law enforcement systems across many jurisdictions.
- **Comparative Views:** Present a comparative analysis of abuse of dominance between the US, UK, and India, emphasizing differences, similarities, and best practices.
- **Legal Scholarship:** Promote knowledge of competition law concepts, enforcement tactics, and regulatory issues in relation to market dominance to further legal scholarship.
- **Business Implications:** Educate companies doing business internationally about the legal environment and compliance standards pertaining to abuse of dominance in various jurisdictions.

INTRODUCTION

The concept of "abuse" has a very even-handed possibilities since it relates to how the endeavour behaves when it puts itself in a position where it can influence the development of a market. The use of tactics adopted by the element that are not exactly the same as the generally typical situations in the rivalry of item or administration exchanges debilitates the level of contest and includes the presence of the dominant substance available. This has an effect that hinders the growth of such a battle and the maintenance of a strong degree of competition that truly exists on the watch. The general idea behind maintaining a rule or regulation for the competition of tasks is that a syndication situation isn't in rivalry with public government assistance programs, but rather involves a similar state where it operates to the fullest extent of its capabilities. Moreover, prior to serious competitors. Organizations are not prohibited by law from becoming the "dominant" player or holding a "dominant" position. The organization has no real control over its ability to become dominant or prevailing. Prohibiting the "abuse" of the dominant position is the moral and practical goal of the law. As far as the law is concerned, it prohibits "the abuse of dominant position." This is the moral foundation of

the law, which is right and a step toward a truly global and free economy.

The word reference for the phrase "dominance" implies "powerful" or "abrogating." In this context, "savage" refers to controlling maltreatment in order to attain financial gain or closeness. Maintaining a "dominant" position is only possible if the company can act freely and autonomously, fearless of competitors, customers, suppliers, and end users. The market that controls the organization's dominating force gives you the ability to manipulate the value to suit your needs or wants.¹ This will enable companies to sell lower-quality goods, services, or development costs than they actually have in a competitive market. Recently, abuse of dominance has become a prominent concept. It is believed to occur when a group of firms or a single organization manipulates its current position in a significant market. In order to create a fair market, the Competition Act of 2002 introduced the idea of mistreatment of predominance. The abuse of the dominant position is specifically covered in Section 4 of the demonstration.² It is also present in almost unquestionably developed and agricultural countries and is considered a global oddity. In order to stop and permit the abuse of the dominant position, each state has its own set of regulations. Therefore, it is crucial to stop this irrational conduct in the serious market. This project will aid in comprehending the relationship between the laws pertaining to the abuse of power in three different countries.

CHAPTER 1- HISTORICAL EVOLUTION OF THE CONCEPT OF ABUSE OF DOMINANCE

Although the term "Renaissance" originally referred to a societal evolution that spanned the fourteenth to seventeenth centuries, it also referred to a specific era that affected several aspects of daily life, such as competition and commerce. Global exchange began to emerge during this period of the Renaissance, especially in the sixteenth century. Even if a lot of this transaction and the abundance that followed were illegal, the experts believed that in order to create a sense of rationality and open competition, exchange had to be directed. In 1623, the British Parliament backed the Imposing Business Model Resolution, which paved the way for modern patent laws. Patent laws were vulnerable to abuse by experts prior to the Imposing Business Model Rule. According to history, it was discovered that Elizabeth I had made a syndication

¹ www.britannica.com

² Pradeep S. Mehta, —Competition & Regulation in India, accessed at ww.cuts-ccier.org

on needs by granting licenses for common household items like salt and starch. A few attempts to split syndications and create rules that promoted contest and deregulation were made in the next years. The merchants that kept up with the syndications, nonetheless, often possessed the kind of plenty that the well-meaning individuals had bought in a unique circumstance with the experts. Exchange limitation regulations are among the various innovations that have finally led to current contest regulation. Business control prevents parties from engaging in or carrying out comparison exercises in an equal resistance, as the phrase suggests. The Sherman Act (1890) and the Clayton Act (1914), both of which were established in the United States, are today widely recognized as the foundations of contest regulation. The Sherman and Clayton Acts reflect different developments, particularly after World War II and the fall of the Berlin Wall in 1990, although at the time, European countries had a variety of laws and regulations governing rivalries and syndications³ Since international trade has rapidly improved in the twenty-first century, antitrust and competition laws need to be updated. Following World War I, rivalry strategies similar to those used by the US were implemented by other countries. Controllers of rivalry have been established to ensure compliance with antitrust laws and to challenge policies and agreements. Following World War II, the Partners established rules to dismantle the syndications and cartels that had developed during the war. It was mostly focused on Japan and Germany at the time. Given Germany, it was anticipated that massive industry cartels would be subdued in order to grant the Nazi regime complete financial control over the nation. Nepotism was pervasive in large organizations inside the multi-industry aggregates that dominating the Japanese economy. However, Germany and Japan's submission to allied powers toward the close of World War II allowed for the implementation of more stringent rules that were based on the guidelines used in the United States. The term "antitrust" is most frequently used in the United States to refer to laws that forbid cartel formation, sometimes known as "business trusts."⁴ Antitrust laws give buyers some protection against dishonest suppliers attempting to take over a market, even if they are generally distinct from consumer security laws. Before being approved, mergers and acquisitions must pass a rigorous review procedure in accordance with antitrust and competition laws. India adopted and adhered to systems comprising what are known as Order and-Control regulations, rules, guidelines, and leader instructions during the majority of the 50 years following its achievement of freedom in 1947. One example was India's competition law, most especially the Syndications and Prohibitive Exchange Practices Act, 1969 (MRTP Act). Unrestricted monetary reforms were

³ Middleton, K, 'The Americanization of UK competition law' 2003 SL PQ 27

⁴ William Blumenthal, —Merger analysis under the US Antitrust Laws, accessed via www.kslaw.com

adopted in 1991, and the order and control economy began to evolve toward a more open market economy. Financial development has swept through India, as it has in many other countries, and there has also been a perceived need for a strong contest system. India's competition laws were established under Articles 38 and 39 of the Indian Constitution. Part of the Mandate Standards of State Strategy are these articles. The primary Indian law pertaining to contestation, the Imposing Business Models and Prohibitive Exchange Practices, 1969 (MRTP Act), was established in 1969 and focuses on fixing the Order Standards. According to Articles 38 and 39 of the Indian Constitution, among other things, the State is required to promote the prosperity of individuals by guaranteeing and protecting as successfully as possible a social request in which social, economic, and civil rights illuminate all facets of public life and the state, in particular, will coordinate its security strategy.

1. To better distribute ownership and control of the local community's material assets for the benefit of everyone;
2. To prevent the monetary system from causing a concentration of wealth and production methods to the detriment of everyone.

A high-level board of trustees on rivalry strategy and contest regulation was chosen by the Indian government in October 1999 to describe a modern rivalry law for the nation that would take into account global developments and to recommend an official framework that might include a new law or appropriate amendments to the MRTP Act. In May 2000, the Commission presented the public authority with its Competition Strategy report. In November 2000, the public authority received a draft of the rivalry regulation. In December 2002, the Parliament passed the new regulation, specifically the Competition Act, 2002.5, after some adjustments, extensive conferences, and discussions with all parties involved.⁵

CHAPTER 2-

THE INDIAN LAW

The main piece of legislation pertaining to competition law in India is the Competition Act, 2002 (the Act). Although the Act was passed in 2002, its main provisions weren't fully implemented until May 20, 2009. The Act addresses three primary issues: anti-competitive agreements, regulation of combinations (mergers control), and prohibition of abuse of dominance.

⁵ 21Marsden, P and Whelan, P, "Consumer Detriment" and its Application in EC and UK Competition Law' [2007] ECLR 569.

The Act's substantive provision addressing abuse of dominance is found in Section 4. Despite its brief existence, the Competition Commission of India (CCI) has shown itself to be an aggressive regulator, levying numerous high-profile fines for businesses engaging in abusive practices.⁶

Legal framework under the Act

The behaviour of a business that has enough market power in a certain relevant market to function independently of market forces and the competitive restrictions imposed by its rivals is referred to as abuse of dominance or unilateral conduct. The Act does not forbid any business from genuinely occupying a position of dominance or having significant market power, in keeping with the goal of advancing free markets and the freedom of commerce and business of both individuals and corporations. The misuse of such market dominance or power, however, is what the Act aims to discourage since it would be harmful to rivals and, most significantly, consumers.

However, the previous stance was duplicated by the former Monopolies and Restrictive Trade Practices Act, 1969 (MRTP Act), which required major enterprises that exceeded the specified levels to file a report with the Monopolies and Restrictive Trade Commission. India's competition law has advanced significantly with the passage of the Act and the repeal of the MRTP Act, reflecting the more logical principle that "big is not bad." The Act lists a number of criteria that can be used to assess dominance and forbids specific forms of abusive behaviour by dominant businesses.⁷

The Act's Section 4 forbids any business or group of businesses from abusing their position of power. A three-step test is prescribed by the Act to determine whether there has been abuse of dominance:

- defining the relevant market;
- assessing dominance in the relevant market; and
- Establishing abuse of dominance.

To prove culpability under section 4 of the Act, each of the aforementioned procedures is essential.

⁶ Khanna, P. (2019). Abuse of Dominant Position by Refusing to Issue Copyright Licenses. *Christ ULJ*, 8, 45.

⁷ Khanna, P. (2019). Abuse of Dominant Position by Refusing to Issue Copyright Licenses. *Christ ULJ*, 8, 45.

Defining the relevant market

An organization's dominance is always assessed in relation to a specific, pertinent market. Crucial to competition law, the idea of the "relevant market" establishes the conditions for determining "dominance" in the event of an abuse of dominance investigation.

Both the relevant product or service market and the relevant geography market are examined in order to determine the relevant market. The relevant product market includes all commodities and services that consumers believe to be interchangeable or substitutable based on product features, costs, and end-use. When determining the relevant product or service market, the CCI takes into account supply-side considerations such as producer switching costs in addition to demand-side factors. A market that includes the region where there are unique, uniform competitive conditions regarding the supply and demand of products or services—conditions that can be differentiated from those that prevail in nearby regions—is referred to as the relevant geographic market.

Therefore, determining whether or not an organization is dominant depends in large part on the scope of the pertinent market definition. The case of real estate giant DLF Limited in (the DLF case)⁸ *Belaire Owners' Association v. DLF Limited* is a good illustration. In the context of the CCI, the market for "high-end residential apartments in the city of Gurgaon" was defined as the extremely narrow market. Because it restricted the commodity's scope and the location of the relevant market to a particular region, the CCI's determination that DLF was dominant in the relevant market was unavoidable. However, by defining the market as all multiplex theatres in India rather than just one, which would have clearly led to the conclusion that Coca-Cola was dominant, the CCI held that Coca-Cola was not dominant in the Coca-Cola cases (which addressed the alleged abuse of power in connection with Coca-Cola's high-priced bottled water and aerated drinks sold in multiplex theatres).

In the four years since Section 4 of the Act was notified, the CCI has evaluated a wide range of industries, including publishing houses, food and beverage companies, public utilities, real estate, and stock exchange services. It also seems to be heading toward a trend of more in-depth analysis, including econometric data. A number of industries with inherent monopolies have also been taken into consideration by the CCI, including the coal and sports industries.

⁸ *Belaire Owner's Association v. DLF Ltd*, Haryana Urban Development Authority, Dept of Town and Country Planning, State of Haryana, (2011) Comp LR 239 (C.C.I.)

The contrasting decisions in *Dhanraj Pillai v. Hockey India*⁹ and *Surinder Singh Barmi v. BCCI*¹⁰ show that the CCI appears to have deviated from its customary standards in evaluating sports federations as a natural monopoly, as will be covered in more detail below.

Assessment of dominance

The ability of a business to function independently of market pressures and influence rivals, customers, or the relevant market in its favour is known as dominance. Section 19(4) of the Act requires the CCI to employ the following standards to assess dominance:

- market share;
- size and resources of the enterprise;
- market share of competitors;
- financial strength of the company, including a competitive edge over competition;
- The vertical integration of the businesses or their network of sales or services;
- dependence of consumers on the enterprise;
- legal monopoly or dominant position;
- barriers to entrance, such as those resulting from financial risk, regulations, high capital costs, marketing, technical barriers, economies of scale, and high switching costs;
- countervailing buyer power;
- market structure and size of the market;
- social obligations and social costs;
- relative advantage, as a result of the dominating business's contribution to financial development; or
- any additional element that the CCI deems pertinent to the investigation.

