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EFFECT-BASED ANALYSIS IN COMPETITION LAW: LESSONS FROM THE SCHOTT GLASS CASE. A COMPARATIVE ANALYSIS OF EU PRECEDENTS AND INDIAN JURISPRUDENCE.

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Introduction

The need for Anti-Trust law is realized as we step into this cut-throat world, globalized in its markets yet swerving through the challenges of monopolistic control. The very rationale for such a law is not only practical but also extracts power from the Constitution of India[1]. The Directive Principles of State policy under articles 38 &39 clearly lay down that the state shall endeavour to foster the welfare of the people and protect their economic, social, and political interests; it shall strive that the resources of the nation are distributed evenly so as to avoid unfair advantage and secure the interests of all, and, should ensure that the economic system is not operating in a way so as to concentrate the wealth of the nation in the hands of a few affluent people, over-stepping the prosperity of all. Yet, the development of competition law in India is in its nascent stage. Emerging only in 2002, the Competition Act[2] displaced an outdated MRTP[3] regime turning focus towards fostering consumer welfare through healthy competition. It is against this backdrop that *Competition Commission of India v Schott Glass India Pvt Ltd*[4] assumes almost epochal significance. The case in its jurisprudential scale, is the setting of a constitutional cornerstone that guides the architecture of abuse-of-dominance jurisprudence in India. The choice of the topic not merely stems from a scholarly interest but also arises from genuine exaltation at the development of Indian Jurisprudence, which has now assumed a more practical and grounded approach. Thus, what follows is not merely a chronicle of what has ensued but also an analysis of the vector duality of the verdict delivered. The article shall flow from a general context setting of the case, to briefly discuss the various issues and then focus on Issue V which relates to abuse of dominance. The author shall also endeavour to compare

[1] Government of India, Ministry of Law and Justice, Legislative Department, Official Languages Wing, *The Constitution of India* (as on 1 May 2024)
https://lddashboard.legislative.gov.in/sites/default/files/coi/COI_2024.pdf
[2] The Competitions Act (2002)
[3] The Monopolistic and Restrictive Trade Practices (MRTP) Act, 1969
[4] Civil Appeal No 5843 of 2014# (Supreme Court of India, 13 May 2025) INSC 668

ISSN: 2582-6433

and weigh the judgement at hand with international best practices.

Case History

The genesis of the dispute lay in an information filed in 2010 by Kapoor Glass, which accused Schott India, the principal domestic producer of borosilicate glass tubes, of leveraging its market strength to exclude rivals by discriminatory rebates, unfavourable terms, and refusal to supply. The Director General's inquiry in 2011 found abuse, and the Competition Commission of India (CCI) imposed penalty and cease-and-desist directions in 2012. The Competition Appellate Tribunal (COMPAT), however, reversed this in 2014, holding that evidence of anti-competitive effect was lacking. The matter thus reached the Supreme Court, which was tasked with reconciling statutory language with economic reality and aligning with comparative doctrine, much as in *CCI v Steel Authority of India Ltd*[5].

Issues

Issue I: Whether the target-discount scheme of Schott India contravened Section 4(2)(a) and (b).

The Court observed that Schott's slab rebates, triggered exclusively by annual volume, "rose mechanically with volume and with nothing else; identity of the buyer was irrelevant"[6]. Customers lifting equal quantities were treated alike, with no hidden discrimination. Given the economic realities, such rebates transmitted efficiencies and thus could not be condemned as unfair *per se*.

Issue II: Whether the "No-Chinese" scheme or TMLA imposed unfair conditions under Section 4(2)(a)–(b).

The Court dismissed the allegation, noting that imports continued to constitute a share, Nipro-Triveni expanded, and no output restriction was demonstrable. Here, the maxim *de minimis non curat lex* applied: trifling effects that do not cause an appreciable adverse effect on competition (AAEC) fall beyond the statute's mischief.

Issue III: Whether the LTTSA amounted to a margin squeeze under Section 4(2)(e).

Drawing from *TeliaSonera Sverige AB v Konkurrensverket*a Case[7], the Court affirmed that a

[5] (2010) 10 SCC 744
[6] *Schott Glass* INSC 668
[7] C-52/09 ECR I-527

ISSN: 2582-6433

margin squeeze requires (i) downstream participation, (ii) insufficient wholesale-to-retail spread, and (iii) foreclosure. Since Schott India did not itself convert tubes, and Schott Kaisha's container prices were often at or above rivals', equally efficient converters competed profitably. No margin squeeze was established.

Issue IV: Whether NGA and NGC tubes were unlawfully tied under Section 4(2)(d).

The Court held that NGA and NGC are two discrete products. Reliance was placed on *Microsoft Corp v Commission* Case[8], which sets out the criteria for abusive tying. Mere aggregation of volume for rebate slabs did not amount to tying.

Issue V

Whether effects-based analysis is essential under Section 4 inquiries.

The Court clarified that Section 4[9] prohibits abuse of dominance, not dominance per se, defining abuse as conduct distorting competition or harming consumers[10].

The Court relied on the following for its reasoning

- Article 102 TFEU[11]
- *Intel Corporation Inc v European Commission* Case[12]
- *British Airways plc v Commission* Case[13]

In the current case, following was discovered:

- Independent converters increased output and EBITDA over the period;
- Imports (including Chinese glass) maintained a presence;
- Pharmaceutical buyers paid stable container prices.

