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Algorithmic empires and antitrust evolution: Reassessing abuse of dominance under Indian competition law

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Abstract

This article examines the developing jurisprudence on abuse of dominance under the Competition Act, 2002. It describes the statutory framework, especially how dominance is defined and what factors the Competition Commission of India (CCI) takes into account when assessing market power, dominance and its abuse. The discussion highlights several leading matters such as DLF, Excel Crop Care, Google Android and Meta/WhatsApp, which show how regulators and appellate bodies are using both legal and economic reasoning for questions of exclusionary conduct, discriminatory conditions, and also leveraging of market strength. Particular attention is placed on recent actions in the digital sector and quick-commerce, where problems of data use, heavy discounting and neutrality of platforms is testing the old doctrines. The article also reviews the scope of remedies, including monetary fines and behavioural obligations, and point towards judicial concern with proportionality and due process. It finally concludes that balancing innovation, consumer welfare and fair competition remain a difficult challenge in India's fast changing economy.

Keywords: Competition Act 2002, abuse of dominance, relevant market, deep discounting, behavioural remedies, structural remedies

1. Introduction

Following independence, India pursued a mixed economy with extensive reliance upon the public sector and elaborate controls over private enterprise. Industrial licensing, reservation of sectors, and quantitative restrictions created the so-called "license raj ^[1]." Market structures were thus not the outcome of competitive forces but rather of governmental regulation. Efficiency was often secondary to compliance.

By 1991, this model had reached exhaustion. The balance-of-payments crisis compelled the adoption of liberalisation, privatisation, and globalisation. The industrial policy of 1991 dismantled controls, reduced tariffs, and encouraged the private sector. With this shift, the MRTP Act appeared wholly inadequate. It was concerned with curbing monopolistic trade practices but did not address modern anti-competitive conduct such as cartels or abuse of dominance. The Raghavan Committee Report had recommended that India should have a fresh legislation on competition, and this finally resulted in the Competition Act, 2002. Later, in 2007, the Act was amended so as to make the institutional structure of the Competition Commission of India (CCI) more robust ^[2].

The law basically stands on three important pillars: first, Section 3, which prohibits anti-competitive agreements; second, Section 4, which deals with abuse of dominance; and third, Sections 5 and 6, which regulate combinations. In this way the Act follows the global pattern of contemporary competition laws ^[3]. During its first decade, the CCI has handled hundreds of cases, especially under Sections 3 and 4. The cases have spanned stock exchanges, automobiles, real estate, pharmaceuticals, entertainment, and increasingly digital platforms.

Dominance in competition law is a slippery yet unavoidable notion. Dominance under competition law does not just mean that a company is big or very profitable. Instead, it refers to a situation where a firm enjoys such strength in a relevant market that it can operate, at least to a significant degree, without having to worry too much about rivals or even the consumers. The Competition Act, 2002 takes this with careful understanding. It does not ban dominance as such; what Section 4 actually prohibits is the abuse of a dominant position. This stance recognises that market power may be the reward of efficiency, yet the law must guard against conduct that subverts competitive processes.

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To establish dominance the law first demarcates the relevant market in product and geographic terms. Only after that exercise can one measure whether an undertaking enjoys significant market power in the ability to act irrespective of other market players. This is an effects-based enquiry and so evidence on market shares, barriers to entry, demand-side substitutability and countervailing buyer power matters. Digitalisation has further complicated this task. Platforms and ecosystems exhibit - network effect, multi-sided markets, zero price services, bundling, and data-dependent scaling advantages that challenge traditional tools of market definition and cost-based pricing tests. For enforcement to be predictable and welfare-oriented, sharper methodological guidance, clearer standards for market definition and transparent evidentiary rules are required, together with calibrated remedies proportionate to the harm.

