

Abuse of Dominant Position under Section 4 of the Competition Act, 2002

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ABSTRACT

The *Competition Act, 2002*¹ is the main law that deals with competition in India. Its purpose is to make sure that businesses compete fairly and that consumers are protected. *Section 4 of this Act*² focuses on the abuse of a dominant position, which happens when a company uses its strong position in the market in a way that limits competition or takes advantage of consumers. This research paper looks at what dominance means, the legal rules that control how it is used, and how this part of the law has been understood by the authorities and courts over time. The paper explains that having a dominant position in the market is not illegal on its own. Companies can become dominant because they are more efficient, innovative, or have more resources. However, the law steps in when this dominance is used to unfairly control prices, block competitors, or limit how other businesses can operate. The study looks at different ways dominance can be abused, such as setting unfair prices, using aggressive tactics to drive competitors out, stopping others from entering the market, and using dominance in one area to gain an advantage in another. It also explores how the Competition Commission of India identifies and tackles these unfair practices.

The research also looks at important court decisions that have helped shape how abuse of dominance is understood and handled in India. These cases show how authorities determine if a company is dominant, how they define the market, and how they assess the effect of

¹ *Competition Act, 2002, No. 12 of 2003.*

² *Competition Act, 2002, No. 12 of 2003, § 4*

business actions on competition. The paper also discusses new challenges that come with digital markets, where dominance is often based on things like controlling data, network effects, and the power of online platforms, rather than just how much market share a company has. The study concludes that *Section 4*³ is very important in keeping markets competitive by stopping the misuse of economic power. It allows businesses to grow and be innovative but ensures that they don't do things that harm competition or the interests of consumers. As the economy changes, especially with the growth of digital platforms, it's very important to enforce this law properly to keep competition fair and efficient in the long run.

KEYWORDS: Competition Law, Abuse of Dominant Position, the Competition Act, 2002, Dominant Position, Market Power, Anti-Competitive Practices, Consumer Protection, Relevant Market, Digital Markets, and the Competition Commission of India.

INTRODUCTION

Competition law is important for making sure that markets work well, fairly, and in the best way for customers. In India, the Competition Act of 2002 was introduced to encourage and keep competition alive, protect customers, and allow businesses to operate freely. One of the key parts of this Act is Section 4, which looks at when a company with a lot of market power uses that power in a way that hurts competition or takes advantage of customers. Dominance means a company has a lot of power in a particular market, and can act without being controlled by other companies or influence how the market works in its favor. But dominance itself is not illegal. In a competitive market, companies can become dominant through things like being more innovative, more efficient, offering better products, or having better strategies. This kind of success is seen as a normal result of competition. The problem comes when that dominance is used unfairly, like making it hard for other companies to compete, treating customers badly, or stopping new companies from entering the market.

Section 4 of the Act lists different ways dominance can be abused, such as setting unfair prices, selling products at very low prices to drive out competitors, blocking others from entering the market, limiting production or innovation, and using dominance in one area to

³ *Competition Act, 2002, No. 12 of 2003, § 4.*

control another. These actions can stop healthy competition, reduce choices for customers, and create unfair barriers for new businesses. That's why it's important to regulate such behavior to make sure all businesses have a fair chance to compete. The Competition Commission of India is responsible for enforcing these rules.

It looks into cases, checks if a company is dominant, and takes action against anti-competitive behavior. Over time, the Commission and the courts have built a set of guidelines that help explain how Section 4 should be applied. They focus more on the effect a company's behavior has on competition rather than just how big the company is. In recent years, the issue of abusing dominance has become more important because of the rise of digital markets. Technology companies often gain dominance through things like controlling data, having strong network effects, and building large platform ecosystems. These new developments challenge how competition law is applied and require the law to keep changing and improving in order to deal with the modern market. Studying abuse of dominant position under Section 4 is important for understanding how the law can balance economic growth with fair competition. It helps ensure that businesses with a lot of power do not use that power to harm customers or stop fair competition in the market.

BACKGROUND AND LITERATURE REVIEW

The idea of abuse of dominant position under the Competition Act, 2002 has changed a lot over time, both around the world and in India. To understand how it is used today, it is important to look at how it has developed over the years, as well as the views from experts and judges who have helped shape it.

