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Collective Dominance under the Competition Act, 2002: A Critical Analysis

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ABSTRACT

The idea of dominance in Indian competition law has usually concerned what a single company does and the impact it creates in the market. The law does not work well when many companies act together to control the market, or collectively abuse their market power, without any formal agreement between them. This paper examines whether the Competition Act, 2002 is sufficient to deal with companies whose conduct, taken together, dominates the market. It examines competition law, particularly Sections 3 and 4, to see how they address the issue of collective dominance. The current law focuses mainly on preventing companies from making agreements that are not fair and on stopping a single company from abusing its dominant position. It does not really address the problem of many companies controlling the market through tacit coordination.

The paper also examines the approach of the courts and regulatory bodies to these situations. To understand the problem better, it compares the competition laws of jurisdictions such as the European Union and the United States, which have mechanisms for dealing with several companies acting together to dominate a market. It argues that Indian law needs to be revised to reflect the reality of the market, and suggests amendments that would help Indian competition law work better and regulate such conduct more effectively.

Keywords: *Collective dominance, competition law, dominant position, CCI.*

I. INTRODUCTION

The aim of Indian competition law is to ensure that market practices are fair by preventing anti-competitive practices that cause an appreciable adverse effect in the relevant market. Before independence, there was no specific law preventing anti-competitive practices in India. After independence, Parliament enacted the Monopolies and Restrictive Trade Practices Act, 1969, which focused only on prohibiting monopolistic practices and treated a dominant position as unlawful in itself, even without abuse. With liberalisation, privatisation, and globalisation in 1991, the Indian market was opened wide, paving the way for the entry of private players and

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multinational companies.¹ In light of these LPG policy measures, the MRTP Act was considered insufficient to maintain fair competition, given the rise of private and multinational players. Hence the Raghavan Committee was constituted to suggest measures needed to maintain fair competition in the Indian market.

The recommendation of the Raghavan Committee was to repeal the MRTP Act and enact a new competition law that would promote fair competition and prohibit practices causing an appreciable adverse effect on competition. Based on the Committee's recommendation, the Competition Act, 2002 was enacted by Parliament with the object of prohibiting anti-competitive agreements and the abuse of a dominant position, and of regulating combinations. The Act also establishes the authority that regulates fair competition, the Competition Commission of India, to enforce the mandates provided in the Act.

A. Hypothesis

The current framework under the Competition Act, 2002 does not adequately address the aspect of collective dominance, thereby creating enforcement gaps in regulating anti-competitive conduct; this necessitates a re-examination of the statutory scheme and consideration of specific legal reforms.

B. Research Question

Whether the existing legal framework under the Competition Act, 2002, as interpreted by judicial and regulatory authorities, is adequate to address the issue of collective dominance in India.

C. Object of Research

The primary objective of this research is to analyse and evaluate critically the adequacy of the legal framework governing collective dominance under the Competition Act, 2002. The study analyses how the Act deals with the concept of "dominance," particularly its emphasis on single-firm dominance, and assesses whether the framework is capable of addressing situations in which multiple enterprises collectively exercise market power and collectively abuse a dominant position. It further examines the interpretative role played by the Competition Commission of India (CCI) and the judiciary in cases that may indirectly involve elements of collective dominance, and the challenges of interpretation that arise.

¹ Abir Roy & Jayant Kumar, *COMPETITION LAW IN INDIA* 53 (Eastern Law House, 2d ed., 4th impr. 2023).

The research also identifies the gaps and challenges arising from the absence of explicit statutory recognition of collective dominance, and evaluates the impact of such gaps on effective competition regulation in India. By drawing comparative insights from jurisdictions where collective dominance is recognised, the study seeks to determine whether reforms or amendments to the Competition Act, 2002 are necessary. Ultimately, the objective is to contribute to the development of a more comprehensive and effective competition-law framework capable of addressing evolving market realities.

D. Research Methodology

This research paper adopts the doctrinal method of research. The study makes use of sources containing information relevant to competition law, landmark judgments, and other relevant material. This material is obtained through a documentary analysis of case law, books, articles, and websites concerning competition law and the concept of collective dominance.

