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ABUSE OF DOMINANT POSITION UNDER THE COMPETITION ACT, 2002: A STUDY OF INDIAN LAW AND JUDICIAL DECISIONS

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ABSTRACT

Few areas of Indian competition law show so clearly where doctrine, economics and commercial reality come together as the control of abuse of dominance. The Competition Act, 2002 does not, in Section 4, treat market power as wrongful in itself; what it penalises is the misuse of that power. The paper studies how that principle has been read and put into practice since the provision came into operation in 2009. Reading the statute alongside orders of the Competition Commission of India (CCI) and the rulings of the National Company Law Appellate Tribunal (NCLAT) and the Supreme Court, it argues that enforcement has shifted from a form-based approach to Section 4(2) towards an effects-based inquiry, a shift the Supreme Court endorsed in *CCI v Schott Glass India Pvt Ltd* (2025). The paper then considers digital markets, the 2023 amendments on global-turnover penalties, settlements and commitments, and the unsettled future of ex ante digital regulation. It closes with reforms aimed at predictability, speed and proportionality.

Keywords: Abuse of dominance; Competition Act, 2002; Section 4; Competition Commission of India; effects-based analysis; digital markets.

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Chapter-1

Introduction

Every market economy tolerates winners. A firm that offers a better product, prices sharply or builds a larger network will, over time, win a bigger share of its market, and competition law has no quarrel with that. Its concern begins when a firm that is already powerful uses that power to shut rivals out, or to extract terms from customers that no competitive market would sustain. India's answer to that concern is Section 4 of the Competition Act, 2002 (the Act), which forbids any enterprise or group from abusing a dominant position and sets out the kinds of conduct treated as abuse.[1]

Section 4 is brief, yet the questions it raises are far from simple. How is dominance to be recognised in a country where markets range from regional coal depots to nationwide app stores? When does a harsh contract term become an "unfair condition", and when is it merely a hard bargain? Should a regulator condemn conduct because it falls within the list in Section 4(2), or only after it has shown harm to competition? The CCI, the appellate tribunal and the Supreme Court have grappled with them for over a decade, and the answers have changed over time. Scholars describe Indian practice as traditionally form-based, with a visible movement towards an effects-based approach.[2]

The subject is also timely. In May 2025 the Supreme Court gave its first detailed ruling on Section 4, holding that every inquiry must include an effects-based analysis.[3] Meanwhile, the 2023 amendments to the Act allow penalties to be computed on global turnover and open the door to settlements and commitments in dominance cases.[4] And the most prominent dominance disputes today involve digital platforms rather than cement or coal. This paper therefore reads the law as it stands at the end of October 2026 and tests it against the decisions that gave it shape.

1.1 Statement of the Problem

Section 4(2) enumerates abuses in categorical words such as "unfair", "discriminatory" and "denial of market access", yet the Act's declared purpose is to protect competition and

[1] Competition Act 2002, s 4(1)–(2).

[2] Payal Malik, Neha Malhotra, Ramji Tamarappoo and Nisha Kaur Uberoi, 'Legal Treatment of Abuse of Dominance in Indian Competition Law: Adopting an Effects-Based Approach' (2019) 54(2) *Review of Industrial Organization* 435.

[3] *Competition Commission of India v Schott Glass India Pvt Ltd* 2025 INSC 668 (SC, 13 May 2025), Civil Appeal No 5843 of 2014.

[4] Competition (Amendment) Act 2023, as brought into force in stages; the provisions on settlement, commitment and global-turnover penalties were notified by the Ministry of Corporate Affairs on 5 March 2024.

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consumers, not individual competitors. The text therefore invites two readings: a form-based one, in which listed conduct is enough, and an effects-based one, in which harm must be shown. Commentators have long worried that a form-based reading could penalise "unfair" behaviour that has no bearing on competition.[5] At the same time, the enforcement record shows long delays, uneven reasoning in digital cases and fresh uncertainty after the 2023 amendments. The problem, in short, is whether Indian law on abuse of dominance is now predictable, economically coherent and quick enough to work in the markets it must regulate.

1.2 Research Objectives

1. To trace the statutory framework of Section 4 and the concepts of dominance and relevant market that govern it.
2. To analyse the forms of abuse listed in Section 4(2) through decisions of the CCI, the NCLAT and the Supreme Court.
3. To examine the law's response to digital markets and the 2023 amendments on penalties and settlements.
4. To identify weaknesses in the present framework and to propose workable reforms.

1.3 Research Questions

1. What must a complainant prove to establish an abuse of dominant position under Section 4 as the law now stands?
2. How have the CCI and the courts treated exploitative and exclusionary conduct?
3. Has the Supreme Court's insistence on effects changed enforcement standards?
4. Are the current penal and remedial provisions, and the proposed digital regime, adequate?

1.4 Hypothesis

Although Section 4(2) is drafted in a form-based manner, Indian law on abuse of dominance has moved decisively towards an effects-based standard; however, institutional delay and the absence of clear guidance on objective justification and digital conduct continue to limit its effectiveness.

1.5 Research Methodology and Scope

The study is doctrinal. Primary sources, namely the Act, regulations, CCI orders and the

[5] Aditya Bhattacharjea, 'India's New Competition Law: A Comparative Assessment' (2008) 4(3) *Journal of Competition Law and Economics* 609.

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judgments of the tribunal and the Supreme Court, are read alongside peer-reviewed scholarship in competition law and economics. Cases were chosen purposively: decisions that settled a point of principle or carried major penalties were preferred to routine closure orders. The paper confines itself to Section 4; cartels under Section 3 and merger control are left aside except where a decision on those provisions informs the analysis. Where journal scholarship has not yet caught up with developments of 2025–26, the discussion rests on the orders themselves, and the conclusions drawn there are correspondingly tentative.