This work is written with four broad objectives in mind. First, to clarify the concepts of dominance, abuse of dominance, and relevant market. Second, to understand how dominant positions may be used to distort market outcomes. Third, to survey the regulations and the case law in India. And finally, to critically evaluate whether the present system is adequate, particularly given the rise of digital platforms and e-commerce.

2. Abuse of Dominance Provisions in India

The prohibition of abuse of dominant position is the very heart of the Indian competition law regime. Abuse of dominance is generally a unilateral conduct issue, where a single powerful undertaking misuses its market strength. The provision reflects a delicate balance where the country wants its firms to grow large, to be efficient and competitive in the world economy, but it also recognises that unchecked market power can distort the market and harm consumer welfare.

Section 4(1) states in clear terms: “No enterprise shall abuse its dominant position^[4].” The Act further defines dominant position as a position of strength enjoyed by an enterprise in the relevant market which enables it to operate independently of competitive forces, or to affect competitors, consumers or the relevant market in its favour^[5]. Section 4(2)^[6] then goes on to provide an inclusive list of conduct that amounts to abuse. These include:

1. Imposing unfair or discriminatory conditions or prices (including predatory pricing).
2. Limiting or restricting production, or scientific and technical development.
3. Denying market access.
4. Making contracts subject to unrelated supplementary obligations.
5. Leveraging dominance in one relevant market to enter into or protect another.

This statutory framework, though compact, has been interpreted in numerous ways by CCI and appellate tribunals/courts. It may be said that jurisprudence under Section 4 has been richer, more contested, and also more dynamic than many anticipated when the law came into force (the same has been substantiated in upcoming discussion).

2.1 Dominance and Relevant Market

The first and foremost requirement in any matter to be considered a Section 4 violation is the determination of the

“relevant market”. The CCI cannot hold a firm to be dominant in abstract. It must carefully define the boundaries of the product market and geographic market. Sections 2(r), 2(s), and 2(t) of the Act provide definitions, while Section 19(6) and (7) list factors to be considered for analysis by CCI^[7].

In practice, the CCI has adopted the principle of demand substitutability: whether consumers regard products as interchangeable in terms of price, use, and characteristics, which also caters to the paradigm of consumer preferences shaping market determination. For example, in the IPL case, the CCI held that cricket was not substitutable by any other sport, and thus the relevant product market was limited to the organisation of cricketing events^[8]. Very recently, Supply side substitutability and potential competition also are used in defining the contours of relevant market. Similarly, in *Belaire Owner's Association v. DLF*, the CCI took a narrow view of the geographic market, holding that apartments in Gurgaon constitute a distinct market because consumer preference is tied to location.

Determination of dominance then follows. Section 19(4) provides a list of relevant factors to be considered by CCI in deciding whether the concerned enterprise (or group) enjoys a dominant position. The list includes: market share, size and resources of the enterprise, importance of competitors, entry barriers, dependence of consumers, countervailing buying power, vertical integration, and more. The CCI has consistently emphasised that market share is not the sole determinant^[9]; other factors such as brand value, IP rights, network effects, and consumer dependence can also create dominance. In *Intel (ESYS Information Technologies v. Intel)*, the Commission noted that Intel's strong brand, technological leadership, and IP rights created dominance beyond just its market share^[10]. This reflects the complex reality that dominance is not a purely numerical question.

2.2 Forms of Abuse

2.2.1 Unfair and Discriminatory Conditions or Prices

Perhaps a highly debated and litigated form of abuse is imposition of unfair or discriminatory conditions. A classic instance is the *DLF case* (supra), where the CCI found that DLF had inserted one-sided clauses in apartment buyer agreements, allowing it unreasonable authority including changing plans, increasing floors, and penalising buyers unfairly. The CCI held that such conditions were abusive, since homebuyers had no countervailing power and DLF's dominance in the Gurgaon high-end apartment market enabled it to dictate terms. The penalty of ₹630 crore imposed in this case became a landmark, later upheld in appeal with modifications.