II. ANTI-COMPETITIVE PRACTICES UNDER INDIAN COMPETITION LAW

The object of Indian competition law can be traced mainly to the protection of consumers' interests, the prohibition of practices causing an appreciable adverse effect, and the promotion of fair competition and free trade in the market. To ensure fair competition, the Competition Act, 2002 specifically prohibits anti-competitive agreements under Section 3, prevents the abuse of a dominant position under Section 4, and regulates combinations under Sections 5 and 6, in order to eliminate practices causing an appreciable adverse effect. The Competition Commission of India was established under the Act for the enforcement of its provisions. The main duty entrusted to the Commission is to eliminate practices causing an appreciable adverse effect in the relevant market, to protect the interests of consumers, and to create a level playing field that ensures freedom of trade. Under the Act, anti-competitive agreements, the abuse of a dominant position, and combinations are addressed only insofar as they create an appreciable adverse effect on competition.

III. COLLECTIVE DOMINANCE

The Competition Act, 2002 recognises the abuse of a dominant position under Section 4, which addresses only abuse by a single enterprise in the market. The concept of collective dominance is not explicitly covered under the Act. Collective dominance may be defined as a situation in which players in the market, without any explicit agreement but through tacit coordination, attain a collective dominant position and engage in practices that cause an appreciable adverse effect. In such cases there is no proof of an explicit agreement on which to base a penalty; there is only a tacit coordination or understanding among the players, who are collectively in a

dominant position. Collective dominance thus refers to a situation in which two or more independent firms, through tacit coordination or market structure, jointly hold enough market power to act independently of competitors and consumers. Common in EU law, this concept allows authorities to regulate oligopolistic market behaviour that operates like a monopoly, even without a formal cartel.

In other words, collective dominance refers to a situation in which two or more independent firms together hold a dominant position and are able to act in a coordinated manner, even without a formal agreement. Unlike single-firm dominance, which alone is recognised under Indian competition law, collective dominance arises when several enterprises, by virtue of their combined market power and tacit coordination, behave in a way that allows them to influence prices, output, or other market conditions. In such cases the firms may not explicitly collude in a manner that is penalised under Indian law, but their market behaviour becomes aligned because of similar economic interests, market structure, or interdependence.

This concept plays a significant role in competition law because market power is not always abused by a single dominant enterprise. Sometimes a small group of firms can collectively control the market and restrict effective competition through anti-competitive practices. When firms operate in highly concentrated markets with similar cost structures and transparent pricing, they may find it easier to coordinate their actions, which can ultimately harm consumers and smaller competitors and undermine the free trade that is the object of competition law. The idea of collective dominance therefore helps competition authorities examine whether a group of firms together holds and abuses market power, even where no single firm appears dominant individually.

IV. LAWS ON COLLECTIVE DOMINANCE IN THE INTERNATIONAL ARENA

The concept of collective dominance has gradually developed in international competition-law regimes as authorities have encountered cases in which market power is exercised not only by a single firm, but also by a group of firms acting in parallel without a formal agreement. Several countries have incorporated legal provisions, or at least interpretative principles, to address such situations, particularly in markets where a few large enterprises hold substantial market shares. These frameworks aim to prevent coordinated behaviour or tacit coordination that may restrict competition, raise prices, or limit consumer choice, even where there is no explicit agreement among the firms.

Among international jurisdictions, the concept of collective dominance has been most clearly recognised in the framework of the European Union. Under the Treaty on the Functioning of

the European Union, particularly Article 102, competition authorities have interpreted the prohibition on the abuse of dominance to include situations where two or more firms jointly hold a dominant position through tacit coordination. Courts such as the European Court of Justice have clarified that collective dominance may arise where firms are economically linked in a way that allows them to adopt a common strategy and gain a dominant position collectively. This approach has influenced competition law in other jurisdictions, which increasingly examine whether coordinated market power among firms can undermine effective competition.

A. Collective Dominance under the Law of the European Union

The concept of collective dominance is most clearly recognised in the law of the European Union. Although the treaties do not explicitly define or recognise collective dominance, the prohibition of the abuse of a dominant position under Article 102² of the Treaty on the Functioning of the European Union has been interpreted to include situations where two or more undertakings together hold a dominant position. This interpretation recognises that market power may be exercised collectively by a group of firms that are economically connected or capable of coordinating their behaviour without a formal agreement, thereby restricting effective competition within the internal market.