1.6 Structure of the Paper

Chapter 2 sets out the statutory and conceptual framework, including dominance, the relevant market, the objectives of the Act and the path a case follows. Chapter 3 analyses the five heads of abuse in Section 4(2). Chapter 4 reviews landmark Commission orders and the data they yield, and Chapter 5 turns to the Supreme Court and the tribunal. Chapter 6 takes up digital markets, Chapter 7 deals with penalties and settlements, and Chapter 8 with the challenges that remain. Chapter 9 concludes and offers recommendations, followed by the bibliography in Chapter 10. Each chapter deals with a distinct question, and cross-references are used in place of repetition.

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Chapter-2

Statutory and Conceptual Framework

2.1 From the MRTP Act to the Competition Act

The earliest Indian law to deal with market power was the Monopolies and Restrictive Trade Practices Act, 1969 (MRTP Act). It was concerned less with competition than with the concentration of economic power in a planned economy, and its tools suited that purpose.[6] When the economy opened in the 1990s the statute looked out of place. A new law was recommended in 2000 by the High Level Committee on Competition Policy and Law (the Raghavan Committee); Parliament passed the Competition Act in 2002, and Section 66 repealed the MRTP Act.[7] The Act received Presidential assent in January 2003, but a challenge to the structure and composition of the Commission delayed its working, and Section 4 became operational only in May 2009.[8]

The delay is more than a historical detail. The drafters drew heavily on Article 102 of the Treaty on the Functioning of the European Union (TFEU), but the institutions meant to apply the new provision had little experience with the economic criteria it demanded.[9] Much of what follows in this paper can be read as the story of an enforcement culture learning, case by case, to handle those criteria.

2.2 The Anatomy of Section 4

Section 4(1) is a one-line prohibition: an enterprise or group may not abuse its dominant position. Section 4(2) then lists five situations that amount to abuse: (a) imposing, directly or indirectly, an unfair or discriminatory condition or price (predatory pricing included) on the purchase or sale of goods or services; (b) restricting production, the supply of services, the market for them, or technical or scientific development, to the prejudice of consumers; (c) engaging in practices that result in denial of market access; (d) making a contract conditional on supplementary obligations unconnected with what the contract is about; and (e) using dominance in one relevant market to enter or protect another relevant market.[10] The Explanation

[6] Aditya Bhattacharjea, 'India's New Competition Law: A Comparative Assessment' (2008) 4(3) *Journal of Competition Law and Economics* 609.

[7] Government of India, *Report of the High Level Committee on Competition Policy and Law* (2000); Competition Act 2002, s 66.

[8] *Brahm Dutt v Union of India* (2005) 2 SCC 431; Competition Act 2002, s 4 (brought into force in May 2009).

[9] Kalyani Singh, 'Abuse of Dominance Under the Competition Act, 2002: Developments and Trends' (*CPI Antitrust Chronicle*, March 2014); Aditya Bhattacharjea, 'India's New Competition Law: A Comparative Assessment' (2008) 4(3) *Journal of Competition Law and Economics* 609.

[10] Competition Act 2002, s 4(2)(a)–(e).

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supplies the definitions of "dominant position" and "predatory price".[11]

Two features of the text matter. First, the list has been treated as the exhaustive set of heads under which abuse can be alleged, which is why the early practice of the CCI has been called form-based.[12] Second, the provision speaks of an "enterprise" as defined in Section 2(h) and of a "group", so that conduct is attributed to the economic unit and not merely to the legal entity that signed the contract.[13]

2.3 Dominance as Capacity, Not Size

Under the Explanation, dominance means a position of strength in the relevant market in India that lets an enterprise act independently of competitive forces, or influence its competitors, its consumers or the market to its own advantage.[14] The definition is functional. It asks what the firm can do, not how large it is. Section 19(4) accordingly requires the CCI to weigh many factors, among them market share, the enterprise's size and resources, how large and important its rivals are, its economic power and commercial advantages, vertical integration, consumer dependence, any statutory dominance, barriers to entry, buyer power on the other side, the structure and size of the market, social obligations and costs, and anything else that is relevant.[15] Market share is only where the analysis begins.[16]

Early on, the CCI made the foundational point that holding a dominant position is no offence; it is abuse that the law forbids.[17] One gap deserves mention. Because Section 4 speaks of an enterprise or group, it is naturally read as a single-firm provision. A position of strength held jointly by independent oligopolists has no obvious home in the text, a limitation to which Chapter 9 returns.

2.4 The Relevant Market as Gateway

Dominance cannot exist in the abstract; it is always dominance in a defined market.[18] The Act defines the relevant market by reference to the relevant product market, the relevant geographic

[11] Competition Act 2002, s 4, Explanation (a)–(b).
[12] Kalyani Singh, 'Abuse of Dominance Under the Competition Act, 2002: Developments and Trends' (*CPI Antitrust Chronicle*, March 2014).
[13] Competition Act 2002, ss 2(h), 4(1).
[14] Competition Act 2002, s 4, Explanation (a).
[15] Competition Act 2002, s 19(4)(a)–(m).
[16] Zerick Dastur and Aashni Dalal, 'Can there be Two Kings of the Jungle? The Delineation of "Dominance" under the Competition Act, 2002' (*Bombay Chartered Accountant Journal*, November 2017).
[17] *Neeraj Malhotra, Advocate v North Delhi Power Ltd* (CCI, Case No 6 of 2009).
[18] Zerick Dastur and Aashni Dalal, 'Can there be Two Kings of the Jungle? The Delineation of "Dominance" under the Competition Act, 2002' (*Bombay Chartered Accountant Journal*, November 2017).