Even though market share is seen as a significant signal, the Act does not use the bright line market share test, in contrast to other countries, to determine dominance. In the majority of the abuse of dominance cases it has examined, the CCI has taken market share into account. Subjective factors such vertical integration, rival buyer power, the company's financial strength, barriers to entry, public statements, etc., have also been taken into account. The DLF case and *MCX Stock Exchange v. National Stock Exchange of India Limited* (the NSE case) are two significant CCI decisions pertaining to abuse of power that make this clear. In the NSE case, the CCI determined that, despite having a smaller market share than the informant MCX,

⁹ Case No. 73 of 2011 (CCI, 31/05/2013)

¹⁰ 2013 CompLR 297 (CCI)

the National Stock Exchange of India Limited (NSE), one of three participants in the market for stock exchange services in the currency derivatives segment, was dominant due to its overall financial strength, strong historical presence in the market for stock exchange services in other segments, and vertical integration in the stock market. According to market share, NSE was the third-largest market participant, whereas MCX was the leading market participant, as demonstrated by the market structure examined by the CCI. In particular, the CCI noted that "this indicator does not have to be pegged at any point but must be considered in conjunction with numerous factors given in section 19(4) of the Act in the context of Indian law."

Additionally, while assessing dominance in the DLF case—in which it penalized DLF Limited 6.3 billion rupees for abusing its position of power—the CCI took into account a variety of variables besides market share. These factors included statements made by DLF Limited in the public domain (about its market dominance, in its annual report, red herring prospectus, etc.), large amounts of capital and fixed assets, turnover, brand value, strategic relationships, a broad sales network, etc.¹¹

As a result, the market share of purportedly dominating businesses must be taken into account in the framework of Indian competition law, together with a number of other elements listed in section 19(4) of the Act.

Abusive conduct

In accordance with the Act, the following activities qualify as abuse of dominance:

exclusionary abuses: These include acts or conduct, such as denial of market access, refusal or limitation of supply, etc., that may lead to the exclusion of rivals or new entrants from the relevant market; and

- Exploitative abuses: These consist of imposing exploitative conditions on the sale of commodities or the rendering of services, such as tying and bundling, leveraging, predatory or excessive pricing, etc.

The final consumer is harmed by both of these forms of abusive actions, either directly through exploitative action or indirectly through exclusionary action. The following categories of abusive conduct are particularly listed in Section 4(2) of the Act:¹²

- Excessive pricing, which is the practice of charging exorbitant costs that are not

¹¹ KHARAB, D. ABUSE OF DOMINANCE POSITION IN RELEVANT MARKET: ANALYSIS OF DLF CASE.

¹² Chaitanya, Y. S., & Peddibhotla, R. (2022). Abuse of Dominant Position by Corporates. Issue 1 Indian JL & Legal Rsch., 4, 1.

- commensurate with the product or service's economic worth;
- Predatory pricing, which is the practice of setting prices below a good or service's short-term cost of production in an effort to drive out competitors and increase market share;
 - Price discrimination that isn't based on objective standards (such business volume) between businesses or individuals in similar situations;
 - rebates and discounts that aren't founded on objectively measurable standards, like loyalty payments given to customers who exclusively purchase products from the dominant company or discounts that are contingent on the customer purchasing all or most of its products from it, may be regarded as loyalty-inducing rebates;
 - long-term exclusivity agreements that have the effect of preventing other businesses in the relevant market from accessing the market;
 - refusal to supply any intermediate goods or inputs to a downstream client, which prevents them from accessing the market and lessens competition in the downstream market;
 - tie-in arrangements, which are agreements that bind the purchase of one good or service to the purchase of another without giving customers the choice to buy each one individually and may cause major issues, particularly in the network sector (software, media, etc.); and
 - Leveraging, or using a dominating position in one market to enter or defend its position in another relevant market, shows that "dominance" and "abuse" of dominance do not necessarily have to occur in the same relevant market.¹³

Even though section 4(2) of the Act stipulates that abuse of dominance is to be treated as a per se violation of competition law, exclusionary abuses by definition require proof of the effect of exclusion or foreclosure from the market in order to establish the offense. By considering how the alleged abusive behavior has impacted consumers, the relevant market, and competition, the CCI has effectively implemented an effects-based approach through case law. Regarding the burden of proof, the CCI said in one of its first rulings that the informant must not only demonstrate or prove, via credible evidence or data, that the other party holds a dominant position in the relevant market, but also that the other party has abused that position by engaging in the actions listed in section 4(a) to (e) of the Act. In order to achieve the standard of proof required to establish dominance, the CCI has, as mentioned in several of its orders,

¹³ KHARAB, D. ABUSE OF DOMINANCE POSITION IN RELEVANT MARKET: ANALYSIS OF DLF CASE.

relied on publicly available data or industry studies that show the disputed enterprise's dominant position in the relevant market.

CHAPTER 3-

DETERMINATION OF DOMINANT POSITION

A position of economic strength known as dominance gives an enterprise the ability to act significantly independently of its rivals, clients, and ultimately consumers, thereby preventing effective competition from being maintained on the relevant market. 77 Commission of the European Communities v. United Brands Company v. 15Case No. 13 / 2009 made this statement. Now let's look at how dominating position is interpreted in different jurisdictions.

European Commission: There is no precise definition of dominating position in the European Commission treaty. Nonetheless, the European Court of Justice has established a dominating position in several rulings. Britain Section 18(3) of the UK's Competition Act states that "dominant position" refers to a dominant position inside the UK, and "the United Kingdom" refers to the UK or any portion of it. The definition of "dominant position" is not given in Section 18.

United States of America: "Monopoly" is the phrase that corresponds to a dominant position under the US antitrust legislation. The ability of the relevant company to set prices or to limit or eliminate competition is known as monopoly power. It is reiterated in relation to United States (US) v. E.L. du Pont de Neumours and Co United States v. du Pont de Neumours and Co.

India: The definition of dominant position in the Indian Competition Act considers whether the business in question is in a strong enough financial position to function independently of rivals or to influence the relevant market in its favour. According to Explanation (a) to Section 4 of the Indian Competition Act 2002, a dominant position is "a position of strength really enjoyed by a corporation in the relevant market in India which enables it to operate on its own of competitive forces prevailing in the relevant market or impact its competitors or consumers or the relevant market in its favour."¹⁴

¹⁴ Ahmed, M. S. Abuse of Dominant position in Indian Context: A Critical Analysis. COMPETITION LAW IN NEW ECONOMY, 101.

EXAMINATION OF ABUSE OF DOMINANCE AS PER THE COMPETITION LAW 2002

Unfair or biased trade practices: This states that when an organization or group lawfully or indirectly imposes discriminatory terms on the sale of goods, the rendering of costs, the cost in a transaction, or the acquisition of brutally high prices for goods or services, it is considered to be abusing its dominant position.

Limiting creation or specialized or scientific advancement: Abuse of dominant position occurs in the market when an organization or group, either directly or indirectly, imposes conditions that restrict the development of goods or specialized or logical advancement that results in the development of goods or services.

Barriers to entry, development, and showcase: Any circumstance that prevents someone from entering the market in any form will be considered an abuse of the dominant position.

Beneficial commitments are imposed when an undertaking requires that various parties acknowledge beneficial commitments that are so extensive that they are unrelated to the subject matter of the agreement by their very nature or according to business use in that field.

Protection of several markets: When a business exploits its position in a major market to enter another, which is an abuse of a dominating position.

As a result, it can be claimed that Section 4(2) of the Act lists the following as misuses: directly or indirectly imposing oppressive or inappropriate conditions in the sale or purchase of goods or administration; directly or indirectly imposing an unfair or unfavorable cost in the purchase or deal (including ruthless cost) of products or administration; restricting or limiting the production of products or the arrangement of administrations or market; confining or limiting logical or specialized improvements associated with goods or services to the consumers' preference; preventing access to the market in any way; leveraging its dominant position in one important market to enter or guarantee other relevant markets; and requiring different groups to acknowledge advantageous obligations that have nothing to do with the subject of such agreements because of their temperaments or commercial demands.

- **ABUSE OF DOMINANCE IN DIGITAL MARKET**

The opposing law is constantly discussing the introduction of rivalry regulation in the computerized market. The computerized market is currently one of the later business sectors where the traditional tools of competition regulation should be viewed and used. While there are many challenges in contest policing computerized advertising, this article focuses on evaluating the power and abuse of the sophisticated market of web-based business websites, particularly in light of the 2019 High Court ruling in the **Uber case**. Putting the matter to rest, the High Court's decision that misfortune-creating valuation can be a sign of strength contradicts the views of the Rivalry Commission of India, which had warned against the evasive translation of predominance. In addition to the rapid advancement of innovation, computerized markets have broadened the scope of the market and have instead become an elective one. The computerized market size has pushed the problem associated with the traditional market outline of important market evaluation of predominance and its abuse to the limit. As a result of this advanced market's approach, it is now required to present the idea of organization impacts and information as a determinant of market position. In addition, the opposition regulation's implementation in the advanced market had been difficult for the entire contest regulation ward. Instead of adhering to the regulations set forth by the Opposition Act 2002 and other laws from the US and other rivalry regulatory locales, the Opposition Commission of India's decision in sophisticated markets has been swiftly evolving over time and is permitted by its own understanding of these business sectors.¹⁵ Similarly, on January 8, 2020, the Opposition Commission of India presented its market focus on the Web-based business stage in India. In this presentation, it highlighted contest-related issues that may arise as a result of the advanced business sectors and also illustrated how the commission would approach these issues. The resistance difficulties that have been surfacing for online company websites or advanced business sectors at present time include imposing unreasonable prices, elitist arrangements, and placing heavy restrictions on clients. The commission has determined that these issues can be handled under Segment 4, which addresses abuses of dominance in the relevant market. In any event, the venture or online business to which the misuse complaint has been directed must maintain a dominant presence in the essential market in order to handle the matter as a misuse of strength in the market under Segment 4 of the Opposition Act 2002.

To ascertain whether there has been abuse of power in the computerized market, it becomes

¹⁵ Arias, K. D. O. (2023). Competition Law and Digital Economy on Relevant Markets and Abuses of Dominant Position. *USFQ L. Rev.*, 10, 29.

imperative to investigate whether the advanced market is a relevant market and, if so, whether the venture was retaining a dominant position in the significant market under the opposition legislation.

- **DIGITAL MARKET AND DATA RELATED ISSUES**

The computerized market has seen tremendous development as a result of the world's rapid advancement. The competition in the online market has been a major focus of opposing regulation and strategy defining all kinds of online platforms. Therefore, using the phrase "maltreatment of dominance" is important. It is assumed that computerized marketplaces serve as a test for the abuse of power in practice. More regulations are needed in these areas because there is a greater chance that these computerized markets will cause harm. Abuse of the regulations was designed as a way to prevent something similar, in the unlikely event that the opposition experts are unable to stop the counteraction and denials to the computerized market plan of action. It is a fact that the opposition in the computerized market has emerged as one of the key hubs for opposition strategy. It is obvious that the size and importance of computerized businesses have a big impact on how they contribute to the economy, which is particularly important. The core tenet of rivalry strategy, or the opposing regulation strategy, is the idea that big isn't always bad. In any event, businesses really need to be evaluated, and all of the factors should be considered, such as a well-thought-out plan of action, the impact of its own growth, or the fact that the firm is extremely large because it has more productive jobs.¹⁶ At the same time, a firm's growth or size may be the consequence of fierce competition that is constantly searching for ways to aid customers and, on a larger scale, the financial efficiency of the entire region. This vast number of factors are taken into consideration whenever the topic of abuse preponderance gains attention. Nonetheless, there are specific approaches that opposition experts have identified and that are primarily used by organizations and dominant enterprises at the market level to strengthen and protect their market dominance. If there is no such advancement from these methods, there is a good likelihood that customers will suffer, which will ultimately lead to financial harm as well. In this way, a genuine guarantee is anticipated to guarantee that these online marketplaces do not abuse their circumstances. According to the Indian perspective, one of the biggest challenges that would generally arise in the current context of computerized markets is the development of legal remedies that are specifically related to the direction of computerized markets.

¹⁶ Wahyuningtyas, S. Y. (2017). Abuse of dominance in non-negotiable privacy policy in the digital market. *European Business Organization Law Review*, 18, 785-800.

In addition, there is a problem with the availability of reliable information that can eventually aid in ensuring resilience and desertion or hostility to significant effects. The argument for why validity cannot be learnt is that these computerized enterprises typically operate overseas, making it difficult to obtain reliable data or information for determining a piece of the pie. Seeing from the perspective of information abuse of power in a developed market.