These empirical realities disproved foreclosure and confirmed that no AAEC (Appreciable Adverse Effect on Competition) occurred.

[8] T-201/04 ECR II-3601

[9] *Competition Act, 2002, s 4* https://www.cci.gov.in/images/legalframeworkact/en/the-competition-act-20021652103427.pdf

[10] *Competition Commission of India v Schott Glass India Pvt Ltd and Anr Civil Appeals Nos 5843 and 9998 of 2014, Supreme Court of India [para 59].*

[11] *Art 102 Treaty on the Functioning of the European Union (TFEU)* https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12012E/TXT:en:PDF

[12] *Case T-286/09 Intel Corporation Inc v European Commission ECLI:EU:T:2014:547 (General Court)* https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62009TN0286

[13] *Case T-219/99 British Airways plc v Commission ECR II-5917, ECLI:EU:T:2003:343 (General Court)* https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:61999TJ0219

ISSN: 2582-6433

The EU precedents: What they were

- **Article 102 of the Treaty on the Functioning of the European Union (TFEU)[14]:** The Treaty lays down: Dominatio non est iniuria, sed abusus dominationis. Which elaborates as; the dominant position held by a player in the relevant market per se does not attract punitive liability, however, the abuse of this very position is deemed unlawful and against competition laws. The abusive conduct can be in many forms such as imposing unfair prices, limiting production to the detriment of consumers, or applying discriminatory conditions to equivalent transactions. This further, lays upon the dominant player a 'special responsibility' to not unduly distort internal markets in its inordinate favour.

- **Intel Corporation Inc v European Commission Case:[15]** The aforementioned article 102 has been implemented in the said case. The European commission formerly has sentenced Intel corporation to the heftiest fines at that time for allegedly accusing its dominant position in the internal market through loyalty rebates which dis-favoured the competition. However, it was later held by the European Court of Justice that such rebates are not to be blatantly condemned without a nuanced effect-based analysis of the situation at hand. The case highlights the importance of balancing formalistic and effects based legal tests in circumstances involving abuse of dominance and these must be assessed on their capability to exclude equally efficient competitors from the relevant market.

- **British Airways plc v Commission Case:[16]** This case further advanced the rationale for effect based analysis, however, set a different analysis standard. The case explored beyond formalistic rules and went on to hold that actual harm to the market is not necessary to attach cognisance if it's concluded that exclusionary practices by the dominant firm are likely to affect similar transactions in dissimilar exclusionary ways. It's germane to the Schott Glass case, as it elucidates the principle that dominant firms' discriminatory incentive schemes may amount to abuse when they distort competitive conditions without objective justification.

[14] Art 102 TFEU (n3)
[15] *Intel Corporation* (n4)
[16] *British Airways* (n5)

ISSN: 2582-6433

Analysis

The EU precedents aid the Indian Jurisprudence and also fortifies the effect based analysis in cases involving similar factual integrity however a divergence too does exist. The Indian Jurisprudence holds its ground over AAEC which contrasts with the European Court of Justice's decision in the British Airways case. The former holds there needs to be actual adverse effect over competition by a dominant firm to exert liability and not merely the presence of likelihood of a dis-favourable exclusion, however, in contrast the British Airways case holds that the actual effect should accept a back-seat when the clear probability of adverse effect over competition exists. The two cases are set apart over the grounds over which the dominant firm attracts liability. It can be concluded that Indian competition law jurisprudence, though still in its early stages, applies stringent standards before imposing liability and shows careful restraint in setting precedents. In doing so, it seeks to develop a legal framework that is fair, minimally discriminatory, and aligned with principles of equity and economic efficiency.

Conclusion

The significance of this judgment is monumental; within Indian competition law, it is what *Marbury v Madison*[17] was for constitutional law. My endorsement of Justice Vikram Nath's reasoning rests on three grounds:

First, it carefully demarcates dominance from abuse, ensuring that mere economic size is not penalised. This interpretation is in accord with **Raghavan Committee Report (2000)**[18] which laid the founding principles of the current Act[19].

Second, by mandating demonstrable competitive harm, the Court entrenched an evidentiary threshold that restrains arbitrary sanction, thereby giving effect to the constitutional doctrine of **rule of law** under **Article 14, Constitution of India**.

Third, its insistence on procedural propriety strengthens adjudicative legitimacy. By reaffirming natural justice, the Court upheld not only statute but also the guarantee under **Article 21, Constitution of India**, that no deprivation of liberty or livelihood shall occur save

[17] 5 US (1 Cranch) 137 (1803)
[18] High Level Committee on Competition Policy and Law (S V S Raghavan Committee), 'Report of High Level Committee on Competition Policy & Law' (2000) https://theindiancompetitionlaw.wordpress.com/wp-content/uploads/2013/02/report_of_high_level_committee_on_competition_policy_law_svs_raghavan_committee.pdf
[19] The Competition Act, 2002

ISSN: 2582-6433

by a fair process; "*fiat justitia ruat caelum"*.

The *Schott Glass* judgment is a lighthouse in the uncharted seas of Indian competition law. A dispute over volume rebates became the crucible in which the doctrine of effects-based analysis was conclusively forged. By affirming that efficiency-driven practices may coexist with dominance without constituting abuse, the Court crystallised economic rationality with constitutional fidelity. The decision guards enterprise while disciplining excess, harmonising Indian competition jurisprudence with global standards and constitutional values.