HISTORICAL BACKGROUND

India started working on competition law with the *Monopolies and Restrictive Trade Practices Act, 1969 (MRTP Act)*⁴. Its main goal was to stop the concentration of power and control monopolies. However, this law was mainly about stopping monopolies instead of encouraging competition. It also did not have strong ways to enforce rules and couldn't handle modern business challenges, especially as the economy started to open up. The economic reforms of 1991 were a big change. Liberalization, privatization, and globalization brought more competition and made it easier for foreign companies to enter the Indian

⁴ *Monopolies and Restrictive Trade Practices Act, 1969, No. 54 of 1969.*

market. The old MRTP Act was no longer enough. The government formed the Raghavan Committee, which suggested creating a new competition law that followed international standards. As a result, the Competition Act, 2002 was passed and replaced the MRTP Act.

Unlike the previous law, the new one focused on promoting competition instead of just controlling monopolies. It included rules against anti-competitive agreements, abuse of dominant position, and regulation of business combinations. The Competition Commission of India was set up to enforce these rules and provide an independent regulatory body. The shift from focusing on control to promoting competition shows a bigger change in economic thinking. The law now understands that dominance can come from being efficient and innovative, and only the abuse of that dominance should be limited. This idea is similar to how the European Union handles competition law, which also cares about distinguishing between having power and misusing it.

DEVELOPMENT OF THE CONCEPT OF ABUSE OF DOMINANCE

The idea of abuse of dominance is based on the belief that companies with a lot of market power can change how competition works. But today's competition laws look more closely at what companies actually do, rather than just how big they are. Section 4 of the Competition Act clearly says that only abusive actions by dominant companies are not allowed. The definition of "*dominant position*"⁵ in the Act talks about the ability of a company to act without being affected by competition or to help itself and its competitors at the expense of consumers.

It shows that dominance depends on the specific market and isn't just about size. Section 4(2) gives examples of abusive practices, like unfair pricing, limiting production, blocking market access, and using dominance in other ways. These are not the only ways an abuse can happen, but they are helpful in understanding what counts as unfair competition. The law mostly looks at the effects of these actions, not just what they are. As experts say, it's only when these actions harm competition or reduce consumer benefits that they are considered abusive.

REVIEW OF ACADEMIC LITERATURE

⁵ *Competition Act, 2002, No. 12 of 2003, § 4*

Experts studying abuse of dominance stress the difference between normal business strategies and harmful competition. Law professors say that competition law shouldn't punish companies for being successful or efficient, but should only step in when that success is used to push out competitors or take advantage of customers. This point is widely accepted in both Indian and global competition laws. Research shows abuse of dominance can take many forms, usually split into two types: exploitative and exclusionary. Exploitative abuse involves actions like setting prices too high or using unfair contracts that hurt consumers. Exclusionary abuse involves actions aimed at stopping competitors from entering the market, such as selling products at very low prices to drive others out or blocking access to important markets. These groups help explain how dominance can be misused.

More studies look at how economic factors like market share, barriers to entry, customer reliance, and network effects can help define dominance. Section 19(4) of the Act⁶ lets the Competition Commission of India (CCI) use these factors when deciding if a company is dominant. Some experts also suggest using economic tools like the SSNIP test and the Herfindahl-Hirschman Index to determine the relevant market and measure how concentrated it is.

JUDICIAL AND REGULATORY INTERPRETATION

The meaning of abuse of dominance in India has been shaped by decisions made by the Competition Commission of India and higher courts. Early cases focused on traditional businesses like real estate, stock exchanges, and automobile sectors, where issues like unfair conditions or blocking market access were common. Over time, the law has grown to handle more complex issues, especially in digital markets.

The CCI has taken an effects-based approach, meaning it doesn't automatically say that any action listed in Section 4(2)⁷ is abusive. Instead, it looks at how the action affects competition. For example, when looking at pricing strategies, the CCI checks if prices are below cost and whether the company is trying to remove competitors.

In cases where market access is denied, the Commission looks at whether the action is making it hard for new businesses to enter or limiting what customers can choose. This way,

⁶ *Competition Act, 2002, No. 12 of 2003, § 19(4)*

⁷ *Competition Act, 2002, No. 12 of 2003, § 4*

only actions that really hurt competition are dealt with, and fair business practices are not unfairly punished.