Understanding the extent to which an information can truly imply and its prospective roles in the opposition's implementation is especially important in order to identify areas of strength for an analysis of the pertinence of information with regard to the online economy. It goes without saying that information has always been important when examining contests; this suggests that any bit of data can be referred to as information.¹⁷ It has also been maintained in the 1979 Hoffman-Ra Roche decision that the company's specialized expertise gave it a strong position in that market, which resulted in a comprehensive benefit of the significantly changed customer data. When discussing the Indian legal system at the moment, it is possible to observe that there is no framework or set of rules that prevents CCI from examining this material on improper handling. There is no restriction on what can constitute an uncalled-for condition within the guidelines' scope, unlike in area 4(2)(a)(i), which allows CCI specialists to take any action against any ongoing project that is thought to be imposing unreasonable circumstances for the assortment of the information. The same is true of part 4(2)(d), which gives CCI the authority to determine whether an endeavor is reliable and to address risk if, in the unlikely event that it is providing additional services and handling information in an unreasonable manner (here refers to agreeing or consenting to specific commitments that disregard the clients' or those benefiting from the services' right to security). Although India lacks a strong statute pertaining to security and information assurance in relation to European regulations, the entire escape clause is expressly contained in the law. Drawing comparisons across countries can properly reveal another objective. It is undeniably true that the ongoing pandemic has led to a regular expansion in the accessibility to computerized administrations. Therefore, it is particularly crucial to recognize that India continues to exercise respect in regulating the policies of tech companies. The CCI's Web-based business market analysis has favourably sparked certain concerns among Indian partners, such as the fact that stages are not acting impartially or fairly, imposing unreasonable terms on agreements, making selective arrangements, and often keeping detailed records.

¹⁷ Wahyuningtyas, S. Y. (2017). Abuse of dominance in non-negotiable privacy policy in the digital market. *European Business Organization Law Review*, 18, 785-800.

However, The CCI has been doing its best to ensure a decent online marketplace. For example, the CCI mentioned the need to adopt a model or worldview approach by adopting self-guideline to ensure clarity by displaying all of the nuances, such as its updated agreement terms, client survey, and rating component, among others. But when compared to EU- recommended criteria, such as the Computerized Market operate, which would operate as a guardian for the internet-based business stages, this kind of model methodology actually falls short. Lastly, the objective may be to receive more stringent criteria for computerized business that can provide excellent management, responsibility, and decency for the consumers and customers.

In digital markets, exactly what does "abuse of dominant position" mean?

According to Section 4 of the Competition Act 2002, "dominant position" refers to an autonomous control of the market that has an impact on rivals. Although it is legal to have such a position, it is illegal to abuse it. This is due to the fact that a market cannot function properly with a small number of participants, leading to a monopoly. Rather, it is meant to provide each other with equal opportunities. Therefore, exploitation of a dominant position affects market competitiveness. For instance, the Competition Commission of India (CCI) recently fined the US tech giant Google USD 162 million and USD 113 million for unfair competition and abusing its dominating position in the Android operating system market, respectively.¹⁸ The Play Store's payment policy was being distorted. The critical necessity to impose sanctions on businesses that unfairly use their dominant position in the digital market is shown by the CCI's measures against Google. In order to combat the capricious tactics of tech giants that harm their competitors, rivals, and customers alike, such measures were applauded.

Applicable Law – India and Abroad

The growth of digital markets has given rise to numerous new competitive challenges. As a result, major Organization for Economic Co-operation and Development (OECD) countries are either discussing what regulations to create or have already implemented regulatory steps to support contestability and fair trade in digital marketplaces. For OECD countries, such actions hold promise for long-term growth. Articles 101 and 102 of the Treaty on the Functioning of the European Union provide rather comprehensive and efficient regulation of abuse of dominance. Regulation 1/2003, which supports the articles in guaranteeing fair competition,

¹⁸ XYZ (Confidential) and Ors. vs. Alphabet Inc. and Ors, MANU/CO/0091/2022.

delineates the European Commission's powers.¹⁹

There is no regulation of the digital market in India, in contrast to the European Union's (EU) Digital Markets Act, 2022 (DMA), which guarantees proper internal market operation by establishing ex-ante principles for contestability and equity in the digital industry. A statutory body established by the Competition Act of 2002, the Competition Commission of India has extensive authority to investigate and rule on unfair practices in the digital market. The Competition Act of 2002 and the Competition (Amendment) Act of 2023 currently provide the legal framework that oversees India's online marketplaces. When the CCI concludes that there is a reasonable suspicion of abuse of dominance, it will direct the Director General to carry out an inquiry and provide a report. The Director General may be ordered by the Commission to carry out a search and seizure as well as an investigation. Penalties for violating CCI orders include fines, which can reach up to Rs. 10 crores, as decided by the Commission, and can reach up to Rs. 1 lakh per day that non-compliance occurs.²⁰

Challenges in directing rivalry in advanced market

The obstacles that come with controlling the computerized market seem to be introduced one after the other. A few of the typical issues that arise in the computerized market with reference to abuse of a current scenario have been looked at below: Administration of personal information Due to *Marriage v. Google*, the CCI disregarded abuse of a dominating situation that corresponded to something similar, even though it acknowledged the possibility of abuse of a monopolistic grip over consumer personal data. The misuse of the client's personal information in this way raised general security concerns, but it didn't specifically make a work an examination. Unnecessary expansion of operations in the online marketplace Dominant firms attempt to hire application designers and related associations to be the market and additional information experts. Google, for example, was penalized by the European Commission primarily for mishandling its overwhelming situation by providing its own exam shopping administration a prominent place in its inquiry items instead of rival administrations. The challenges of developing economies in guiding the development of sophisticated markets the majority of non-industrialized nations have relatively new, little contest bodies with limited resources to handle intricate rivalry disputes in an unquestionably globalized market. Online

¹⁹ NirmalaMahaveerPatil, "Combating abuse of dominance in digital markets: Study from the perspective of EU and India" School of Economics and Management, Lund University, Oct.3, 2023.

²⁰ Competition Act, 2002

business rules and regulations should be implemented in these nations to guarantee that local small and medium-sized businesses have equitable access to stages with reasonable agreements. A lack of comparable features is a test in online marketplaces. Inconsistency in defining "sufficient security" measures to guide legislation two fundamental questions that pose challenges to automated market recommendations are what constitutes "satisfactory wellbeing" and who is responsible for implementing it. For example, many of the unreliable apps we purchase from the Google Play Store have the potential to compromise our devices' data. Such data may contain sensitive information, and its intrusion could result in deception or widespread fraud.

• TYPES OF DOMINANT POSITION

Two categories of dominance exist:

1. Exploitative such as excessive pricing

Abuse of power by the dominant body, such as imposing unfair or unfavourable terms on other businesses or consumers, is known as exploitation. In *Pankaj Agarwal v. DLF*, Case No. 13 & 21 of 2010 and Case No. 55 of 2012²¹, the agreements that Delhi Land and Finance (DLF) drafted alone gave them the authority to be discreet about information relevant to the buyer, such as the number of apartments on the floor, to drop portions and forfeit booking sums, and to be discretionary about the designation of super-area in a situation involving the distribution of apartments. The agreements were deemed by the Commission to be abusive and one-sided because they exploited buyers.

2. Exclusionary such as a denial of market access

When the dominant entity uses its power to prevent competitors from entering the relevant market, this is known as an exclusionary activity. One example is the case of *Re Shri Shamsher Kataria v. Seil Honda*, Case No. 03/2011,²² in which the dominant entities and the overseas suppliers of unique vehicle parts had an agreement that prevented the overseas suppliers from supplying parts to free repairers. This agreement was deemed anti-competitive because it restricted the entry of new businesses.

An examination of Abuse of dominance under Indian Competition Act

²¹ https://www.cci.gov.in/sites/default/files/132155_0.pdf

²² <https://www.cci.gov.in/sites/default/files/03201127.pdf>

The act defines a "dominant position" as "a corporation's position of influence in the relevant Indian market that allows it to—"

- (i) operate independently of competitive dynamics prevailing in the relevant market; or
- (ii) favorably impact its rivals, customers, or the pertinent market;

It is necessary to read this definition of "dominant position" in conjunction with the examples listed in S.4(2) of the act. The act's clauses (c) through (e) will be deemed AoD if they either let the business or group to function without interference from the forces of competition or if they have an impact on rivals or customers.

Therefore, in order to classify an act by a group or a company as an abuse of dominance, it is necessary to first demonstrate that the group or enterprise in question holds a dominant position with regard to the claimed act, whether it was carried out by the group or not. To do this, one must demonstrate one of the two tests outlined in the act's Explanation to S.4(2)(a). The second question that will be examined is whether the claimed act falls under the purview of S.4(2) of the act after it has been established that the enterprise holds a dominant position. According to S.4(2) of the legislation, an enterprise is guilty of abuse of power if it (a) imposes unfair or discriminatory—

- (i) an obligation for the acquisition or sale of products or services; or
- (ii) the cost of buying or selling products or services, especially predatory prices.

But in this context, the word "Shall" does not enforce a requirement. An enterprise cannot be considered AoD in and of itself, even if it enforces unfair or discriminating conditions. This aspect is made clear in the explanation of this subsection. It makes clear that an act will not be regarded as AoD if unfair or discriminatory conditions are established in order to meet competition. This explanation also makes it clear that no condition that is unjust or discriminatory will be regarded as an AoD. It must be connected in some way to the fierce rivalry in the Indian market.

- **MONOPOLISTIC AND RESTRICTIVE TRADE PRACTICES ACT AND THE INDIAN CONTRACT ACT**

According to a study, the majority of the cases that were brought before the commission under the MRTP Act had little to do with competition. According to Aditya Bhattacharjea, the general term in §2(o) saw an increase in filings, reaching 80 percent in the 1990s.

Many of these cases, particularly those involving cooking gas cylinders, automobiles, or real estate, were filed by customers against dealers for delayed deliveries or other contractual issues. These were not competition issues at all, and they ought to have been brought before the Consumer Protection Act's forums or civil courts for contract violations.

The issues that arose before the MRTP commission are anticipated to resurface before the CCI. It is argued that the ICA does allow for this kind of issue. Chapter V-B of the MRTP Act addresses "Unfair Trade Practices" (UTPs), including deceptive advertising, incentive programs, and product standards violations. As a result, numerous consumer dispute cases were filed under this chapter. Nevertheless, the current Indian Competition Act does not contain such a section. Furthermore, it is argued that no such instances may be brought before the CCI even under S.4 of the statute.

According to the mischief rule, if a statute is causing trouble, the court attempts to stop it by interpreting it in light of the purpose for which it was passed. As stated in the act's title, "The Competition Act was passed in order to boost competition and eliminate the shortcomings of the MRTP Act. It was titled "An Act to provide, keeping in view of the economic growth of the country, for the formation of a Commission to prevent activities having adverse effect on competition, to encourage and sustain competition in markets, to protect the welfare of consumers, and to ensure independence of trade carried on by other parties involved in markets, in India, and for concerns connected therewith or incidental thereto." This definition makes it clear that the commission's function will be to-

1. Stop actions that hurt competition;
2. Encourage and maintain market competition;
3. Safeguard consumer interests;
4. Guarantee the freedom of commerce practiced by other market participants in India.
5. for issues related to or incidental to that.

According to the act's definition, the CCI has five roles, all of which make it clear that its function is related to competition rather than serving as a forum for consumers. Additionally, the competition act was passed in order to rectify the MRTP Act's flaws. S. 4 will therefore be applied in situations where there is no real or foreseeable restricting effect on the market, and the CCI will be diverted from its duty if all complaints involving abuse of dominance are entertained. In the end, CCI's job is to safeguard customers impacted by the dominating

company. Therefore, the CCI safeguards consumers by preserving competition. The fundamental, well-established, and rational premise is that consumers gain from efficient market competition. Therefore, it is generally forbidden for businesses to engage in activity that undermines healthy competition unless it can be demonstrated that the efficiencies it creates outweigh the harm to competition as perceived by customers. However, this cannot be construed to encompass consumer disputes, which are barely related to competition laws.

□ SECTION 4 AND SECTION 28 OF THE ACT

It has been determined that Section 28 gives the CCI the authority to disband a company in order to prevent it from abusing its dominating position—without needing evidence that it has already done so. In order to prevent the firm from abusing its dominating position, CCI may split it up under Section 28. Therefore, even though the firm has not misused per se dominance, it can be stated that it is forbidden under the act. Section 4 and Section 28 seem to be at odds with one another. Although S.4 prohibits abuse of dominance, S.28 gives CCI the power to split up a dominating business even in the absence of misuse. It is crucial that the statute be interpreted harmoniously to prevent such a conflict and ensure that these two provisions do not contradict one another.