Judicial interpretation by the European Court of Justice and the General Court of the European Union has played a major role in developing this doctrine. The courts have clarified that collective dominance may arise where firms are linked in such a way that they can adopt a common strategy and act independently of competitors, customers, and consumers. In assessing collective dominance, authorities typically examine factors such as market concentration, transparency of the market, similarities in cost structures, and the ability of firms to monitor and respond to one another's behaviour.

Another important aspect of European Union law is that the doctrine of collective dominance is applied not only in cases involving abuse of dominance, but also in merger control. Under the EU Merger Regulation,³ competition authorities may assess whether a proposed merger would create or strengthen a collective dominant position, ensuring that market structures facilitating coordinated conduct among a small number of firms are scrutinised before they can significantly harm competition. Over time, several landmark decisions of the European courts

² Treaty on the Functioning of the European Union art. 102, 2012 O.J. (C 326) 47.

³ Council Regulation (EC) No. 139/2004 on the Control of Concentrations Between Undertakings (EU Merger Regulation), 2004 O.J. (L 24) 1.

have shaped the understanding of collective dominance and established criteria for identifying such situations, and have influenced competition-law discussions in many other jurisdictions.

Article 102: Any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it shall be prohibited as incompatible with the internal market in so far as it may affect trade between Member States....

Article 102 of the Treaty on the Functioning of the European Union, extracted above, deals with the abuse of a dominant position by an enterprise in the internal market. The internal market may be defined as the markets of the countries comprising the European Union. The effect may fall either wholly within the internal market or in a substantial part of it; in such situations the conduct is covered by EU law. In this Article, the phrase “one or more undertakings” in a dominant position specifically opens the way for the concept of collective dominance. The development of this doctrine has taken place largely through judicial interpretation of these words by the European Court of Justice and the General Court of the European Union. The courts have clarified that collective dominance may arise where firms are linked in such a way that they can adopt a common strategy and act independently of competitors, customers, and consumers; the main point is that, in collective dominance, no agreement between the parties is required.

B. Collective Dominance in the United States

In the United States, competition law does not formally recognise the doctrine of collective dominance in the same explicit manner as the European Union. The primary legal framework governing market power and anti-competitive practices is the Sherman Antitrust Act and the Clayton Act. Under this framework, antitrust enforcement focuses mainly on monopolisation by a single firm or on explicit agreements among competitors to restrain trade; US law does not expressly recognise tacit coordination among enterprises to obtain a collective dominant position. The courts generally require clear evidence of an agreement between firms to establish liability, and mere parallel conduct among oligopolistic firms is usually not sufficient to prove an antitrust violation. As a result, coordinated behaviour without explicit collusion is often difficult to challenge under US antitrust law.⁴

⁴ Vasundhara Singh, Priya A. Solanki & Shreya, *Collective Dominance Under Indian Competition Law: A Comparative Legal and Policy Analysis with the United States, Canada and the European Union*, INT’L J. ECON. PRACTICES & THEORIES (2026).

Hence US antitrust law does not recognise the concept of collective dominance directly. It is difficult to fix the liability of players in an oligopolistic market merely because of parallel behaviour aimed at obtaining a collective dominant position; clear and explicit proof of an agreement or understanding between the players is necessary. In fact, the United States was one of the pioneering nations to enact an antitrust law, which served as a guideline for many countries framing their own competition laws; yet it does not have an effective law to deal with the concept of collective dominance.

C. Collective Dominance under the Law of the United Kingdom

In the United Kingdom, the concept of collective dominance has largely evolved under the influence of European Union competition law. The primary legislation governing competition is the Competition Act 1998, which prohibits anti-competitive agreements and the abuse of a dominant position. Although the Act does not define collective dominance in detail, the interpretation of dominance has been developed through principles drawn from the European competition framework. As a result, the possibility that two or more independent firms may together hold a dominant position has been acknowledged in competition analysis, though it is not directly provided for in the law of the United Kingdom.

The enforcement of competition law in the United Kingdom is carried out by the Competition and Markets Authority. In assessing dominance, the authority may consider whether a group of undertakings is able to behave independently of competitors, consumers, and other market forces. Factors such as market concentration, economic links between firms, transparency in pricing, and the ability of firms to monitor each other's conduct are often examined when determining whether a situation of collective market power exists.