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market, or both, and Sections 19(6) and 19(7) list the factors. For geography they include regulatory trade barriers, transport costs, language and consumer preferences; for product they include physical characteristics, price, consumer preference and whether specialised producers exist.[19] Economic tools, the hypothetical monopolist test for instance, can assist, but they supplement the statutory factors rather than replace them.

Because the Explanation requires dominance "in India", worldwide strength alone is not enough; what matters is power in a market that includes India, with Section 32 extending the Commission's reach to conduct abroad that has an effect on Indian markets.[20] The result is a three-stage inquiry: define the relevant market, assess dominance within it, and only then ask whether the impugned conduct amounts to abuse.[21]

2.5 Statutory Objectives as an Interpretive Anchor

Under Section 18 the CCI's duties are to eliminate practices harmful to competition, to promote and sustain competition, to protect consumers' interests, and to ensure freedom of trade for other market participants in India.[22] The list matters for Section 4 because it supplies the purpose against which each head of abuse must be read. A clause that speaks of "unfairness" is easier to confine when the Act's evident aim is to preserve the process of competition and the welfare of consumers rather than the comfort of any particular rival. A purposive reading of this kind is consistent with the Supreme Court's refusal in *Schott Glass* to treat dominance plus listed conduct as sufficient, and it answers, at least in part from within the statute itself, the early criticism that the fairness language might punish behaviour irrelevant to competition.[23]

2.6 How a Section 4 Case Proceeds

A Section 4 case usually begins with information filed by a competitor, customer or other affected person, or with a reference from the government or a statutory authority; the Commission may also act upon its own knowledge or information, as it did in the WhatsApp matter.[24] If the CCI forms a prima facie opinion that there is a contravention it directs the

[19] Competition Act 2002, ss 2(r)–(t), 19(5)–(7).
[20] Kalyani Singh, 'Abuse of Dominance Under the Competition Act, 2002: Developments and Trends' (*CPI Antitrust Chronicle*, March 2014); Competition Act 2002, s 32.
[21] Zerick Dastur and Aashni Dalal, 'Can there be Two Kings of the Jungle? The Delineation of "Dominance" under the Competition Act, 2002' (*Bombay Chartered Accountant Journal*, November 2017).
[22] Competition Act 2002, s 18.
[23] Aditya Bhattacharjea, 'India's New Competition Law: A Comparative Assessment' (2008) 4(3) *Journal of Competition Law and Economics* 609.
[24] Competition Act 2002, s 19(1).

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Director General to investigate; if not, it closes the matter.[25] After the Director General reports, the parties are heard and the Commission passes a final order under Section 27. Section 53B provides for an appeal to the NCLAT, and Section 53T for a further appeal to the Supreme Court.[26] Each stage has produced its own body of law, and the sequence also helps explain why a single dispute can occupy more than a decade: most stages carry some route to challenge.

[25] Competition Act 2002, s 26(1)–(2).
[26] Competition Act 2002, ss 27, 53B, 53T.

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Chapter-3

Forms of Abuse Listed in Section 4(2)

3.1 Exploitative and Exclusionary Conduct

Competition lawyers divide abuse into two families. Exploitative abuse harms customers or suppliers directly, through oppressive terms or excessive prices. Exclusionary abuse harms them indirectly, by weakening rivals or keeping them out. Section 4 uses neither label, yet Indian practice treats Section 4(2)(a) as the home of exploitative conduct and clauses (b) to (e) as the home of exclusion.[27] On this point Indian law is bolder than some jurisdictions, and boldness is precisely what has attracted criticism: the concern that an Act aimed at competition might end up penalising "unfair" behaviour that has no bearing on it.[28]

3.2 Unfair or Discriminatory Terms and Pricing

Clause (a) deals with unfair or discriminatory conditions and, as a separate limb, with unfair or discriminatory prices, predatory pricing among them. According to the Explanation, a predatory price is a sale below cost (as fixed by regulations) made in order to reduce competition or drive out competitors, which makes intent part of the definition.[29] The clause is the most frequently invoked head. It underpinned the real-estate decision in *DLF*, where lopsided clauses in apartment buyer agreements were challenged, and it has also featured in digital cases on take-it-or-leave-it terms.[30] Yet the Supreme Court's judgment in *Schott Glass* marks the limits of the clause: a neutral, volume-based target-discount scheme with an objective justification was held to be neither discriminatory nor exclusionary.[31]

3.3 Limiting Production, Markets and Technical Development

Clause (b) targets conduct that limits production, services, the market for them, or technical and scientific development, but only "to the prejudice of consumers". That qualifier gives it a built-in harm element that clause (a) lacks. The clause has been engaged where dominant firms restrict the availability of inputs or technology; in the *Google Android* matter, for example, the CCI examined contractual restrictions on the development of competing Android versions,

[27] Kalyani Singh, 'Abuse of Dominance Under the Competition Act, 2002: Developments and Trends' (*CPI Antitrust Chronicle*, March 2014).
[28] Aditya Bhattacharjea, 'India's New Competition Law: A Comparative Assessment' (2008) 4(3) *Journal of Competition Law and Economics* 609.
[29] Competition Act 2002, s 4(2)(a)(i)–(ii) and Explanation (b).
[30] *Belaire Owners' Association v DLF Ltd* (CCI, Case No 19 of 2010, order dated 12 August 2011).
[31] *Competition Commission of India v Schott Glass India Pvt Ltd* 2025 INSC 668 (SC, 13 May 2025), Civil Appeal No 5843 of 2014.