The Commission must first confirm that the company is a dominant entity. Section 19(4) of the act lays forth the criteria that the Commission will consider in order to determine whether or not there has been abuse. The Commission will take into consideration the following principles for this. The following factors need to be considered:

- (a) The enterprise's market share;
- (b) The enterprise's size and resources;
- (c) The competitors' size and significance;
- (d) The company's financial strength, which includes competitive advantages;
- (e) The vertical integration among the companies or their marketing or service network;
- (f) Customers' reliance on the business;
- (g) Monopoly or dominant position, whether obtained via the application of any law, as a government enterprise, a public sector undertaking, or in any other way;
- (h) entrance hurdles, which include things like financial risk, regulatory restrictions, high capital costs of entry, marketing and technical barriers, economies of scale, and the high cost of consumer substitute goods or services;
- (i) Countervailing buying power;

- (j) The market's size and composition;
- (k) Social responsibilities and expenses;
- (m) Any other element that the Commission deems pertinent for the investigation;
- (/) relative advantage, as demonstrated by the contribution to economic development made by the company holding a dominating position that has or is likely to have a significant negative impact on competition. After taking into account all of these variables, the Commission must attempt to prove that the company's dominant position enables it to:
 - i) operate without regard to the competitive dynamics present in the relevant market;
or
 - ii) impact its competitors, clients, or the industry in a way that is advantageous to it.

The CCI may split the dominant business in accordance with section 28 of the act once one of the two requirements is met.

CCI is required by section 28 to recommend the division of a dominant firm. There must be a rationale behind this suggestion, and it must be an impartial one. Without a valid reason, a mere fear cannot be considered legitimate. Such a recommendation also violates Article 14 of the Constitution, which states that the use of discretion must be supported by a specific justification and be fair, reasonable, and reasonable.

A correct interpretation of section 28 will make it clear that it is used where there is a chance that the dominant corporation may abuse its position of power now or in the future. Such a fear needs evidence to back it up. The CCI's proposal to the Central Government will be null and void without such proof, and it may be challenged in court.

- **AVAILABLE DEFENCES UNDER SECTION 4 OF THE ACT**

Exclusionary conduct may be excepted from S.4's ban if the dominant firm can show that the benefits of its actions outweigh the harm to competition. The dominating corporation can make the case that the otherwise abusive action is an objective necessity defence, which is the first kind of objective justification that can be used to prevent discriminatory conditions from being imposed in the acquisition or sale of goods. It is necessary for the dominant corporation to demonstrate that the products in question cannot or will not be produced or supplied in that market if specific conditions are not placed on their usage. The dominating entity can demonstrate that the supposedly abusive behaviour is actually a loss-minimizing response to

competition from others (a tactic known as "meeting competition defence") under the second sort of objective justification. The business may argue that the claimed action was taken in order to compete. In this case, it is his responsibility to provide such an objective defence. The Robinson-Patman Act's provision 2(b) also permits this defense. The defense of meeting the competition was likewise offered by the ECJ in the United Brands case. The Court recognizes that any company, including those in a dominating position, has the right to take action to safeguard its business interests, but it states that in the case of dominant enterprises, such action must be absolutely proportionate to the justifiable business goals being pursued. In *Falls City Industries, Inc. v. Vanco Beverage, Inc.*, it was decided that a price decrease that intentionally undercuts a competitive offer is illegal. The burden of proof should be on the business claiming the benefit of a defense against a finding of infringement to prove that the requirements for using such a defense are met. It covers the misuse of power brought on by unfair pricing. In *FTC v. A.E. Staley Mfg. Co.*, the Supreme Court held that a seller must demonstrate that he acted in "good faith" by "showing the existence of facts which would induce a prudent and reasonable individual to believe that the acceptance of a lower price would in fact match the equally low price of a competitor." The dominant company must demonstrate that its response is appropriate, necessary, and proportionate, as well as that it outweighs the likely harm to consumers and, consequently, the likely negative effects on competition caused by the conduct.

In an interim order in *ECS/AKZO*, the Commission dismissed AKZO's claim that it was only reacting to competition from other suppliers by lowering its rates. As it prohibited AKZO from offering or supplying its products to any buyer in the United Kingdom at prices different from those offered or given to other comparable buyers from AKZO, it generally required that all of a dominant supplier's equivalent customers be treated equally and without discrimination. The Commission did, however, permit AKZO to offer or supply below a minimum price for a particular customer in the same ruling, provided that doing so is necessary in good faith to meet (but not to undercut) a lower price clearly offered by a supplier who is ready and able to supply to that customer. Therefore, the Commission made it clear that it will only accept the meeting—not the beating of competition—as an excuse for a dominant vendor to treat his customers unfairly.²³ Therefore, under certain situations, a seller may even set prices that are unreasonably low, but they should never undercut a competitive offer. Therefore, under E.C. law, the "meeting but not beating" doctrine also applies. The consumer interest must be taken into

²³ Maihaniemi, B. (2017). The role of innovation in the analysis of abuse of dominance in digital markets: The analysis of chosen practices of Google Search. *Mkt. & Competition L. Rev.*, 1, 111.

account in order to assess whether a certain action taken by a dominating corporation qualifies as an abuse of dominance or not.

CHAPTER 4-

CATEGORIES OF ABUSES UNDER COMPETITION ACT, 2002

Exploitative Practices

- Exploitative practices are when an individual, a group, or an event is unfairly or unethically used for financial gain, comfort, or career progress. Businesses that engage in these kinds of activities aim to take advantage of their clients. Excessive or discriminatory pricing is the most prevalent example of such exploitative practices.
- In the seminal case of Pankaj Agarwal vs. DLF Gurgaon Home Developer Private Limited, the Commission ruled that terms and conditions that solely benefit the business would be viewed as abusive and one-sided in the buyer's agreement. Such provisions will be regarded as being exploitative to the buyer.

Exclusionary Practices

- Contracts, pricing policies, and other general measures used by dominant companies to discourage new competitors from entering a market or industry, force existing competitors to leave, confine them to specific market niches, or stop them from growing are examples of exclusionary practices. These actions ultimately hurt the customers. Predatory pricing and market access denial are the most prevalent instances of such exclusionary practices.
- Google maintained its dominating position in the online search market, denying other search apps access to the market, according to the Commission's ruling in the seminal case of Google INC. & ORS. vs. Competition Commission of India (2015)²⁴.

Essential Facility Doctrine

In competition law, the term "essential facility doctrine" describes a circumstance in which a facility or other infrastructure is thought to be necessary for other companies to compete in a certain market. According to the idea, any company or organization that controls a vital facility—like a port, railroad, or communication network—must refrain from denying its rivals access or from charging them undue fees for it. This restriction stems from the belief that

²⁴ Google Inc. v. Competition Commission of India, 2015 SCC OnLine Del 8992

denying access to a facility that is considered essential for competition to occur in the relevant market would provide a dominant enterprise an unfair advantage.

Section 4(2)(c) of the Competition Act, 2002, which forbids any abuse of dominance by a dominant entity in a relevant market, including the restriction of access to an essential facility, recognizes the essential facility doctrine in India.

If a company violates the essential facility doctrine, the Competition Commission of India (CCI) has the power to look into the matter and take appropriate action. In order to eliminate any instances of misuse, the Commission may impose alternative remedies, such as penalties or facility divestment, or it may force the dominant firm to grant access to the facility on acceptable terms.

All things considered, the necessary facility theory is a useful instrument for encouraging competition and thwarting anticompetitive practices in Indian marketplaces.

RECOURSES AGAINST ABUSE OF POSITION OF DOMINANCE

The Competition Commission of India (CCI) may take the following actions if it is convinced that an act that violates subsection (1) of section 3, subsection (1) of section 4, or subsection (1) of section 6 of the Act has been committed, is being committed, or is about to be committed:

1. Issue an order of restraining
2. Oversee the division of businesses in a dominant position to prevent such dominance from continuing.
3. Order any company, group of companies, individual, or group of individuals, as the case may be, that is abusing its dominating position to stop doing so.
4. Penalize each individual or business that abuses its dominating position as it sees fit, but no more than 10% of the average turnover or income, as applicable, for the three previous fiscal years.
5. Issue any directives that may be appropriate.

PREDATORY PRICING

Most of the nations under investigation have competition statutes that do not explicitly call predatory pricing "an abuse of dominance." But according to the Indian Competition Act, it is an abuse of dominance when a dominant company "directly or indirectly imposes a

discriminatory or unfair price in the course of buying or selling (including predatory pricing) of goods or services." European Commission: The pertinent EC legislation pertaining to predatory pricing is Article 82 of the EC Treaty. As stated in the AKZO Chemie BV case, it forbids actions by a company that misuses its dominant position within the Community and could have an impact on trade between Member States. United States of America: Any attempt to monopolize any aspect of commerce between US states is prohibited under Section 2 of the Sherman Act. The Clayton Act forbids price discrimination and predatory pricing in the US. In India, where the Competition Act of 2002 is based, the supply of a product is typically restricted to one market player. This player has become extremely powerful due to his low production costs, which he can use to set the price without taking the fixed price into account. This is because he has enormous economies of scale and better research and development facilities than most. "Predatory price" refers to the sale of products or provision of services at a price below cost with the intention of reducing or eliminating competitors, as stated in Explanation (b) at the end of Section (4). A thorough examination of the actual situation reveals that Indian courts have adopted the US model, despite the fact that India's theoretical law is based on the UK model. Whether or not selling at a reduced price is criminal in and of itself was one of the most significant issues that the Indian Supreme Court had to resolve. The Competition Act of 2002, as amended by the Competition (Amendment) Act of 2007, requires that both of the conditions in Section 4 be met because the section appears to be broken into two parts. According to Section 4(b) of the Competition Act, 2002, as amended by the Competition (Amendment) Act 20 07 79, predatory pricing is defined as the practice of setting prices below cost with the goal of driving out competitors. Furthermore, a dominant position by itself is not an abuse or a restrictive trade practice under the Competition Act of 2002. Additionally, this is the case under Article 82 of the EC Competition Law and Section 2 of the Sherman Act of 1860.²⁵

CHAPTER 5-

COMPARATIVE ANALYSIS WITH OTHER COUNTRIES

In market economies, competition laws are now a fundamental component of regulation. By 2010, 126 nations, the majority of which having done so in the previous three decades, had enacted competition laws. Together, these nations generate around 95% of the global GDP,

²⁵ Singh, V. K. (2014). Competition Law: Dominant Position and Its Abuse: Abuse of Dominant Position in US and EU. Module written for e-Pathshala, MHRD Project NME-ICT of Government of India (2014).=

underscoring the importance of competition laws in controlling international trade. Nevertheless, despite competition law's increasing importance on a worldwide scale, cross-national competition law measures have been modest. The majority of cross-national research on competition regulation now in existence uses a binary coding system that ignores substantial heterogeneity in the actual substance of competition legislation. ¹ While some scholars have tried to document the rules in greater detail, ² the size of the tasks has forced most researchers to create datasets that rely on limited sampling of nations or years. ³ As a result, there hasn't been a thorough assessment of competition laws across a variety of nations and time periods, which jeopardizes attempts to accurately assess the history and impacts of competition law.

Abuse of dominance. Without providing specific statutory advice on whether actions qualify as abuses, some governments merely forbid abusive conduct by a dominating corporation. A prohibition that is so broad or "blanket" may allow the agency a great deal of latitude in defining what is considered an abuse. Since it is unclear what kinds of actions are prohibited by competition legislation, in many ways, such a prohibition increases the danger of competition. It is uncommon, though, for a provision to grant authorities unrestricted authority. Competition rules generally include a number of actions that are considered anti-competitive abuses of a dominating position. To avoid the situation where the CLI is unduly sensitive to this choice between a broad prohibition versus enumeration in any given jurisdiction, we award two points for a general ban of abuse of dominance and increase the overall dominance score by small increments for each specified abuse. In particular, the most prevalent activities that are typically seen as abusive when carried out by a dominant corporation are taken into separate account by our CLI. These include price-related and non-price-related practices, such as predatory pricing, anticompetitive discounts, unfair (or excessive) pricing, resale price maintenance, discriminatory pricing, and tying and refusal to deal (price-related abuses).