EMERGING TRENDS IN LITERATURE

Recent writing has started paying more attention to the problems created by digital markets. Unlike older industries, digital platforms gain power because of things like controlling data, the way networks grow stronger as more people use them, and how different parts of a platform work together. These features make it hard for new companies to enter the market and can cause fewer companies to control most of the market.

Experts say that old ways of checking if a company is too powerful might not work well in the digital world. For example, looking at how much of the market a company owns might not show how much power it really has, especially in places where services are free. Instead, things like how many users a platform has, how much data it controls, and how much people depend on the platform are more important. The writing also talks about issues like favoring your own products over others, unfair decisions made by algorithms, and using data in ways that could harm users. These actions can help big tech companies stay on top and make it harder for others to compete. Because of this, people are asking whether current rules about competition are enough to deal with these problems or if new laws are needed.

The way abuse of dominance is handled under Indian competition law has changed over time. It has moved from strict rules against monopolies to a more flexible approach that looks at the effects on the market. The Competition Act, 2002 gives a strong base for dealing with unfair business practices, backed by research and court opinions. However, the fast-changing nature of markets, especially in the digital area, brings new challenges that require the law and its enforcement to keep changing. The research and history together show that the idea of abuse of dominance is always changing. Understanding how it has changed is important for seeing how it's used now and where it might go in the future in Indian competition law.

ANALYSIS AND DISCUSSION

The law against misuse of market power, as outlined in Section 4 of the Competition Act, 2002, plays a key role in Indian competition law. This provision sets up a balance that lets companies grow but stops them from using their power in ways that harm the market. To understand when a company is misusing its power, there are three main steps: identifying the relevant market, checking if the company has a dominant position, and finding out if its

actions are abusive. The Competition Commission of India has been central in applying these steps through its decisions in important cases.

The first step in looking at an abuse of dominance case is figuring out the relevant market. This means identifying both the product market and the geographic area that matters. This is important because you can't check if a company is abusing its power without knowing which market it's operating in. The Competition Commission usually looks at how similar products can be used as substitutes for each other. For instance, when looking at digital platforms, the Commission has been careful in defining the market, understanding that some services, like mobile operating systems, might not have exact replacements.

Once the relevant market is determined, the next step is to check if a company holds a dominant position. The Competition Act, 2002, gives several factors to consider. These include the company's market share, its size and resources, how much power it has economically, how hard it is for new companies to enter the market, and how much consumers depend on that company. It's important to know that just having a large market share doesn't automatically mean a company is dominant. In today's markets, especially in digital areas, other factors such as network effects, control of data, and brand strength can make a big difference. For example, companies like Google are dominant not only because of their market share but also because of their control over data and ecosystem.

The third and most important step is determining whether the company's actions are abusive. Section 4(2) of the Act gives examples of such actions, like unfair pricing, limiting production or technical development, blocking market access, adding unfair conditions to contracts, and using dominance in one market to take over another. However, under Indian competition law, the focus is on whether the actions actually or potentially hurt competition.

One common form of abuse is predatory pricing, where a dominant company sets prices below cost to drive out competitors. This was clearly shown in the case of *MCX Stock Exchange v. NSE*,⁸ where the National Stock Exchange offered its services in the currency derivatives segment for free. The Competition Commission ruled that this was an attempt to eliminate competition and was an abuse of dominance. Their decision made it clear that not only do such actions hurt competitors, but they also reduce consumer choices in the long run.

⁸ *MCX Stock Exchange Ltd. v. National Stock Exchange of India Ltd.*, Case No. 13 of 2009, Competition Comm'n of India.

Another well-known case is the DLF Ltd. case,⁹ where the company imposed unfair conditions in agreements with apartment buyers. Because DLF had a dominant position in the real estate market, the buyers had little power to negotiate. The Competition Commission found that these actions were abusive and imposed a significant penalty. This case showed that abuse of dominance isn't just about excluding others from the market; it also includes actions that directly harm consumers.