Predatory pricing falls under the same clause. Section 4 explains predatory price as sale of goods or services below cost with a view to reduce competition, or eliminate competitors^[11]. The CCI applies a three-pronged test: (i) pricing below cost (determined by CCI's Cost of Production Regulations), (ii) intention to eliminate competition, and (iii) view of recovering the present losses after the competition has been eliminated^[12].

Recently, allegations of predatory pricing have arisen in digital markets, especially in e-commerce and quick commerce. Complaints have been made against Swiggy, Zomato, and Zepto for using deep discounts funded by venture capital to undercut rivals^[13]. The CCI has initiated investigations, but final findings are awaited. This shows

that predation in India is no longer confined to traditional industries, but has become a live issue in the platform economy as well.

2.2.2 Limiting Production or Technical Development

Abuse also includes limiting production or scientific development leading to prejudice to consumers. This clause has been less frequently used, but it remains important. The underlying context is that, the dominant firms may stifle innovation, suppress alternatives or delay new technologies in order to preserve their power. In the *Google Android case*, pre-installation restrictions were found to limit the development of alternative app stores and new versions of Android^[14].

2.2.3 Denial of Market Access

Section 4(2)(c) specifically prohibits practices that result in denial of market access. This provision has been used in diverse contexts. In *Shamsher Kataria v. Honda Sael Cars*^[15], agreements between car manufacturers, dealers, and suppliers prevented independent repairers from accessing spare parts, amounting to denial of market access. Similarly, in *MCX-SX vs NSE case*^[16], NSE's policy of offering zero transaction fees in the currency derivatives segment was held to deny access to rivals.

Denial of market access is especially relevant in digital platforms, where control over a bottleneck facility (like an app store or a search engine) can exclude competitors. In *Google Play Store Billing*, the CCI found that Google's requirement that app developers use its proprietary billing system amounted to denial of market access for alternative payment providers^[17]. The CCI's decision was partly upheld by NCLAT though the penalty was substantially reduced, and the hence decision is pending before the Hon'ble Supreme Court in an appeal^[18].

2.2.3 Supplementary Obligations

Another form of abuse is making contracts subject to unrelated supplementary obligations. This overlaps with the concept of tying and bundling. In the *Google Android case*, requiring pre-installation of the entire Google suite was held to be such an abuse^[19]. The CCI emphasised that forcing manufacturers to pre-install multiple apps, irrespective of consumer choice, leveraged Google's dominance in search into other markets like browser and video hosting.

2.2.5 Leveraging

Section 4(2)(e) prohibits using dominance in one relevant market to enter or protect another. This principle was central to *Google Android (supra)* and *Meta/WhatsApp (supra)*. A hint of it may be identified in the latter, the CCI described concerns about data flows and tying and the impact it may have on strengthening a firm's dominance in other relevant markets by mandating data sharing. Leveraging is an especially live issue in digital markets where ecosystems of services are interconnected, and dominance in one area (say search, or messaging) can spill over into another (advertising, cloud, e-commerce).

2.3 Per Se Rule vs. Effects-Based Analysis

An ongoing debate in Indian jurisprudence was whether conduct listed under Section 4(2) is per se abusive, or whether effects must be examined. The statute is silent, but the CCI in *Dhanraj Pillay v. Hockey India*^[20] held that the

conduct must also be shown to be discriminatory or unjust in application, implying that not every instance automatically amounts to abuse. The Supreme Court has also moved towards an effects-based approach, emphasising that competition law protects the process of competition, not competitors as such^[21]. Very recently, the Hon'ble Supreme Court of India has mandated an effects based analysis of abuse whereby highlighting that "*Competition law is not designed to humble the successful or to clip the wings of enterprises that have, through industry and innovation, secured a commanding share of the market*"^[22]."

This is an important development because many practices may superficially appear abusive but may have efficiency justifications. For instance, loyalty discounts may exclude rivals, but may also reflect legitimate competition. Similarly, tying may promote standardisation. An effects-based analysis ensures that pro-competitive practices are not unnecessarily penalised.