- **COMPETITION LAWS IN UNITED KINGDOM**

Several laws have been implemented to regulate buyer protection in the Unified Realm, including the Consumer Credit Act of 1974, the Unfair Contract Terms Act of 1977, the Uncalled for Terms in Consumer Contract Guidelines of 1999, and the Unfair Contract Terms Bill. The requirements of the European Association's Buyer Protection Mandates are fulfilled by these several legislation. The development of the legal and international technique has expanded the scope of use to criminal responsibility, despite the fact that instances of violations of customer freedoms are typically the result of unlawful conduct or agreements. A typical

customer is a normally educated, reasonably conscious, and aware person, as stated in Article 2 of the Unfair Commercial Practices Directives of 2005 and as determined by the European Official judiciary. This term takes into account etymological, sociological, and social factors. Two sets of rules operate simultaneously in the Unified Realm. The provisions of Section 18 of the Competition Act 1998 apply if an English company maintains a dominant position in the UK market; however, if the UK Company maintains a dominant position in a market that extends to other EU countries, the provisions of Workmanship 82 of the EU Settlement apply. The requirements that should be outlined for both are essentially the same because the regulation from the European Union has been incorporated into the UK regulation. Following the passage of the Competition Act of 1998, which went into effect on March 1, 2000, the domestic rivalry laws in the United Kingdom underwent significant modifications. The provisions of paragraphs 81 and 82 of the EC Settlement were taken into consideration when this Act was ordered. The Competition Act of 1998's Section 1 is divided into five sections. Section I oversees arrangements (including the denial of understanding); Part II deals with abuses of the dominant position; Part III concentrates on analysis and execution; Section IV makes arrangements with the Contest Commission and requests; and Section V deals with sporadic issues. A few schedules for the demonstration are available. The Workplace of Fair Exchanging (OFT) is granted broad authority to supply data, conduct on-the-spot investigations, and impose penalties. As part of the demonstration, the OFT and the sectoral controllers must provide guidance on how to effectively implement the demonstration in practice. Additional adjustments were made to the U.K. by the Enterprise Act of 2002.²⁶

Rivalry legislation includes the introduction of a new mechanism for controlling consolidation, a new set of references for market assessment, the establishment of a criminal cartel offense, and the possibility of excluding supervisors of businesses that violate competition laws. Additional modifications were proposed to the Competition Act of 1998 in light of the various Authorizations (Revision) Guidelines of 2004 and the Competition Act of 1998's use of the E.C. Modernization Guideline. The EC Settlement's Articles 81 and 82 offer a clear illustration of the Competition Act of 1998's provisions.²⁷

²⁶ Singh, V. K. (2014). Competition Law: Dominant Position and Its Abuse: Abuse of Dominant Position in US and EU. Module written for e-Pathshala, MHRD Project NME-ICT of Government of India (2014).

²⁷ DG Competition Discussion Paper on the Application of EC Article 82 to Exclusionary Abuses, December 2005

European Union perspective on the Competition Law

The EU Community Act of 1972 allowed the UK to join the European Community (EC), and as a result, it was governed by European competition law. Europe has been referred to as the European Union (EU) since the 1992 Maastricht Treaty. The social and economic pillar of the treaties is where competition law is located. The pillar system was dropped with the implementation of the Pact of Port, and competition law was included into the Treaty on the Functioning of the European Union (TFEU).²⁸ Therefore, the EU Commission can have social control powers and EU law can apply anywhere a British company is engaging in unfair economic practices or attempting to merge in a way that could interfere with competition across GB boundaries.

Article 111 TFEU, which addresses cartels and restrictive vertical agreements, is the main clause. Square measure that is prohibited-

- 1) Any agreements among undertakings, decisions made by associations of undertakings, and coordinated practices that may "affect" trade among Member States and that occasionally interfere with, restrict, or distort competition within the European Economic Community. Samples of hard-core restrictive activities, such as worth fixing or market sharing, are then provided by Article 101(1) TFEU.(2) The TFEU affirms that all agreements are null and void.²⁹

Like the Statute of Monopolies 1623, however, Article 101(3) TFEU establishes exceptions if the collusion is for technological innovation or spatial arrangement, gives customers a fair portion of the profit, and avoids disproportionate or unreasonable restrictions that could eliminate competition everywhere. Monopolies, or more specifically, firms that hold a dominant market share and misuse that position, are covered by Article 102 TFEU.

In contrast to U.S. antitrust law, EU legislation only places a special need to behave appropriately; it has never sought to penalize the existence of powerful firms. Certain categories of abuse enumerated in Article 102 Europe include exclusive dealing and worth discrimination, which are strikingly similar to sections two and three of the Clayton Act in the United States.

²⁸ Behrens, P. (2018). The ordoliberal concept of 'abuse' of a dominant position and its impact on Article 102 TFEU. In *Abusive practices in competition law* (pp. 5-25). Edward Elgar Publishing.

²⁹ Singh, V. K. (2014). *Competition Law: Dominant Position and Its Abuse: Abuse of Dominant Position in US and EU*. Module written for e-Pathshala, MHRD Project NME-ICT of Government of India (2014).

The EU Council was tasked with enacting a rule to oversee corporate mergers under Article 102 of the European Union. The most recent of these regulations is known by the acronym ECMR Reg. 139/2004. Effective competition may be significantly hampered by a degree of competition (merger or acquisition) that has a community component (i.e., impacts a number of EU member states). Once more, the stark reduction of competition caused by the Clayton Act.

Lastly, the involvement of the state in the market is governed by Articles 106 and 107 TFEU. According to Article 106(2) of the European Union, nothing in the regulations can be used to restrict a member state's ability to provide public services; nonetheless, public companies should be subject to the same norms regarding collusion and abuse of power as everyone else. Similar to Article 111 TFEU, Article 107 TFEU establishes a general rule that the state cannot support or subsidize private parties in a way that distorts free competition, but it also makes exceptions for charitable organizations, natural disasters, and regional development.³⁰

• **COMPETITION LAWS IN THE UNITED STATES OF AMERICA**

Although a few state antitrust laws preceded the Sherman Act in 1890, the United States of America contest regulation is typically followed until its passage. The actual demonstration was essentially a codification of the precedent-based regulation. Up to the turn of the century, the strict custom of early custom-based regulation that nullified all constraints of exchange was in power in the United States of America. Given the public interest in permitting certain defense vows, the convention has been relaxed. Up to the presentation of the advanced perspective on the legality of settling on the trial of sensibility of the restraint, both English and American courts upheld the appropriate rules for the situations for limitation on the possibility of agreement. According to precedent-based regulation, any mixtures or arrangements that ludicrously restrict contest or retrain exchange are illegal and null and invalid as against public strategy, giving little attention to professed cause.

The Sherman Anti-Trust Act (1890) is an intriguing example of a government legislation pertaining to the imposition of business models and unlawful limitation of trade. The Congress may make special exceptions to the demonstration's rules by imposing cost-fixing requirements on public officials, identifying a particular industry for special treatment and thereby removing

³⁰ Singh, V. K. (2014). Competition Law: Dominant Position and Its Abuse: Abuse of Dominant Position in US and EU. Module written for e-Pathshala, MHRD Project NME-ICT of Government of India (2014).

the demonstration's penalties, or temporarily or permanently suspending the demonstration's operations within the approved barriers; however, the reasonable intent of its wording does not support such an exception. The demonstration is both therapeutic and remedial for natural harms. The main goals of the Sherman Hostile to Believe Act are to safeguard a free and ruthless financial venture arrangement and to protect the public from syndications, agreements, and mixtures that blatantly encourage irrational concealment or limitations on interstate trade or commerce. The court has upheld the authority of state legislative bodies to handle topics that are antagonistic to trust, to reject illegal mixtures in order to prevent competition and limit trade, and to prevent and reject oppressive business models.

Under the Clayton Act of 1914, it is illegal for anyone involved in a business to rent or sell goods, hardware, etc., with the understanding that the buyer or resident will not use or bargain in goods or hardware from a competitor, dealer, or lessor where competition may have a substantial negative impact on the contest or will more frequently rather than create a syndication.³¹ Despite some Clayton Act clauses that make reference to both, the Clayton Act and the Sherman Act are distinct statutes and will remain so. Congress has occasionally approved the Clayton Act, which amends the Sherman Act, as well as other government resolutions that are equally beneficial to all people but aim to impose limitations on interstate commerce or business that is not covered by the Sherman Act.³²

By prohibiting unfair competition practices, the U.S. Congress created numerous laws to help foster competition:

- The Sherman Act is the world's oldest antitrust law. Enacted in 1890, it prohibits rivals from entering into agreements with one another that could restrict competition. For example, they cannot set a value for a product by conforming to it; it would be value fixing. Additionally, the Act makes it illegal for a company to have a monopoly if it engages in unfair competition or cheats. Executives from companies that operate in that manner risk facing high fines or possibly jail time!
- In 1914, the Clayton Act was passed. Due to the Sherman Act and the dissolution of trusts, American business practices were dynamic. However, several businesses found that combining into a single business was a better way to control prices and output than

³¹ Herbert Hovenkamp, —Clayton Actl, accessed via www.enotes.com

³² A. Jones and J. Davies, “Merger control and the public interest: balancing EU and national law in the protectionist debate”, [2014] 10(3) European Competition Journal 453.

creating trusts inside their own industries. The Clayton Act prevents mergers and acquisitions that are likely to restrict competition, protecting American consumers.

- In 1914, Congress established a new administrative organization to examine unfair business practices. The Federal Trade Commission was given the power to look into and stop unfair competitive strategies and deceptive activities through the Federal Trade Commission (FTC) Act.

These three fundamental federal just laws are being enforced by the Bureau of Competition of the Federal Trade Commission (FTC) and, consequently, the Department of Justice's just division. Before beginning any investigation, the agencies consult with each other to determine who is qualified to look into the facts and handle any potential case. However, each organization has gained expertise in specific sectors. Every state has just laws that are upheld by the attorney general of each state. Your state capitol has an associate workspace that assists clients or companies that can suffer when companies don't compete fairly.

The purpose of antitrust legislation was not to protect competing businesses from intense rivalry. Businesses fail sometimes, and competition is tough. This is the strategy used in markets with intense competition, where buyers gain from the fierce rivalry between vendors. One of the key cases in the development of US competition law is the Kodak case [7]. One of the most well-known brands in the camera and film industries is Kodak.

During certain periods, Kodak held a 96% market share in the US. Kodak has been the subject of numerous antitrust lawsuits and charges against both private and federal parties over the years. The United States government filed one of the most important cases in 1921. As a result of this case, Kodak promised to sell only its own film and refrain from selling private-label film. In 1954, Kodak also consented to a consent decree with the US government. Shortly after Kodak produced its colour film, this lawsuit was brought. The business was the only one that knew how to process colour film and was the only one that produced and sold it. By charging clients a fee to send, process, and deliver the film, Kodak incorporated this benefit into their business plan.

The business had to grant other parties a license to use the colouring technique. Due to shifting global economic conditions, a court ended the orders in 1994, but they had remained in force until then.

In case of Viamedia, Inc. v. Comcast Corp., et al; Viamedia was able to go to trial on its claims that Comcast had violated Section 2 of the Sherman Act after a three-judge panel of the United States Court of Appeals for the Seventh Circuit gave new life to a refusal to deal claim.

The plaintiff Viamedia claimed that Comcast used its monopoly power in the interconnect market to keep rivals like Viamedia out of the ad rep market and that it also operated in the advertisement representation (or "ad rep") market while maintaining monopoly power in the interconnect market. Comcast prohibited Viamedia's clients (multichannel video programming distributors, or "MVPDs") access to the interconnect market if they hired a vendor other than Comcast for ad rep services, according to Viamedia's claims, which were based in part on the refusal to deal theory. Viamedia contended that without this access, the MVPDs would be unable to deliver their services efficiently, which would discourage them from working with any Comcast rival in the ad rep market and, eventually, bar those rivals from entering that market. In 2016, Viamedia filed a lawsuit against Comcast, requesting damages of around

\$160 million. Viamedia's refuse to deal suit was dismissed by the US District Court for the Northern District of Illinois on the grounds that Comcast's purported refusal to deal might have been supported by good business judgment. The court explicitly declared that Comcast's refusal "offers potentially improved efficiency" since it eliminates Viamedia as a middleman and that the lawsuit failed to "explain how Defendants' refusal to deal... has no rational procompetitive purpose."

Viamedia appealed the ruling to the Seventh Circuit, which overturned the lower court's ruling on February 24, 2020. The Supreme Court's 35-year-old ruling in Aspen Skiing, which the court later acknowledged as being "at or near the outer boundary of § 2 liability," was the court's main source of support. "Viamedia has put forward a case that is well into those bounds and seems to be stronger than Aspen Skiing," the Seventh Circuit said, recognizing the limited scope of Aspen Skiing. The court clarified that Viamedia had claimed that the following factors were sufficient to allege a refusal to deal claim: (1) a pre-existing relationship between the parties indicates that joint dealings were efficient and profitable; (2) similar joint agreements are used in comparable markets; and (3) the defendant sacrificed profits to harm its rival. "At the pleading stage, it is enough to allege plausibly that the refusal to deal has some of the key anticompetitive characteristics identified in Aspen Skiing," the Seventh Circuit said, rejecting Comcast's argument that any potential business justification for the refusal overcomes potential liability. It further stated that "balancing" tests that analyse procompetitive benefits are

appropriate only after extensive fact finding, not at the pleading stage. The court also warned that if evidence supports Viamedia's initial accusation, Comcast might have "the burden to prove what would need to be some dazzling procompetitive benefits to justify its conduct." Comcast has announced that it would ask the Supreme Court to reconsider the Seventh Circuit's decision.