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commonly called forks.[32]

3.4 Denial of Market Access

Clause (c) prohibits "practices resulting in denial of market access in any manner". The wording is effect-oriented: the practice must *result* in denial. This gives the text an anchor for an effects test well before the Supreme Court addressed the matter, and it has been used flexibly, from restrictions on independent repairers to platform policies that disadvantage rivals. The NCLAT upheld a finding under this clause against WhatsApp in 2025.[33]

3.5 Supplementary Obligations and Tying

Clause (d) prohibits making a contract depend on supplementary obligations which, by nature or by commercial usage, are unconnected to its subject. It is India's tying provision. Its limits were drawn sharply in *Schott Glass*, in which the Supreme Court dismissed the tying allegation because the two types of glass tubing in question were not economically distinct products.[34] In contrast, the CCI concluded that Google's practice of making the pre-installation of its application suite a condition of access to the Android operating system fell squarely within the clause.[35]

3.6 Leveraging Across Markets

Clause (e) bars an enterprise from leveraging dominance in one relevant market to enter or shield another. It is the most demanding head, since it requires the CCI to define two markets and to show a link between them. In *Schott Glass* the Supreme Court used it to explain the test for margin squeeze, a comparatively under-litigated theory in India.[36] In the WhatsApp matter the NCLAT set aside the CCI's finding of leveraging into online display advertising while upholding the findings under clauses (a)(i) and (c), a reminder that cross-market theories require the closest evidence.[37] In practice the same conduct is often charged under several heads at once, which makes the classification less important than the harm that sits behind it.

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[32] Competition Act 2002, s 4(2)(b); *Umar Javeed v Google LLC* (CCI, Case No 39 of 2018, order dated 20 October 2022).
[33] Competition Act 2002, s 4(2)(c); *Meta Platforms Inc v Competition Commission of India* (NCLAT, order dated 4 November 2025).
[34] *Competition Commission of India v Schott Glass India Pvt Ltd* 2025 INSC 668 (SC, 13 May 2025), Civil Appeal No 5843 of 2014.
[35] *Umar Javeed v Google LLC* (CCI, Case No 39 of 2018, order dated 20 October 2022).
[36] *Competition Commission of India v Schott Glass India Pvt Ltd* 2025 INSC 668 (SC, 13 May 2025), Civil Appeal No 5843 of 2014.
[37] *Meta Platforms Inc v Competition Commission of India* (NCLAT, order dated 4 November 2025), modifying the order of the CCI in Suo Motu Case No 1 of 2021 dated 18 November 2024.

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Chapter-4

The Enforcement Record: Landmark Commission Orders

Statutes are best understood through their application. Table 1 collects the principal Section 4 decisions discussed in this paper, and Figure 1 compares the penalties imposed. Three early orders set the tone of the first decade and are taken up first.

4.1 Real Estate: the DLF Order

The CCI's 2011 order against DLF was among the first to show that Section 4 could reach contractual terms imposed on consumers. The Commission found DLF dominant in the market for high-end residential development in Gurgaon, treated the one-sided clauses in its apartment buyer agreements as unfair conditions, and fined it Rs 630 crore.[38] The order confirmed that exploitative conduct, even without exclusionary effects, falls within the Act.

4.2 Natural Resources: the Coal India Order

In December 2013 the CCI held Coal India Ltd liable for unfair conditions in the fuel supply agreements it signed with power producers and fined it about Rs 1,773 crore, at that time the heaviest penalty the Commission had imposed.[39] The case showed that state-owned monopolists enjoy no special exemption, but it also showed how much depends on market definition, since a narrowly drawn market produces a more easily established dominance.

4.3 Aftermarkets: Automobile Spare Parts

The 2014 order in *Shamsher Kataria v Honda Siel Cars India Ltd* dealt with curbs on the availability of spare parts and diagnostic tools to independent repairers. Treating each manufacturer as dominant in the aftermarket for its own brand, the CCI found contraventions of Sections 3(4) and 4 and imposed aggregate penalties exceeding Rs 2,500 crore on fourteen manufacturers.[40] The brand-specific aftermarket was a conceptually important step because it located dominance in a captive downstream market.

[38] *Belaire Owners' Association v DLF Ltd* (CCI, Case No 19 of 2010, order dated 12 August 2011); Kalyani Singh, 'Abuse of Dominance Under the Competition Act, 2002: Developments and Trends' (*CPI Antitrust Chronicle*, March 2014).

[39] *Coal India Ltd* (CCI, order dated 9 December 2013); Kalyani Singh, 'Abuse of Dominance Under the Competition Act, 2002: Developments and Trends' (*CPI Antitrust Chronicle*, March 2014).

[40] *Shamsher Kataria v Honda Siel Cars India Ltd* (CCI, Case No 3 of 2011, order dated 25 August 2014).