Historically, the recognition of collective dominance in the United Kingdom was closely aligned with European Union jurisprudence, particularly the interpretation of Article 102 of the Treaty on the Functioning of the European Union. Even after the United Kingdom's withdrawal from the European Union, European case law and principles continue to influence the interpretation of dominance under domestic competition law. Consequently, while explicit cases on collective dominance remain relatively limited, the legal framework allows competition authorities to examine situations where a small number of firms may collectively exercise market power in a way that restricts effective competition.

V. INDIAN LAW ON COLLECTIVE DOMINANCE

Before independence, India had no specific law governing fair competition. After independence, in 1969, the Monopolies and Restrictive Trade Practices Act was enacted with the object of

restricting monopolies; it treated a dominant position as unlawful in itself and focused on restriction rather than on the promotion of fair competition. The Indian market was liberalised, privatised, and globalised in 1991, paving the way for the entry of private and global players, in light of which the MRTP Act proved insufficient to deal with the challenges posed. Hence the Raghavan Committee was formed and submitted its recommendations in 1999, the main one being to repeal the MRTP Act and enact a new competition law to maintain fair competition and protect consumer interests.

Based on those recommendations, Parliament enacted a new law to govern fair competition in the market, named the Competition Act, 2002. The main object of the Act is to eliminate practices causing an appreciable adverse effect in the Indian market and to protect the interests of consumers. After a legal challenge in *Brahm Dutt v. Union of India*⁵ and the amendment made in 2007, the Act came into full operation in 2009, completely replacing the MRTP Act. The Competition Act, 2002 focuses mainly on anti-competitive agreements (Section 3), the abuse of a dominant position (Section 4), and combinations (Sections 5 and 6), in order to eliminate anti-competitive practices and any appreciable adverse effect in the Indian market.

A. Anti-Competitive Agreements: Section 3

Section 3 of the Competition Act, 2002⁶ defines anti-competitive agreements and gives a detailed list of their various forms, based on the position of the enterprise in the supply or distribution chain. Section 3(1) provides:

No enterprise or association of enterprises or person or association of persons shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India.

Section 3 thus defines an anti-competitive agreement as an agreement between enterprises, associations of enterprises, persons, or associations of persons that has the effect of producing an appreciable adverse effect on competition, by agreeing on the production, supply, distribution, or control of goods or the provision of services. Such an agreement is prohibited. Further, the agreement need not be a formal written one; it can be an understanding or arrangement between enterprises or persons, as defined in Section 2(b). These agreements are classified into horizontal and vertical agreements according to the nature of the business.

⁵ *Brahm Dutt v. Union of India*, (2005) 2 S.C.C. 431 (India).

⁶ The Competition Act, 2002, § 3, No. 12, Acts of Parliament, 2003 (India).

Coordinated behaviour effected by an agreement between parties can therefore be dealt with under Section 3 of the Competition Act, 2002.

B. Abuse of Dominant Position: Section 4

Section 4 of the Competition Act⁷ defines and prohibits the abuse of a dominant position, and provides various factors for determining the dominant position of an enterprise. Under Indian competition law a dominant position is not prohibited in itself; only its abuse is prohibited. Section 4 provides:

(1) No enterprise or group shall abuse its dominant position. (2) There shall be an abuse of dominant position under sub-section (1) if an enterprise or a group (a) directly or indirectly imposes unfair or discriminatory (i) conditions in the purchase or sale of goods or services, or (ii) prices in the purchase or sale (including predatory prices) of goods or services.

This section prohibits the abuse of a dominant position by an enterprise or group through unfair or discriminatory conditions or prices, including predatory pricing. The question to be analysed is whether the section has any scope in cases of collective dominance. The section begins with “No enterprise or group,” and the phrase “enterprise” clearly recognises only an individual enterprise. The meaning of “group” is found in clause (b) of the Explanation to Section 5, and is narrowly defined to include only associated or wholly-owned subsidiaries, excluding independent firms that might form a group. On analysing these definitions, it may be concluded that the concept of collective dominance finds no place in Section 4 directly.