- **COMPETITION LAWS IN INDIA**

For instance, dominant ventures' initial position enables them to operate without significant powers that their enemies have developed. This is important because healthy competition across competitor's increases efficiency, disperses effectiveness gains, and enhances buyer surplus. For example, there are issues when a business tries to regulate creation or expenses, eliminate current competitors, or create barriers to a section. Additionally, the space viewpoint provided in section 4 of the demonstration's explanation (a) (ii) relates to a company's ability to influence its competitors, customers, or the relevant market. In a sense, this is a more powerful tool that allows an organization to freely use the evaluation or non-duty process to overcome the downward pressure on candidates' pay, or to attract or engage customers, or to create a serious environment. a market environment that would discourage the most recent objective in terms of competing companies and competing goods. The share of the pie and the states of passage are the two essential components that guarantee the dominant position. Remembering that to achieve a dominant condition using legitimate measures, such as product development, dominant creation or dissemination processes, or extended marketing efforts, is very important. According to section 19 of the Competition Act, the Competition Commission of India has considered particular circumstances when determining the arrangements' current validity. the guarantee of the prevailing circumstances through segments of the industry, transaction data, and dynamic offers. However, in light of the buyer conduct model, the market is typically still up in the air based on the helpful attributes of the commodities. In essence, Section 19 emphasizes the Competition Commission's duty to take these factors into account when controlling variables of dominant position. This enables us to assume that we use these crucial phases to determine whether a company has a dominant position and abuses it-

1. Outlining the key market's characteristics.
2. Conducting research Determine whether the company has enormous power by evaluating the market's strength.
3. Examine if the endeavor's direction amounts to abuse.

The two types of "maltreatment of prevailing position" situations that are analyzed as under-

1. Savage Appraisal Section 4(b) of the Demonstration states that it makes sense to train people to supply goods or organize services at a cheaper cost than what would be required to reduce competition or eliminate competitors.
2. Refusal to supply: This training involves purposefully maintaining the item or administration's inventory in order to increase interest in it and, in turn, force customers to purchase it at a higher price, so limiting the client's prerequisites. The state of fair competition in the sizable market is negatively impacted by this rejection.
3. Limiting Stock The act of having a limited quantity of outcomes that are rich and desirable, thereby benefiting from an increase in value due to their scarcity. The market for precious stones is a good example of this, but vast quantities are kept hidden and only a small portion is cleaned and made available to customers, which drives up the price.³³
4. Barriers to completing or declining the market survey both patents and crucial first mover benefits are included in the boundaries to section.

Area 4 of the Competition Act provides for the prohibition of abuse of a dominating position.

Section 4: Abuse of the Dominant Position:³⁴

(1) No business will abuse its dominant position.

(2) A venture will be considered to have abused the current situation under sub-area (1) if it: a) directly or indirectly imposes unreasonable or discriminatory conditions on the purchase or offer of labor and products; (I) costs money for the purchase or sale (including savage cost) of goods or services; or (b) restricts or confines— (I) the production of goods or the arrangement of services or the market for them; (ii) specialized or logical advancements related to labor and products to the detriment of buyers; or c) engages in or attempts to forgo market access; or

d) subjects the completion of agreements to the recognition of valuable commitments by various groups that, due to their temperament or business use, are unrelated to the subject of such agreements; or e) uses its current position in one important market to enter or protect another relevant market. Clarification.

³³ Ateliers Paris, Dominant position - Institute of Competition Law Concurrences.com (2017), <http://www.concurrences.com/en/droit-de-la-concurrence/glossary-of-competition-terms/Dominant-position> (accessed on Sep 28, 2019).

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Website- https://lawfaculty.du.ac.in/userfiles/downloads/LLBCM/IVth%20Term_Competition%20Law_LB4033_2023.pdf

For the purposes of this clause, the phrase "predominant position" denotes a position of solidarity that a venture in India's major market enjoys, enabling it to: (I) operate freely of ruthless powers winning in the relevant market; or (ii) Persuade customers, competitors, or the relevant market to support its; (b) The term "savage cost" refers to the selling of goods or a package of services at a price lower than the cost of producing the goods or services, as determined by guidelines, in order to reduce competition or eliminate competitors. Since no organization or group will abuse its dominating position, the Competition Act's structure based on abuse of dominant position makes perfect sense. The section 4 clarification clarifies the dominating position as a location of solidarity in the relevant Indian market. The depictions are complete and in-depth.

Section 4's explanation provides a number of potential uses for this authority. Depending on all of the case's actual reality, these potential outcomes can be clearly examined separately or in combination. As mentioned in section 4(2)(a)(I) and (ii), the clarification to section 4(2)(a) protects them from unfair or biased exchanging situations, unwarranted or unfavourable cost rates, or savage evaluations, preparing those practices that are prevalent in nature from being implied as a "maltreatment of a predominant position" to meet rivalry.³⁵ There is no "abuse" by any of the ventures, according to the argument put forward by those involved in the competition and reformulating their exchange practice methods or plans to stick to the request deal of rivals in a market as it develops.

They merely reflect how the market situation has evolved. For example, in the unlikely event that an item's pace becomes available, a decrease in pace by the organization to reflect the new rate cannot be considered Uncalled for Rating or Savage Cost for legitimate reasons related to the organization's operations. An authority may use this clarification as a precaution when managing an existing situation in accordance with section 4(2)(a). It should be noted that it cannot be accessed in the manner described in section 4(2)(b) to (e) for claims of practices.

- **COMPETITION LAW IN CHINA**

The Chinese government has consistently taken a firmly held position on competition policy as part of the context of national policy. However, on October 18, 2017, the 19th National

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Website-
https://lawfaculty.du.ac.in/userfiles/downloads/LLBCM/IVth%20Term_Competition%20Law_LB4033_2023.pdf

Congress Report stated that China should accelerate the development of the socialist market financial system in order to achieve the successful conclusion of socialism with Chinese characteristics in the new era. In order to understand the efficient incentive of ownership, the free flow of the weather, the flexible value response, and consequently the honest and orderly competition, the financial setup reform should focus on refining the weather and, consequently, the marketization of the weather. In order to improve the market management system, the system of negative lists of market access should be fully implemented, many regulations and practices that impede the unified market and honest competition should be cleaned up and eliminated, the business system should be reformed, the executive monopoly should be broken, market monopolies should be avoided, the marketization of issue costs should be accelerated, and the restrictions on access to service industries should be expanded. Through the creation of the honest competition review system, China's competition system has concurrently built supporting regulations for anti-monopoly laws. While other work is continuously being enhanced, the anti-unfair competition act is currently undergoing revision. The Ministry of Commerce made the decision to update the Measures for the Centralized Examination of Operators (draft amendment) in September 2017 in order to improve and standardize law enforcement processes for operators' review and to publicly seek public input. The updated draft is based on the current review procedures and includes the clauses from the Anti-Monopoly Review Form for Managerial Concentration Review, the Measures for Centralized Reporting of Operators, the Guiding Opinions on Concentrated Reporting of Business Operators, the Guiding Opinions on Reporting Concerning Concentrated Cases of Business Operators, the Provisional Regulations Concerning Applicable Standards for Concentrated Business Cases of Business Operators, and the Provisions Concerning Concentration of Business Operators on Restrictive Conditions. These regulations, methods, and guidelines are closely related to the centralized review of multiple operators and are issued by the Ministry of Commerce. The goal of this draft is to make the relevant regulations more workable, standardize them for centralized reporting and review by operators, and significantly increase the review's efficiency.

- **COMPETITION LAW IN RUSSIA**

Significant modifications have been made to Russian competition legislation in the last ten years. The majority of the modifications have been influenced by EU competition law, however some still need to be aligned with EU regulations for competition. In exchange, Russian competition law stimulates debate on topics like state and municipal tender processes, unique

antitrust regulations for tenders, and non-discriminatory regulations for natural monopolies. The Federal Antimonopoly Service (FAS) prioritizes international collaboration. We have worked productively and successfully with international organizations and competition authorities in numerous nations for many years. We have close contacts with the Commonwealth of Independent States (CIS), the Eurasian Economic Union (EAEU), and Competition Authorities. At the moment, we are working extensively in the BRICS format. International Working Groups have also been formed to address important competition-related topics. These working groups concentrate on the food, pharmaceutical, IT, and automotive sectors.

In order to cooperate with international competition authorities, FAS Russia has more than 58 bilateral and multilateral agreements. They provide several ways to communicate, such as exchanging non-confidential information, talking about topics that both parties find interesting, holding workshops and seminars, etc. The FAS Russia looked into several incidents involving big international companies that operate globally between 2015 and 2016. In particular, there are the cases involving Google, Apple, Microsoft, and liner shipping companies (a decision has not yet been made). These studies demonstrate that the commonly utilized, basic methods of collaboration now in use are unable to counteract these organizations' restrictive business practices. We discovered some issues over the course of looking into cross-border cases that must be fixed in order to increase collaboration effectiveness and produce useful outcomes. Existing variations in the laws of other countries make it difficult to conduct joint investigations, which is one of the issues with international collaboration in the investigation of cross-border cases. Notification processes, fundamental definitions, national laws, and the penalties for the same infraction vary depending on the jurisdiction. This demonstrates unequivocally the necessity of establishing uniform fundamental guidelines and cooperative norms. Confidential information sharing is still a key component of successful collaboration between competition authorities across jurisdictions. This issue includes both legal technique concerns and the lack of trust between authorities. The lack of the new level agreements made it difficult for productive informal cooperation to develop into a formal exchange of sensitive information.

Furthermore, there isn't an efficient international system in place to prevent sensitive information from being revealed on foreign soil.

Apart from the legal framework concerns, there are numerous unresolved issues with notifying and serving documents to foreign defendants and translating them, imposing fines on foreign legal entities, and conducting joint dawn raids or inspections upon request from the Competition Authority for business entities based abroad. All of the aforementioned issues are worldwide in scope and impact not only the Russian Competition Authority's operations but also those of all other competition agencies. We may forecast that the number of instances involving violations of competition laws, which are genuinely global in scope, will rise in the years to come due to the quick globalization of markets and the emergence of new, highly inventive fields.

In order to find a shared solution to these issues, FAS Russia recommends starting the process of creating and approving an international document that will contain practical instruments for international cooperation in thwarting transnational corporations' restrictive business practices. It also recommends encouraging the adoption of an international convention on combating the most severe form of anticompetitive conduct, namely international cartels.

- **COMPETITION LAW IN ISRAEL**

In 1988, Israel replaced a 1959 statute with its comprehensive competition law, the Restrictive Trade Practices statute, which embodied a new strategy for fostering market competition. While other agreements are subject to rule of reason analysis, hard core cartels are now tried as per se violations. EU models serve as the basis for block exemptions, which exempt parties from obtaining particular exclusions for restrictive arrangements. In monopoly law, an older design centered on market share has been supplemented with rules such as Article 102 TFEU (Treaty on the Functioning of the European Union). The Law uses market share as a criterion for notice, which does not follow guidelines that criteria be objective. Mergers are examined using a modern, effects-based analysis. IAA merger rulings have occasionally been delayed in their appellate review, despite the fact that process improvements have decreased the amount of time needed to assess mergers. Future changes would restrict per se treatment to price-affecting horizontal collusion, direct the law's ban of restrictive arrangements on actions that hinder market competition, and give better instruments for dealing with oligopoly markets. The suggestions reflect and uphold the broader movement to lessen the extent of category and per se treatment, since the courts and IAA are now more capable of evaluating the impacts of competition. In 1994, the Israel Antitrust Authority (IAA) was established as a separate organization to uphold the competition law. The IAA and the specialized appellate tribunal

have applied the law to a wide range of conduct through an impressive body of fully elaborated decisions. In the process, they have developed a methodological sophistication that is informed by close attention to current judicial and academic analysis in Israel and around the world. The IAA has gained the respect of practitioners, scholars, industry associations, and even the Supreme Court, which has commended the "exceedingly high calibre" of its knowledge. It has also elevated competition law compliance to the corporate community's agenda. Predictability, transparency, efficiency, and expedition are highly valued by the IAA; the agency and its employees are known for being responsive and sensitive to confidentiality; and its decisions are well acclaimed for the caliber of their analysis.