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Table 1: Landmark Section 4 decisions

Case (forum)	Year	Core finding	Outcome
Belaire Owners' Association v DLF Ltd (CCI)	2011	Unfair conditions in apartment buyer agreements; s 4(2)(a)	Penalty of Rs 630 crore
Coal India Ltd (CCI)	2013	Unfair terms in fuel supply contracts	About Rs 1,773 crore
Shamsher Kataria v Honda Siel Cars India Ltd (CCI)	2014	Restricted access to spare parts and diagnostic tools; ss 3(4) and 4	Over Rs 2,500 crore across 14 manufacturers
Matrimony.com v Google LLC (CCI)	2018	Self-preferencing in web search	About Rs 136 crore
Umar Javeed v Google LLC (CCI)	2022	Mandatory pre-installation; restrictions on Android forks	Rs 1,337.76 crore; largely upheld by NCLAT (2023)
WhatsApp privacy policy (CCI; NCLAT)	2024–25	Take-it-or-leave-it data terms; ss 4(2)(a)(i), (c)	Rs 213.14 crore upheld; leveraging finding and data ban set aside
CCI v Schott Glass India Pvt Ltd (SC)	2025	Discounts, tying, margin squeeze; effects analysis mandatory	Rs 5.66 crore penalty not sustained

Source: compiled by the author from the orders and judgments cited in the footnotes to this chapter and to Chapters 5 and 6.

4.4 What the Record Shows

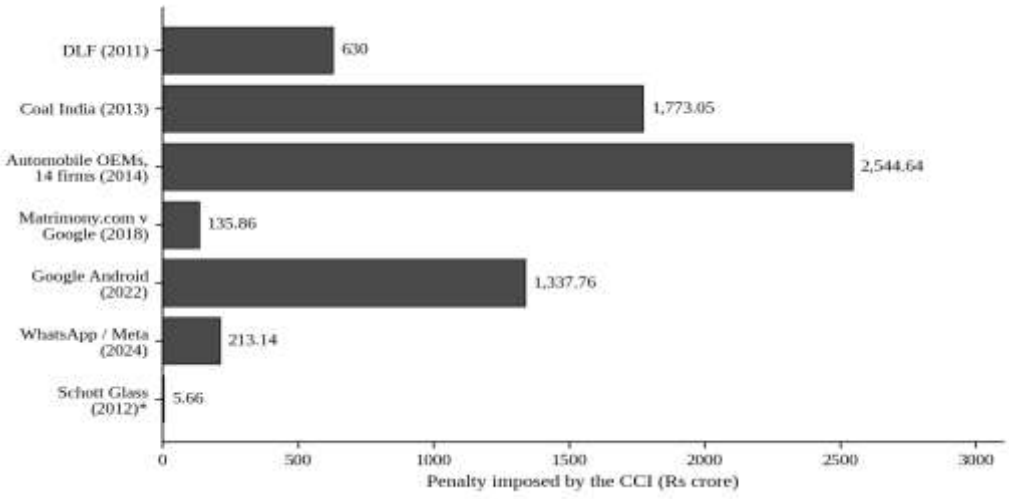


Figure 1: Penalties imposed by the CCI in selected Section 4 matters (Rs crore). *The Schott Glass penalty was not sustained on appeal.

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Three patterns emerge. First, penalties vary by almost three orders of magnitude, from Rs 5.66 crore in *Schott Glass* to more than Rs 2,500 crore across the automobile manufacturers, and the headline figures say little about how they were reached. Second, several orders were modified on appeal: the *Schott Glass* penalty was set aside, and the WhatsApp order was trimmed. Third, the passage of time is striking. The CCI decided *Schott Glass* in March 2012, and the Supreme Court gave its final judgment in May 2025, more than thirteen years later. A doctrine that takes this long to settle cannot guide business conduct in real time.

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Chapter-5

Judicial Interpretation by the Supreme Court and Tribunal

5.1 Defining the Commission's Role: the SAIL Decision

The first major judicial statement came in *CCI v Steel Authority of India Ltd*, a case that began with allegations that SAIL had entered into an exclusive rail supply arrangement with Indian Railways. The Court did not rule on abuse; it settled a question of procedure, holding that the Commission's prima facie opinion under Section 26(1) is administrative in nature, needs no prior hearing of the enterprise, and cannot itself be appealed.[41] The ruling cleared the way for investigations to proceed without being derailed at the threshold, but it also placed the weight of fairness on the later stages of the inquiry.

5.2 Sharing Space with Sectoral Regulators: Bharti Airtel

In *CCI v Bharti Airtel Ltd* (2018), arising from complaints about interconnection by Reliance Jio, the Supreme Court ruled that a sector regulator's mandate does not oust the Commission's jurisdiction, but that issues within the telecom regulator's domain should first be decided by that regulator before the CCI proceeds.[42] The decision matters for abuse of dominance because many dominant firms sit in regulated sectors, such as telecom, power, aviation and finance, and the Act's later amendment of Section 18, which enables memoranda with statutory authorities, builds on the same coordination logic.[43]

5.3 Proportionality in Penalties: Excel Crop Care

Excel Crop Care Ltd v CCI arose under Section 3, but its reasoning on penalties applies to Section 4 too. The Court accepted that a penalty must be proportionate and, on the facts before it, linked to turnover from the products or services affected by the contravention, not the firm's whole turnover.[44] That principle is now in tension with the 2023 amendment, a point examined in Chapter 7.

5.4 The Turning Point: CCI v Schott Glass

The Supreme Court's decision of 13 May 2025 is the most important judicial statement on Section 4 so far. Schott India, a dominant manufacturer of glass tubing, had been found by the

[41] *Competition Commission of India v Steel Authority of India Ltd* (2010) 10 SCC 744; Competition Act 2002, s 26(1).
[42] *Competition Commission of India v Bharti Airtel Ltd* (2019) 2 SCC 521.
[43] Competition Act 2002, s 18, as amended by the Competition (Amendment) Act 2023.
[44] *Excel Crop Care Ltd v Competition Commission of India* (2017) 8 SCC 47.