2.4 Penalties and Remedies

Section 27 of the Competition Act gives the CCI wide powers. It can order an enterprise to stop the anti-competitive conduct, impose monetary penalties up to 10% of the average turnover of the last three years, and may direct the division of an enterprise. So far, the CCI has not gone to the extent of ordering structural remedies such as break-ups. However, it has regularly used behavioural remedies and has also imposed very heavy penalties in many cases.

The *Excel Crop Care* decision of the Supreme Court clarified that penalties must be based on "relevant turnover," i.e., the turnover from the products or services in respect of which the contravention occurred^[23]. This principle is vital in multi-product firms ensuring proportionality. In *Google v. CCI (Android Ecosystem case)* the NCLAT reiterated proportionality by reducing the penalty from ₹1,337 crore to ₹216 crore, while upholding the finding of abuse^[24]. In *Meta/WhatsApp*, the CCI imposed a penalty of ₹213 crore and behavioural remedy banning data sharing for advertising purposes for five years. The same is pending before NCLAT.

2.5 Evaluation

It is fair to say that the Indian approach to abuse of dominance has evolved rapidly. In the early years, the CCI relied heavily upon European jurisprudence, but gradually it has developed its own analytical framework. Decisions in cases like DLF, NSE, Kataria, and Excel Crop built the foundation. More recent cases like *Google-Android* and *Meta-WhatsApp* show that CCI is prepared to resolve complex issues of digital dominance, data, and ecosystems. The government's proposal for a Digital Competition Bill, 2024 indicates recognition that ex post enforcement under Section 4 may not be enough for digital giants. Ex ante obligations on "systemically significant digital enterprises" may be required.

3. E-Commerce and Abuse of Dominance

The spread of e-commerce has deeply changed the working of Indian markets. In the past decade, e-platforms have become central players in areas like retail trade, food delivery, transport services, among other sectors. E-commerce are intermediaries, and may also act as sellers themselves through private labels or preferred sellers. They

derive revenue not only from sales but also from advertising, data monetisation, and ancillary services like logistics or payments. These features make analysis under Section 4 complexer.

The conventional markers of dominance market share, output, price do not capture the reality of platform power, which is often based on network effects, switching costs, and control over data. The jurisprudence on abuse of dominance in India is therefore undergoing a transformation as it confronts these new challenges.

3.1 Defining Relevant Market in E-Commerce

The first difficulty is defining the “relevant market”. In traditional sectors, products and geographies can be relatively easily delineated. In e-commerce, however, questions arise: should online and offline markets be considered separate, or part of the same market? The CCI has sometimes treated them as substitutable, and at other times as distinct, depending on evidence of consumer behaviour.

For instance, in cases involving Amazon and Flipkart, the CCI examined whether the market should be defined narrowly as online marketplaces for fashion products, or more broadly as all retail (online plus offline). In the Google Android case, the CCI had no hesitation in defining the relevant market narrowly as “*Market for licensable OS for smart mobile devices comprising of Smartphones & Tablets in India*” excluding Apple’s iOS because it is non-licensable (Pl. This shows that in digital markets, the Commission is willing to draw narrow markets where consumer choice and entry barriers justify it^[25].

The choice of market definition matters greatly, because dominance is established only within that defined market. If the market is too broad, no platform appears dominant; if it is too narrow, dominance may be too easily presumed. This tension is at the heart of e-commerce enforcement.

3.2 Allegations Against E-Commerce Platforms

3.2.1 Deep Discounting and Predatory Pricing

A common charge levelled against e-commerce platforms is that of predatory pricing, usually carried out through heavy discounting. The CCI has investigated these allegations but cautiously. In 2020, in *Flipkart case*, the Commission observed that while heavy discounts were indeed offered, establishing predatory behaviour requires proof of below-cost pricing and intent to eliminate competition. Given the presence of multiple players, the CCI closed the case, noting absence of clear dominance^[26].