The IAA faces resource challenges in maintaining its reputation, particularly in keeping employees who are lured away by higher compensation in the private sector. Additionally, the IAA anticipates a rise in cartel prosecutions, which are especially resource-intensive due to the need for highly skilled personnel as well as advanced technology capabilities and equipment. If the law is amended to provide further authority for handling oligopoly, resource demands will rise even more.

From advisory opinions to criminal indictments, the IAA has a wide range of measures at its disposal to enforce the RTPL. The investigative authority is all-encompassing. If the law's maximum fines and jail sentences were enforced, they would be enough to dissuade hard core cartels, but the courts have been hesitant to apply severe penalties. The IAA's leniency program has not been utilized much, and one of its weaknesses is the lack of direct jurisdiction for civil financial punishment. The IAA's enforcement record shows a decrease in monopoly cases and an increase in proceedings against attempts to bar foreign imports from Israeli markets. By imposing conditions to make a problematic deal legal, the IAA is increasingly attempting to avoid rejecting it outright in merger proceedings. The IAA now more often uses its power to negotiate consent decrees, including consents that include the payment of a civil penalty, and has decreased its use of more traditional formal tools, such as orders to monopolists. In contrast, the agency's power to request injunctions against persistent anticompetitive behaviour has essentially been rendered ineffective. As allowed by Israeli legislation, which restricts information sharing to criminal investigations, the IAA is prepared to collaborate on investigations and provide sensitive material with foreign authorities.

- **COMPETITION LAW IN CANADA**

The Competition Act gives private parties the ability to file a lawsuit in order to recoup genuine losses incurred when the criminal sections of the Act are broken. Theoretically, private parties can start legal action to establish both the criminal provision's infringement and their damages. Private parties' actions are restricted to establishing their damages, and they typically rely on convictions or guilty pleas that come from government enforcement, such as the Public Prosecutions Service of Canada, to prove the violation. Class actions are the most common form of private claims.

It is important to note right away that the Competition Act does not consider dominance in and of itself to be harmful; rather, it aims to address the misuse of dominance. To prevail in a case involving abuse of dominance, the Bureau needs to persuade the Tribunal that:

- i. One or more businesses dominate one or more relevant markets in Canada, or a part of Canada.

The capacity to charge prices above those of competitors and do so profitably over an extended period of time is known as market power. In most cases, a high market share and entry barriers—such as significant sunk costs or legislative limitations—are necessary to establish market power. Since its inclusion in the Competition Act in 1986, the abuse of dominance provision has been the subject of less than ten fully contested cases, all of which involved companies with market shares greater than 80%. The Bureau also released position statements or technical backgrounders regarding some abuse of dominance investigations that it ceased.

- ii. The dominant business or businesses have committed anti-competitive conduct or are currently doing so.

The activities must be predatory, disciplinary, or discriminatory in order to be deemed anti-competitive. Usually, a competitor must also be the target of the anti-competitive behaviour. Exclusivity arrangement with a supplier for the purpose of rendering that supplier unavailable to a competitor, or offering below-cost pricing to a critical customer of a competitor.

- iii. The anti-competitive acts are having, or will likely have, the effect of preventing or lessening competition substantially.

The "but for" test, which determines if prices in the relevant market would have been lower "but for" the behavior in issue, is the foundation for determining whether there has been a significant prevention or reduction of competition. If the Tribunal determines

that there has been abuse of dominance, it may order the offending business or businesses to stop the offending behaviour and/or take certain measures, like disposing off shares or assets that it determines are necessary to offset the effects of the anti-competitive behavior.

An administrative monetary penalty of up to \$10 million for a first offense and up to \$15 million for each consecutive offense may also be imposed by the Tribunal.

Many changes have been made to the Italian Competition Bill (Law 287/1990) in the past year with the goal of enhancing the Italian Competition Authority's ("ICA") enforcement capabilities. In order to bring the Italian merger control schedule into line with the European Commission's process under the European Union ("EU") Merger Regulation, the Italian Parliament has authorized revisions to the law as of this writing.

The long-awaited harmonization of local laws with EU regulations is just one aspect of the reform. It increases the ICA's investigative capabilities and lays the groundwork for stricter enforcement of merger control laws. Following the restructuring, the ICA may now rely on: (i) the ability to examine below-threshold mergers that are competitively sensitive; (ii) a broader substantive test to prevent anticompetitive transactions; (iii) a new process for settling cartels and unilateral acts; (iv) further investigation authority outside of official antitrust and merger processes; and (v) more stringent regulations against the misuse of financial reliance in the digital industry.

More enforcement and monitoring will probably result from the modifications made to the Italian Competition Bill, with a special emphasis on creative and high-tech sectors.

PENALTIES AND SANCTIONS FOR ABUSE OF DOMINANCE

If an organization is determined to be abusing its dominance, the CCI may impose a penalty of up to 10% of the average turnover for the three previous fiscal years. The Act also establishes personal accountability for all individuals who were in control of and accountable for the company's commercial practices, as well as collective liability for those group entities that enabled the abuse of dominance. The CCI has the authority to order the division of dominating businesses in addition to imposing penalties. This can be done in a number of ways, including the transfer of property, rights, liabilities, or responsibilities; contract adjustments; the creation or dissolution of an entity, etc.

In a mere four years, the CCI has levied a number of high-profile penalties in abuse of dominance investigations, such as 6.3 billion rupees against DLF Limited in the DLF case¹⁶ and, most recently, 17.73 billion rupees against Coal India Limited and its subsidiaries in (the Coal India case) Maharashtra State Power Generation Limited v. Coal India Limited and Others. The CCI is simultaneously actively engaged in advocacy work to promote competition compliance and the implementation of competition compliance policies by Indian companies. It should be mentioned that the Competition Appellate Tribunal (COMPAT), the appellate body created by the Act, has the ability to decide on compensation claims that may be made in response to a CCI or COMPAT ruling that finds violations of the Act. So far, no compensation claims have been brought before the COMPAT.

According to the commission's ruling in Reliance Agency v. Chemists and Druggists (2018)³⁶, "Opposition parties were executing on the method of making the launching of novel goods in the market dependent on payment of PIS charge and their approval, thereby limiting and regulating supplies in the market, in violation of Section 3 (3) (b) read with Section 3 (1) of the Act." Additionally, a penalty of 11,11,549/- is imposed, which is determined by taking 10% of the defendant's typical salary.

In the matter of Indian Laminate Manufacturers v. Sachin Chemicals & others (2020), the CCI Director General ruled that Yug International and Hazel Mercantile were subject to section 43 of the statute for their failure to cooperate with the Commission's investigation. The Commission instructed opposition parties to assist with the probe and fined them INR 1 lakh apiece in two separate rulings dated June 1st and June 11th, 2018.

In the 2018 case *In re, Suo Motu Case (Battery case)*, the commission found the joint managing director's executive assistant and managing director personally accountable under this clause. The commission concluded that a "Company's violation of the Act could not have been possible without the Managing Director's knowledge and implicit approval, given that the violation occurred over for a long time, while the managing director has been "in-charge of the company's affairs throughout, and has not been able to fully prove that the business had violated the Act on his knowledge."

³⁶ Case No. 97 of 2013, Decided on 4.1.2018, CCI.

CHAPTER 6-

RECENT CASE LAW RELATING TO ABUSE OF DOMINANCE

One of the earliest notable cases involving abuse of dominance was the CCI's examination of predatory pricing and leverage, which was based on a complaint filed by MCX Stock Exchange Limited (MCX) against the biggest stock exchange in India, the NSE case. The CCI's assessment of the pricing approach used in the currency derivatives sector (CD segment) led to the conclusion that the NSE's zero pricing policy constituted "unfair pricing," a new variant of the predatory pricing concept. In order to bolster its position in the CD segment, the CCI further held that NSE was using its influence in other stock exchange segments where it is a well-known participant. The COMPAT is now considering an appeal of the CCI's decision of abuse of dominance and punishment.

Another notable early CCI ruling was the DLF case, which resulted in a headline penalty, multiple complaints against real estate firms, and a probe into the real estate industry. Based on a complaint submitted by the apartment owners' association, the CCI determined that DLF was misusing its power with regard to the supposedly unilateral terms and conditions of the unit purchase contracts. The CCI ruled that DLF's actions in arbitrarily altering the terms and circumstances of the apartment purchase agreements were unjust and amounted to an abuse of dominance because of its dominant position and the lack of competing purchasing power. The CCI raised competition concerns by enforcing the biggest penalty it had ever imposed at the time, even though the situation might potentially be classified as a consumer complaint. DLF appealed the case to the COMPAT, which recently decided that the CCI ought to examine and suggest changes to the apartment purchase agreements.³⁷

Although the CCI's orders weren't very thorough at first, this is gradually changing. The CCI is starting to use (limited) economic analysis in its evaluation as the competition law regime develops. It does this by taking into account a number of supply-side and demand-side criteria to ascertain the size of the relevant market. The issue of legal and naturally occurring monopolies in professional sports leagues and the railroad sector has also been addressed by the CCI. A long-term exclusive contract for the acquisition of rails of a specified specification from a government-controlled monopoly supplier of rails to the Indian Railways did not

³⁷ Van Damme, E., Larouche, P., & Müller, W. (2009). Abuse of a dominant position: cases and experiments. *Experiments and competition policy*, 107-159.

amount to an abuse of power, the CCI stated in the first case. According to the CCI, the exclusive supply contract did not prevent competitors (like the informant) from entering the rail market or create entry barriers because it was open-ended and subject to regular price reviews, which were intended to ensure a steady supply. The CCI examined how the Board for Control of Cricket in India (BCCI) organized the Indian Premier League (IPL), a private professional cricket league, with regard to professional sporting leagues. Specifically, the CCI examined how the BCCI granted media rights, franchise rights, and other rights when the IPL was first established. The CCI had never before looked at the sports industry. By committing third parties (through a provision in the IPL's media rights agreement) to not organize, sanction, or support any other professional domestic Indian Twenty-20 league, the BCCI allegedly denied access to the market for organizing private professional cricket in India, according to the CCI's majority ruling. The BCCI was also penalized for abusing its power. ²⁸It is interesting to note that the CCI ruling does not address whether the BCCI's award of various rights—which was the true focus of the inquiry carried out by the director general's office led to misuse of a dominating position. It is noteworthy that one member wrote a separate dissent order in which the BCCI was deemed not to have abused its position of power. The COMPAT is now considering an appeal of the case.

On the other hand, the CCI cleared Hockey India, the hockey federation, of abuse of power in the *Dhanraj Pillai v. Hockey India*³⁸ case, which involved essentially the same facts. The CCI looked at Hockey India's actions in relation to, first, barring other private professional hockey leagues from entering the market due to its regulations regarding event sanctioning; and second, prohibiting hockey players from competing in unapproved hockey competitions, which included disqualification from the national team. Despite concluding that Hockey India dominated the relevant market for "the organization of private professional hockey leagues in India," the CCI used an effects-based approach to exonerate Hockey India of abusing its dominance because there was no concrete evidence that it was actually limiting hockey players and rival hockey leagues (especially since the rival hockey league in question had never applied for sanction). The CCI even went so far as to say that the limitations placed on hockey players were "intrinsic and proportionate" to the goals of Hockey India and, as a result, did not constitute excessive power. The BCCI case surprisingly lacks this type of analysis and rights

³⁸ Supra

balance, even though it was settled a few months prior to the Hockey India case.³⁹

Due to the size of the fine issued, the Coal India case has once again raised awareness of competition compliance. With a market share of roughly 70% and various legal advantages due to Coal India's status as a public sector undertaking (PSU), the CCI's analysis revealed that Coal India and its subsidiaries hardly faced any competition in the Indian market for the supply of non-coking coal for thermal power generation. In this case, abusive conduct included discriminatory circumstances between PSU and private power firms, as well as the imposition of unjust and one-sided conditions on the supply of coal to power companies without any opportunity for bilateral discussion. The CCI mandated that the gasoline supply agreements be changed after consulting with all parties involved and imposed a fine. In addition to the fact that the CCI issued the biggest penalty ever, this decision is noteworthy because it marks the first time a PSU, or government-owned enterprise, had been connected to dominance abuse under the provisions of the Act.

THE IMPORTANCE OF THE DLF CASE

In terms of the Competition Commission of India's accomplishments in combating abuse of power, the DLF Case stands as the most significant case in India. The builder has the right to make unilateral adjustments without the buyer's approval. DLF made the decision on its own to expand the building's size from 19 to 29 stories. The builder has the exclusive authority to alter the super area at his own will without informing the allottees, although they are still required to make additional payments or accept a smaller area.⁴⁰ The only way for allottees to leave is if the builder doesn't deliver the apartment by the scheduled date. In that event, they will receive interest-free refunds, but only after the apartment has been sold. If you default, you may be subject to punitive fines; however, if the builder defaults, you will not be. Even before the first brick was built, DLF had stolen crores of rupees from the allottees. All 16 criteria were deemed unfair and harsh by CCI. Examining the idea of "after market abuse," as defined by the U.S. Supreme Court in the *Eastman Kodak Co. v. Image Tech* case, is crucial in this regard.