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CCI in March 2012 to have abused its position through a target-discount scheme, discriminatory discounts to a related purchaser, tying and refusal to supply, and was fined Rs 5.66 crore, roughly 4 per cent of its average turnover. The appellate tribunal set the order aside, and the Supreme Court, by a bench of Justices Vikram Nath and Prasanna B Varale, dismissed the appeals.[45]

The Court's reasoning can be divided into five strands. First, Section 4 does not prohibit dominance as such, only its abuse. It found the slabbed, volume-based discount scheme neutral and objectively justified. It rejected tying because the two products were not economically distinct. It explained the test for margin squeeze under Section 4(2)(e). And it held that an effects-based analysis is a mandatory part of every Section 4 inquiry, criticising the CCI for relying on untested statements and pre-2009 correspondence without any credible assessment of harm.[46] In effect, the Court read into a form-based text a requirement that abuse be shown to cause, or be likely to cause, an appreciable adverse effect on competition, and it accepted that objective justification belongs within the inquiry.

The judgment also touched on process, including the circumstances in which cross-examination of witnesses may be necessary, so that findings of abuse rest on tested evidence rather than untested statements. For a regulator exercising penal powers, that emphasis on a fair and evidence-based hearing is as significant as the substantive holdings.[47]

5.5 Assessing the Shift

The scholarship had anticipated this direction. Writing in 2019, a group of authors found India "traditionally" form-based but detected an encouraging trend towards effects analysis.[48] *Schott Glass* converts a trend into a binding rule. Comparative research also suggests that judicial review is one of the forces that determine whether competition authorities adopt effects-based standards at all, and the Indian experience fits that insight: it was an appellate court, not the regulator, that moved the standard.[49] What the judgment leaves open is how much economic

[45] *Competition Commission of India v Schott Glass India Pvt Ltd* 2025 INSC 668 (SC, 13 May 2025), Civil Appeal No 5843 of 2014; *Kapoor Glass India Pvt Ltd v Schott Glass India Pvt Ltd* (CCI, order dated 29 March 2012).
[46] *Competition Commission of India v Schott Glass India Pvt Ltd* 2025 INSC 668 (SC, 13 May 2025), Civil Appeal No 5843 of 2014.
[47] *Competition Commission of India v Schott Glass India Pvt Ltd* 2025 INSC 668 (SC, 13 May 2025), Civil Appeal No 5843 of 2014.
[48] Payal Malik, Neha Malhotra, Ramji Tamarappoo and Nisha Kaur Uberoi, 'Legal Treatment of Abuse of Dominance in Indian Competition Law: Adopting an Effects-Based Approach' (2019) 54(2) *Review of Industrial Organization* 435.
[49] Yannis Katsoulacos, Svetlana Avdasheva and Svetlana Golovanova, 'Determinants of the (Slow) Development of Effect-Based Competition Enforcement: Testing the Impact of Judicial Review on the Choice of Legal Standards by Competition Authorities' (2021) 21(1) *Journal of Industry, Competition and Trade* 103.

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evidence will suffice in a given case, and whether the CCI will have the capacity to produce it, questions taken up in Chapter 8.

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Chapter-6

Digital Markets and Contemporary Developments

6.1 Why Platforms Strain Section 4

Digital platforms test every assumption on which Section 4 was built. Many services are priced at zero, which unsettles price-based market definition. Network effects tend to tip markets towards a few players. Data, rather than price, often becomes the currency of the bargain. And a single firm may sit in several linked markets at once, so that leveraging theories, the hardest to prove, become central. The statute's vocabulary of "price" and "condition" has had to stretch to accommodate these features.

6.2 The Google Decisions

The CCI's 2018 order in *Matrimony.com v Google LLC* found that Google had abused its dominance in online web search and search advertising by favouring its own services, and imposed a penalty of about Rs 136 crore.[50] The larger blow fell in October 2022 when, in *Umar Javeed v Google LLC*, the Commission held Google to be dominant in the Indian markets for licensable mobile operating systems and Android app stores, ruled that compulsory pre-installation of its application suite and curbs on Android forks were abusive, and imposed Rs 1,337.76 crore.[51] The NCLAT confirmed the abuse findings in March 2023 while interfering with some of the directions, and the matter has travelled further in appeal; the author has not located a final Supreme Court determination at the time of writing.[52]

6.3 Meta and WhatsApp

In *Suo Motu Case No 1 of 2021* the CCI looked into WhatsApp's 2021 privacy policy update and in November 2024 concluded that users faced a take-it-or-leave-it choice on data sharing, an unfair condition that also denied market access. It levied a penalty of Rs 213.14 crore and prohibited, for five years, the sharing of certain data with Meta companies for advertising.[53] On appeal, the NCLAT in November 2025 upheld the penalty and the findings under Sections 4(2)(a)(i) and 4(2)(c), but set aside the finding of leveraging under Section 4(2)(e) and the five-

[50] *Matrimony.com Ltd v Google LLC* (CCI, Case Nos 7 and 30 of 2012, order dated 8 February 2018).
[51] *Umar Javeed v Google LLC* (CCI, Case No 39 of 2018, order dated 20 October 2022).
[52] *Google LLC v Competition Commission of India* (NCLAT, Competition Appeal (AT) No 1 of 2023, March 2023).
[53] *Updated Terms of Service and Privacy Policy for WhatsApp Users* (CCI, Suo Motu Case No 1 of 2021, order dated 18 November 2024).

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year ban.[54] Meta and WhatsApp are reported to have approached the Supreme Court. Whatever the final outcome, the case establishes that consent and data practices can be examined through the lens of dominance, even as it shows the difficulty of proving cross-market harm.