The issue of denying market access was examined in the case of *Shamsher Kataria v. Honda*,¹⁰ in this case, car manufacturers limited the availability of spare parts to independent repairers. The Commission found that this practice blocked new players from entering the market and limited consumer choices. This case highlighted that abuse of dominance can also involve practices that indirectly restrict competition.

The development of abuse of dominance law is especially clear in digital markets. In the *Google Android case*,¹¹ Google was found to have abused its dominant position by imposing strict conditions on device manufacturers, including the mandatory installation of its apps. The Commission ruled that these practices limited competition and innovation by giving an unfair advantage to Google and stopping other developers from competing on equal terms. This case shows how traditional competition concepts are being applied in new, digital environments.

In the realm of online platforms, issues like large discounts, favoring one's own services, and using data unfairly have become areas of concern. The difficulty in such cases is determining whether these practices are truly anti-competitive or just part of intense, honest competition. The Competition Commission has generally taken a cautious stance, recognizing that not all aggressive business tactics are harmful. For example, price cuts can benefit consumers in the short term, even if they raise concerns about long-term competition. Another important part of analyzing abuse of dominance is understanding the difference between "per se" abuse and effects-based analysis. Section 4(2) lists certain actions as abusive, but Indian courts have made it clear that just because something is listed doesn't mean it is automatically illegal. Instead, the key is to look at how these actions affect competition. This idea was supported in

⁹ *Belaire Owners' Ass'n v. DLF Ltd.*, Case No. 19 of 2010, Competition Comm'n of India.

¹⁰ *Shamsher Kataria v. Honda Sael Cars India Ltd. & Ors.*, Case No. 03 of 2011, Competition Comm'n of India

¹¹ *In re: Android OS (Google LLC)*, Case No. 39 of 2018, Competition Comm'n of India

a case called *Excel Crop Care v CCI*,¹² where the Supreme Court said that penalties should be fair and based on relevant turnover, ensuring that they are not too harsh.

Defences are also important in cases related to abuse of dominance. A company that is considered dominant can argue that its actions were needed to compete or helped make the market more efficient. For example, if a company lowers prices to match competitors and this helps consumers without removing competition, it might not be seen as abusive. But the company has to prove this is true.

The Competition Commission of India (CCI) has played a big role in enforcing Section 4. It not only imposes fines but also tells companies to change their behavior, like altering their business practices. In some cases, it has even thought about structural changes, like splitting a company, but this is not very common. The main goal is to bring back fair competition in the market.

Even though there have been improvements, there are still several challenges when applying Section 4. One big issue is figuring out the relevant market, especially in digital areas where traditional boundaries are not clear. Another challenge is determining dominance in markets where services are free, such as social media platforms. Here, things like control of data and size of user base matter more than price.

The fast changes in technology also mean that competition law has to stay flexible. New practices like algorithmic pricing, data sharing, and platform integration create new questions about what counts as abuse. There is also a debate about whether current laws are enough to handle these new challenges, or if new rules are needed.

In summary, looking at abuse of dominant position under Section 4 shows that it is a growing and changing area of law. The law aims to stop powerful companies from harming competition or consumers. Through laws, court decisions, and how the CCI enforces rules, India has built a strong system for dealing with abuse of dominance. However, this system needs to keep changing to keep up with new market conditions, especially in the digital world.

CONCLUSION

¹² *Excel Crop Care Ltd. v. Competition Comm'n of India*, (2017) 8 S.C.C. 47

The law against abusing market power under the Competition Act, 2002 is important for keeping markets fair and competitive in India. Section 4 makes sure that companies can grow and become dominant through hard work and innovation, but they can't use their power unfairly in a way that hurts competition or customers. This law tries to balance things by telling the difference between being a strong player in the market and acting in a way that harms others.

Over time, the Competition Commission of India and courts have clarified what kind of behavior is considered abusive. They have stopped things like selling products too cheaply to drive others out of the market, blocking others from entering the market, and using unfair rules in contracts. At the same time, they make sure that normal business practices are not stopped without good reason.

But new challenges have come up, especially with digital markets. Things like control over data, the way networks work, and how platforms compete are making it harder to apply old rules. That means the law and how it's enforced need to keep changing.

In the end, Section 4 is a key part of making sure competition stays strong, customers are protected, and businesses use their power in a fair and responsible way in a fast-changing market.

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