Ajay Devgan case: In the Ajay Devgan case, the CCI once more looked into the issue of the relevant market. *V. Yash Raj Productions, Ajay Devgan*. It was believed that Yash Raj Films

³⁹ Karuna, K. M., & Vedashree, A. (2023). The Role and Efficiency of Competition Commission of India in Regulating Abuse of Dominant Position in the Digital Platforms.

⁴⁰ Parikh, J., & Majumdar, K. (2012). Competition Law and Consumer Law: Identifying the Contours in light of the case of *BelaIre owners association v. DLF*. *NUJS L. Rev.*, 5, 249.

had required single screen owners to agree to show movie B at Diwali in order to show movie A, which was sure to be a blockbuster, at Eid. A single-screen theatre would not be permitted to screen a single film if they did not consent to renting their space for both films. Out of 1407 single screens, 821 decided to broadcast Jab Tak Hai Jaan (B) and Ek Tha Tiger (A). However, the informant was unable to provide evidence of how the Indian film business was the pertinent market and how YRF held a dominant position in it. According to publicly available data, Bollywood itself published 107 and 95 films in 2011 and 2012, respectively. 30 CMIE includes Centre for Monitoring Indian Economy. Case No. 66 of 2012. 84 85. YRF only produced two to four films year out of this. Even in the Bollywood sector, this cannot be considered domination. Tie-in agreements in and of themselves do not violate Section 3(4)(a) of the Competition Act. The Act's prohibition of such an agreement is contingent upon whether it has a real or anticipated significant negative impact on Indian competition. According to the Commission, the deal hasn't made it harder for new competitors to enter the market or forced out current ones, nor has it had a significant impact on the benefits that viewers, the final consumer, receive. Multi-screen theatres generated 65% of income, and single screens accounted for 35%. Ajay Devgan filed an appeal with the Comp. Appellate Tribunal to have JTHJ stayed, however COMPAT denied the stay request.⁴¹

In the Eastman Kodak Co. v. Image Tech case before the Supreme Court. Kodak was the vendor of photocopiers in this instance. Kodak was not a major player in the photocopying machine market. At first, Kodak sold the spare parts to different dealers who would maintain the photocopiers and use the Kodak-supplied spare parts. This was in relation to the market for photocopier repair and services. Some of these service dealers began creating their own spare parts to fix the photocopiers, and Kodak discovered that some of them were providing better service than Kodak itself. As a result, Kodak modified its business strategy and requested that equipment manufacturers provide their products exclusively to Kodak. Following that, Kodak made use of offer replacement parts to clients who were able to utilize Kodak's facilities to repair the photocopiers or repair their own Kodak photocopiers. In this way, Kodak controlled about 85% of the service and 100% of the spare parts. As a result, many of the original Kodak dealers who had been providing maintenance for the Kodak photocopiers were forced out of business. Kodak was sued for antitrust by these dealers. The District Court decided in Kodak's favor. The dealers appealed the case to the Ninth Circuit Court of Appeals. According to the

⁴¹ Mahajan, H. (2020). The Contradictory Nature of Refusal to License/Deal IPR as an Anti- Competitive Agreement. *Supremo Amicus*, 20, 189.

Court of Appeals, Kodak's strategy contained a definite purpose to monopolize and was anti-competitive and discriminatory. Kodak took the case to the U.S. Supreme Court because it was unhappy with the Court of Appeals' ruling. The case's facts were taken into consideration by the Supreme Court. According to the Supreme Court's ruling, there were two markets: the photocopier market, in which Kodak was not a second market, and the aftermarket market, which included post-purchase services. Since spare parts would be provided along with the service, there was a tie-in situation in this after market. After then, the Supreme Court cited its own rulings about market power. The Supreme Court ruled in the Jefferson Parish case that market power is the ability to compel a buyer to take an action that he would not take in a market with competition.

CHAPTER 7- SUGGESTIONS

Ensuring fair market processes, stopping anti-competitive behaviour, and advancing consumer welfare are all part of improving India's competition law. Below are a few suggestions to assist you with this:

1. Making Enforcement Stronger:

To improve their capacity for enforcement and investigation, competition bodies like the Competition Commission of India (CCI) should be given more funding.

Simplify the complaint filing and investigation procedures to guarantee prompt case resolution.

2. Raising Awareness:

Through workshops, seminars, and outreach initiatives, inform companies, customers, and legal experts on competition law and its ramifications.

Provide easily comprehensible instructional resources and policies about adherence to competition laws.

3. Encouragement of Merger Control

Evaluate and revise merger control thresholds to include other transactions that can jeopardize competition.

Establish a mandated pre-merger notification system to make sure that mergers that might be anti-competitive are carefully considered before they are finalized.

4. Handling Issues Particular to a Sector:

Perform sector-specific research to pinpoint and resolve issues with competition in important sectors including e-commerce, healthcare, and telecommunications.

-Adapt laws and enforcement strategies to the particular difficulties that each industry faces.

5. Promoting Programs for Leniency and Whistle-blowers:

Companies who self-report anti-competitive activities should be given leniency in order to encourage them to come forward and assist with investigations.

To encourage those with insider knowledge of anti-competitive behaviour to report infractions in confidence, whistle-blower programs should be established.

6. Fostering Competition Advocacy: - Speak with regulators and legislators to support laws and policies that support competition.

Contribute to proposed laws and rules to make sure they support consumer welfare and competitiveness.

7. Strengthening Global Collaboration:

To successfully combat cross-border anti-competitive practices, increase collaboration with international competition authorities.

Engage in global forums and share best practices with other legal systems.

8. Consistent Evaluation and Editing:

Review competition laws and regulations on a regular basis to make sure they continue to be current and effective in handling new competition-related challenges.

Laws and regulations should be amended as necessary to fill up any gaps or improve upon any flaws found by these reviews.

India may improve the framework of its competition laws to better protect consumers, encourage competition, and boost economic growth by putting these recommendations into practice.

To increase the Competition Act of 2002's efficacy in India, a number of possible modifications could be taken into consideration. Among these modifications are:

1. Threshold Amendment: Examine and revise the merger control criteria to include a wider variety of transactions and guarantee that mergers that may be anti-competitive

- are properly examined.
2. **Leniency Program Introduction:** Provide a leniency program to encourage businesses engaged in cartels to come forward and work with the Competition Commission of India (CCI) in return for less fines.
 3. **Strengthening Enforcement Powers:** Give the CCI more authority to enforce the law, including the capacity to carry out dawn raids and apply harsher penalties for violations of competition laws.
 4. **Clarification of Prohibited Practices:** To eliminate uncertainty and make compliance easier, provide more precise guidelines on what behaviors, such as vertical constraints, abuse of dominance, and unfair trade practices, are considered anti-competitive.
 5. **Simplifying the Enforcement Process:** Simplify the enforcement procedure to ensure prompt settlement of competition issues by accelerating investigations and decision-making.
 6. **Enhanced penalty:** To effectively discourage anti-competitive behavior, think about raising the maximum penalty for breaking the competition statute.
 7. **Sector-specific rules:** Create sector-specific rules to handle competition concerns in important sectors where particular difficulties can arise, like digital platforms, e-commerce, and pharmaceuticals.
 8. **Promotion of Competition Advocacy:** To encourage a culture of competition and raise knowledge of its advantages, step up efforts to encourage competition advocacy among legislators, corporations, and consumers.
 9. **Capacity Building:** Make investments to increase the ability of competition agencies to enforce competition law more effectively by giving employees resources and training.
 10. **Whistleblower Protections:** To encourage those with firsthand knowledge of anti-competitive practices to come forward and expose infractions without fear of reprisal, introduce whistleblower protections.
 11. **Regular Review and Update:** Make that the Competition Act of 2002 and its implementing regulations are still applicable and efficient in tackling changing competition concerns in the Indian market by conducting regular reviews.

By putting these modifications into action, the Competition Act of 2002 may become even more effective, and the CCI will be able to better safeguard Indian consumers and competition.

India can improve its strategy for handling the misuse of power in a number of practical ways. Here are some recommendations:

1. Legal Framework Clarity:

To eliminate ambiguity and make enforcement easier, provide precise definitions and standards for what abuse of power under competition law entails.

2. Definition of the Market:

Enhance methods for identifying pertinent markets in order to precisely gauge market power and pinpoint leading companies across a range of industries.

3. Industry-specific Rules:

Create sector-specific laws to handle particular difficulties in fields like digital platforms, telecommunications, and critical services where dominance is common.

4. Proactive Law Enforcement:

Enhance the Competition Commission of India's (CCI) ability to enforce the law by proactively looking into and dealing with cases of abuse of dominance.

Regularly carry out sector investigations and market studies to find and fix structural problems that could be causing the abuse of dominance.

5. Policies and Programs for Compliance:

Provide thorough instructions on abusive behavior to inform companies and make it easier for them to abide by competition laws.

To make sure that their actions adhere to competition laws and regulations, dominant enterprises should be encouraged to create compliance systems.

6. Sanctions and Compensation:

Firms found guilty of abusing their dominance should face severe sanctions in order to discourage anti-competitive activity.

Restore competition in impacted markets by putting into practice efficient remedies like divestiture, behavioral remedies, and corrective actions.

7. Market Access and Interoperability:

Encourage market access for rivals and newcomers by removing obstacles to entry and promoting interoperability standards in industries where established businesses predominate.

8. Accountability and Transparency:

Increase decision-making procedures' transparency and give interested parties a chance to take part in enforcement actions.

Hold powerful companies responsible for their deeds by enforcing frequent reporting guidelines and putting in place oversight procedures.

9. Global Collaboration:

Work together with global competition authorities to share best practices, collect data, and successfully handle cases of abuse of dominance that occur beyond national borders.

10. Protection of Consumers:

When evaluating the effects of abusive behavior, give priority to the welfare of the consumer, especially when it comes to price gouging, unfair trading terms, and quality degradation.

-Give customers the tools to report cases of dominance abuse and offer channels for compensation and recourse.

By taking these actions, India may improve its strategy for combating abuses of power, encourage competition, safeguard the interests of consumers, and create a more vibrant and competitive marketplace.

CONCLUSION

Competition law is a confusing mix of a country's monetary, regulatory, and regulatory elements designed to foster competition in the economy. Contest regulation aims to protect the economy's seriousness since competition is seen as essential to financial outcomes. Contest regulation is based on the idea that competition benefits an economy and acts as a safeguard against the misuse of financial power. By all accounts, the need for a rivalry regulation is on the agenda, and the link between contest regulation and financial improvement that has been emphasized repeatedly seems to be reasonably certain. In order to prevent serious arrangements from abusing their power, prevent organizations from abusing their dominance, and prevent blends from harming competition in the economy, it seems imperative that India implement competition regulation. The Opposition Act of 2002 was created by the Indian Parliament, and this should not be forgotten. The preface and the statement of the law's justifications and reasoning further show that broad financial development objectives were taken into account when the bill was passed. In recent years, the number of wards with a contest law has increased

from about 25—of which few were really implemented—to almost 100. Achieving fundamentally a healthy level of uniformity and union in the use of competition legislation is important as financial movement gradually transcends public borders and purviews, applying contest regulation to organizations and acting outside their boundaries. Even if the basic rules governing contest regulation remain the same, the objectives or outcomes cannot vary depending on the location. In non-industrial countries, a strong rivalry regulation system would often be resolved by a dynamic recognition of the contest strategy's aims. Even though the way rivalry regulation is implemented, even at the beginning of the financial turn of events, isn't terrible in and of itself, the way developed nations implement it can completely destroy its true benefits. In this way, contest regulation is a perplexing legislative process that the Indian government and the Opposition Commission should have the chance to understand in light of the unique requirements and conditions of the Indian economy and implement as necessary.

It is anticipated that an amendment would soon be made to section 4 of the Act to introduce the idea of collective domination. The Indian Parliament is presently considering the Competition Amendment Bill, 2012. Since businesses that might not be seen as dominating on their own may now be examined together, the inclusion of collective dominance will expand the CCI's authority to look into potential abusive business practices. The precedents make it clear that the CCI's evidentiary criteria for demonstrating dominance and abusive behavior need to be clarified and improved, especially when it comes to defining the relevant market and applying predatory pricing. In order to make sure that its decisions are supported by both the law and the principles of natural justice, it is anticipated that the CCI will establish penalty guidelines, concentrate on reasoned orders, and rely on internationally recognized competition law principles as India's competition jurisprudence develops.

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