6.4 The Legislative Response: Ex Ante Regulation

Parliament's Standing Committee on Finance, in its fifty-third report, urged a fresh look at anti-competitive practices by large technology firms.[55] In February 2023 the Ministry of Corporate Affairs set up a Committee on Digital Competition Law; its report, together with a Draft Digital Competition Bill, 2024, proposed ex ante obligations for "systemically significant" digital enterprises, an approach patterned on the European Union's Digital Markets Act.[56] Earlier, the Competition Law Review Committee had urged caution in regulating the digital economy while it was still at a nascent stage.[57]

The Bill's path since has been uneven. The Ministry told Parliament in March 2025 that it was considering a market study before proceeding, and press reports describe the draft as having been withdrawn in 2025 for that purpose, followed by renewed parliamentary support for an ex ante model in August 2026 and a reported revision with narrower thresholds.[58] As of this writing no Digital Competition Act is in force, and Section 4 remains the only tool for challenging platform conduct.

6.5 A Comparative Lens: The European Experience

Because Section 4 was modelled on Article 102 of the TFEU, European experience is the natural comparator. Authors who have studied the two systems note that the European Union has itself been moving towards a more effects-based approach in abuse cases, weighing pro-competitive and anti-competitive effects and efficiency justifications.[59] Platform enforcement offers an example. The European Commission's 2017 decision against Google for favouring its own comparison-shopping service was upheld by the Court of Justice in September 2024,

[54] *Meta Platforms Inc v Competition Commission of India* (NCLAT, order dated 4 November 2025).
[55] Parliamentary Standing Committee on Finance, *Anti-Competitive Practices by Big Tech Companies* (Fifty-Third Report, 2022).
[56] Ministry of Corporate Affairs, *Report of the Committee on Digital Competition Law* (2024); Regulation (EU) 2022/1925 (Digital Markets Act).
[57] Ministry of Corporate Affairs, *Report of the Competition Law Review Committee* (2019).
[58] Rajya Sabha, Unstarred Question No 1335, answered 11 March 2025 (Ministry of Corporate Affairs). Developments after that date are as reported in the press.
[59] Payal Malik, Neha Malhotra, Ramji Tamarappoo and Nisha Kaur Uberoi, 'Legal Treatment of Abuse of Dominance in Indian Competition Law: Adopting an Effects-Based Approach' (2019) 54(2) *Review of Industrial Organization* 435.

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confirming that a dominant platform can abuse its position by favouring its own services.[60] The CCI had reached a comparable conclusion on search bias in 2018. The difference is institutional: Europe now pairs Article 102 with the Digital Markets Act, whereas India has yet to decide whether to do the same. The comparison is a warning against assuming that case law alone can regulate platforms.

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[60] Commission Decision of 27 June 2017, Case AT.39740 *Google Search (Shopping)*; Case C-48/22 P *Google and Alphabet v Commission* (CJEU, 10 September 2024).

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Chapter-7

Penalties, Settlements and Commitments

7.1 Penalties and Remedial Orders

Under Section 27, after finding a contravention of Section 4, the CCI may direct the enterprise to cease and desist, levy a penalty of up to ten per cent of its average turnover over the three preceding financial years, direct modification of agreements, and issue any other order it considers appropriate. Section 28 additionally permits it to order the division of an enterprise enjoying a dominant position, a structural remedy not yet used in practice.[61]

The 2023 amendment changed the penalty base. The Act now provides that "turnover" for the purposes of Section 27(b) means global turnover from all products and services, and the CCI's Determination of Monetary Penalty Guidelines, 2024 prescribe penalty ranges and let the Commission use global turnover where relevant turnover cannot be established.[62] The reform departs from the relevant-turnover logic of *Excel Crop Care* and has been challenged by Apple Inc before the Delhi High Court on that very ground, a challenge reported as pending in early 2026. The deterrent argument for global turnover is easy to state; the proportionality argument against it is just as serious.

7.2 Settlements and Commitments

The 2023 amendment also added Sections 48A and 48B, under which an enterprise investigated for vertical restraints (Section 3(4)) or for abuse of dominance (Section 4) may settle or offer commitments; cartel cases are excluded. The provisions took effect in March 2024, when the CCI also notified its Settlement and Commitment Regulations; these were amended again in 2026.[63] A settled or committed case closes without a final finding of contravention, which offers speed, particularly valuable when digital markets move faster than litigation.

The price of speed is the absence of precedent. If the largest dominance disputes end in negotiated outcomes, the law stops developing, and market participants learn little about where the boundaries lie. Used sparingly and transparently, the new tools can sit comfortably beside adjudication; used routinely, they could hollow it out.

[61] Competition Act 2002, ss 27(a)–(g), 28.

[62] Competition Act 2002, s 27(b) and Explanation, as amended; Competition Commission of India (Determination of Monetary Penalty) Guidelines 2024; Competition Commission of India (Determination of Turnover or Income) Regulations 2024.

[63] Competition Act 2002, ss 48A–48B; Competition Commission of India (Settlement) Regulations 2024; Competition Commission of India (Commitment) Regulations 2024; Competition Commission of India (Commitment) Amendment Regulations 2026.