More recently, however, in the quick commerce sector, complaints have been filed by traders against Swiggy, Zepto, and Zomato, for offering extremely low prices for groceries with quick delivery. In March 2025, the CCI ordered further investigation and sought information, recognising that deep discounting in a nascent market could amount to predatory pricing if dominance is established^[27]. The case is ongoing but indicates a greater willingness to scrutinise discounting practices.

3.2.2 Preferential Treatment and Self-Preferencing

Another issue is preferential treatment for certain sellers by e-commerce platforms. In 2020, the CCI ordered an investigation into Amazon and Flipkart based on complaints that they gave preferential treatment to selected “preferred sellers,” often linked to the platforms themselves, while

disadvantaging independent sellers^[28]. Allegations included search manipulation, higher visibility, and exclusive deals. This issue mirrors global debates, such as the enquiry of Amazon’s dealings with third-party sellers, and the approach of the EU’s Digital Markets Act, which expressly forbids self-preferencing by so-called “gatekeeper” platforms^[29].

3.2.3 Private Labels and Leveraging

Platforms often introduce private label products that compete with those of independent sellers. While this is not unlawful per se, concerns arise when the platform uses private data from third party sellers to identify profitable products and then launch its own versions. The draft Digital Competition Bill, 2024 explicitly proposes to prohibit such conduct by identifying “systemically significant digital enterprises” (SSDEs) and the regulation of their conduct^[30].

3.2.4 Dark Patterns and Exploitation of Consumers

Beyond competition between sellers, there is growing recognition that platforms may exploit consumers through manipulative interface designs, known as “dark patterns.” In 2025, the Indian government issued notices to e-commerce and ride-hailing firms, including Zepto and Uber, for using dark patterns like hidden charges, forced consent, or making cancellation difficult^[31]. While these are primarily consumer protection issues, they intersect with competition law because they strengthen lock-in and reduce consumer choice. A dominant firm using such practices could be said to abuse its position under Section 4(2)(a).

3.3 Critical Reflections

The development of jurisprudence in e-commerce abuse raises several questions. First, the difficulty of establishing dominance when multiple large players exist. Amazon and Flipkart together may dominate online retail, but individually they face competition. Should the law consider collective dominance, as in EU law? The Indian statute does not explicitly provide for this, but perhaps judicial interpretation could evolve.

Second, how to reconcile consumer benefits with harm to competition. Deep discounting benefits consumers in the short run, but may harm rivals in the long run^[32]. The CCI has been reluctant to intervene without clear evidence of below-cost pricing and intent. But should the law adopt a stricter standard in markets prone to “tipping”?

Third, the interface with data protection. As seen in the WhatsApp case, competition concerns overlap with privacy. If platforms exploit consumer data unfairly, is it an abuse of dominance or a data protection issue?

Finally, the role of ex ante regulation. Section 4 is drafted for ex-post enforcement. But the speed of digital markets may require advance obligations. The proposed Digital Competition Bill signals India’s readiness to move in this direction, though balancing regulation and innovation will be key^[33].

4. Conclusion

Abuse of dominance law in India has travelled a long path, moving from cases that dealt with protecting small home-buyers against large real estate players, to cases now involving complex, algorithm-driven global tech platforms. This evolution reflects the broader economic journey of the country itself. At the heart of it, however, the principle

remains unchanged: the law is about fairness about preventing those with significant power from misusing it against weaker rivals or ordinary consumers.

The Indian story shows that abuse of dominance law is not fixed but continuously evolving. Markets change, and so must the law. In less than twenty years, the CCI has built a jurisprudence that can stand alongside international practice. That in itself is remarkable for such a young institution. The real challenge now will be whether the law can keep pace with technological disruptions while staying true to its fundamental commitment to fairness and competitive neutrality.

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