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Chapter-8

Challenges in the Present Framework

8.1 Delay

Delay is the most visible weakness. *Schott Glass* took thirteen years from the Commission's order to the Supreme Court's judgment, and even the faster digital cases have taken years from complaint to order, as the Android matter, registered in 2018 and decided in 2022, illustrates. Interim relief under Section 33 exists but is used sparingly, and by the time a final order arrives the market it was meant to protect may have changed beyond recognition.[64]

8.2 Guidance and Objective Justification

The Supreme Court has said that effects and objective justification must be assessed, but the CCI has issued no guidance on how. The European Commission, by contrast, published enforcement priorities for exclusionary conduct in 2009, setting out how it weighs foreclosure, efficiencies and objective necessity.[65] Without comparable Indian guidance, firms must guess, and the Commission risks inconsistent treatment of similar conduct.

8.3 The Elasticity of "Unfair"

Clause (a) still speaks of "unfair" conditions and prices without defining the term. The criticism that it could reach conduct unrelated to competition remains live.[66] After *Schott Glass* the better view is that fairness must be tied to harm to competition, but the text has not been amended to say so, and a future bench could read it differently.

8.4 Institutional Capacity

Effects analysis demands economists, data and time. The early observation that India had little experience with the technical economic criteria in the Act, and that capacity building was essential, has lost none of its force.[67] The tribunal and the courts face the same challenge in reviewing economic evidence they did not generate.

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[64] Competition Act 2002, s 33; *Competition Commission of India v Schott Glass India Pvt Ltd* 2025 INSC 668 (SC, 13 May 2025), Civil Appeal No 5843 of 2014.

[65] Communication from the Commission, *Guidance on the Commission's enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings* [2009] OJ C45/7.

[66] Aditya Bhattacharjea, 'India's New Competition Law: A Comparative Assessment' (2008) 4(3) *Journal of Competition Law and Economics* 609.

[67] Aditya Bhattacharjea, 'India's New Competition Law: A Comparative Assessment' (2008) 4(3) *Journal of Competition Law and Economics* 609.

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8.5 Overlap with Other Regimes

Digital conduct now engages competition law, data-protection law and consumer law at once. The WhatsApp case shows the friction: the tribunal removed the ban on data sharing for advertising even as it upheld the abuse findings. Without clear lines between regimes, the same conduct may be examined repeatedly by different bodies with different standards.

8.6 Monitoring and Compliance

A remedy is only as good as its monitoring. Behavioural directions, such as those requiring a dominant platform to change contractual terms or permit user choice, demand continuing supervision, and the Act's penalties for non-compliance with Commission orders presuppose that someone is checking.[68] Public information on compliance with the directions issued in the Google and WhatsApp matters is limited, and the more detailed the remedy, the more a regulator needs technical staff to verify that it works as intended. The enforcement story does not end with the order.

[68] Competition Act 2002, s 42.

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Chapter-9

Conclusion and Recommendations

9.1 Conclusion

This paper began by asking whether Indian law on abuse of dominance has become predictable, economically coherent and quick enough to work. The evidence supports the hypothesis in part. The law has indeed travelled from a form-based reading of Section 4(2) to an effects-based inquiry: the early orders of the CCI penalised structure and form, the scholarship recorded a trend towards effects, and the Supreme Court in *Schott Glass* made that trend binding. Digital cases have extended the same analysis to data and consent, while the 2023 amendments have given the Commission heavier penalties and faster, negotiated routes to closure. Yet the second half of the hypothesis also holds. Thirteen-year litigation, the absence of guidance on objective justification, an undefined notion of unfairness and an unsettled digital regime keep the law less certain in practice than it is in principle.

For enterprises and their advisers the practical message is mixed but encouraging. A dominant firm can now argue, with the authority of the Supreme Court, that conduct falling within a clause of Section 4(2) is not abusive unless it harms competition, and that commercial rationales such as volume efficiencies must be weighed. But it must also expect the CCI, armed with global-turnover penalties and settlement powers, to press digital conduct hard, and compliance programmes will have to anticipate effects rather than merely avoid listed practices.

9.2 Recommendations

1. **Issue enforcement guidance.** The CCI should publish guidelines on exclusionary conduct, rebates, tying and objective justification, modelled on, but adapted from, the European Commission's 2009 priorities, so that the effects-based standard becomes operational rather than aspirational.
2. **Tie fairness to harm.** Parliament should clarify Section 4(2)(a) so that unfair conditions and prices are actionable only where they harm, or are likely to harm, competition or consumers, while preserving the exploitative limb for cases of real market power.
3. **Consider collective dominance.** The Act should be reviewed to determine whether joint dominance in concentrated markets needs express treatment, with appropriate safeguards against over-reach.

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4. **Speed up adjudication.** Statutory timelines for investigation and appeal, and dedicated benches in the NCLAT for competition matters, would shorten the cycle. Section 33 interim measures should be used more actively in fast-moving markets.
5. **Calibrate penalties.** The CCI should explain in each order how the penalty was computed under the 2024 Guidelines, and the courts should resolve the proportionality question raised by global-turnover penalties at the earliest opportunity.
6. **Safeguard settlements.** Settlement and commitment decisions should be published with reasons, monitored for compliance, and reserved so that they do not displace adjudication of novel legal questions.
7. **Finish the digital debate.** The government should conclude its market study and either enact a narrowly targeted ex ante regime for the largest platforms or state clearly that Section 4 will remain the principal instrument, and in either case formalise coordination between the CCI and sectoral regulators.
8. **Build capacity and transparency.** The CCI should expand its in-house economic and digital expertise and publish regular statistics on outcomes and timelines, so that future research on enforcement can rest on data rather than anecdote.

Section 4 has matured from a provision that punished conduct on its face to one that asks what conduct does to the market. The task now is to make that question easy to answer, quick to resolve and fair to those who must live with the result.

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Chapter-10

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