VI. ANALYSIS OF THE COMPETITION ACT, 2002 IN LIGHT OF COLLECTIVE DOMINANCE

Collective dominance, as already discussed, means dominance exercised not by a single enterprise or group, but collectively by two or more enterprises. Its special character is that there is often no explicit agreement between those enterprises to maintain the collective dominance; rather, their conduct and pricing are aligned with one another. The elements of collective dominance may therefore be separated as follows: first, two or more enterprises hold a collective dominant position in the market; and second, there is no explicit agreement between them to maintain that position. Accordingly, in order to prohibit collective dominance effectively, the legal framework must be equipped to address circumstances in which multiple enterprises

⁷ The Competition Act, 2002, § 4, No. 12, Acts of Parliament, 2003 (India).

jointly exercise market power, and Indian competition law must be examined from these two perspectives to determine whether it adequately regulates such situations.

A. Two or More Enterprises Holding a Collective Dominant Position

The abuse of a dominant position is dealt with under Section 4 of the Competition Act, 2002. As discussed, the opening phrase of the section is clear: “No enterprise or group shall abuse its dominant position.” It prohibits only the abuse of a dominant position by an individual enterprise or a group, and can be applied only where the dominant position is abused by an individual enterprise. There is no room for ambiguity or interpretation here, because the legislative intent is to prohibit only the abuse of a dominant position by one enterprise or group.

B. Analysing Collective Dominance through the Lens of Anti-Competitive Agreements

Section 3 of the Competition Act, 2002 defines anti-competitive agreements and prohibits them because of their capability of causing an appreciable adverse effect on competition. An anti-competitive agreement may be defined as an agreement or understanding between competitors to cause an appreciable adverse effect through various arrangements, ranging from horizontal to vertical agreements, for reasons such as harming the interests of consumers, driving existing competitors out of the market, or creating barriers to new entrants. It is therefore necessary to analyse whether collective dominance could be covered under Section 3. The section begins with “No enterprise or association of enterprises or person or association of persons shall enter into any agreement,” which makes it clear that two or more enterprises must enter into an agreement to create an appreciable adverse effect. The agreement need not be formal or written; it may be oral or an understanding between the parties. In collective dominance, however, there is no explicit agreement at all, only a tacit coordination. It is therefore difficult to fit collective dominance within, or to prohibit it under, Section 3.

VII. THE COMPETITION COMMISSION OF INDIA ON COLLECTIVE DOMINANCE

The interpretation adopted by the Competition Commission of India (CCI) in relation to the abuse of dominance under the Competition Act, 2002 has consistently excluded the concept of collective dominance through a literal interpretation of the Act. The Commission has maintained that liability under Section 4 arises only where a single enterprise is found to be dominant in the relevant market and abuses that dominance in the ways articulated in the Act. This position was clearly explained in *Neeraj Malhotra v. Deutsche Post Bank Home Finance*

Ltd.,⁸ where it was alleged that several banks had imposed identical prepayment-penalty charges on borrowers. The CCI rejected the complaint, observing that although multiple banks had adopted similar practices, none of them individually possessed a dominant position in the relevant market, and that Section 4 could therefore not be invoked. The case makes clear that the CCI looks into the dominant position of an individual enterprise before examining its abusive conduct.

A similar approach was taken in *Sanjeev Rao v. Andhra Pradesh Hire Purchase Association*,⁹ where the members of the association together controlled nearly sixty percent of the hire-purchase market but individually held no dominant position. The Commission dismissed the case, reiterating that the statute does not recognise the doctrine of collective dominance. Likewise, in *Meru Travel Solutions Pvt. Ltd. v. ANI Technologies Pvt. Ltd.*,¹⁰ concerning the conduct of Ola and Uber in the radio-taxi market, the CCI held that even if parallel conduct adversely affected competitors, it could not amount to abuse under Section 4 unless the individual dominance of an enterprise was first established. These decisions demonstrate the Commission's consistent stance that the current framework of Indian competition law does not extend the concept of abuse of dominance to situations involving collective market power.

The issue resurfaced with urgency in 2025, when the CCI dismissed a case of collective dominance in the refined-copper market.¹¹ The two firms alleged to control roughly seventy-five percent of domestic supply were accused of imposing onerous contractual terms, including de-pricing clauses and the early invocation of bank guarantees, particularly during a period of tight supply following the COVID-19 lockdown. The CCI held that collective dominance is not recognised and that no action could be taken, because the alleged enterprises, Hindalco and Vedanta, did not individually hold a dominant position. The CCI's refusal to act once again underscores the need to recognise the concept of collective dominance in India, which is one of the serious aspects of competition law.

⁸ Neeraj Malhotra v. Deutsche Post Bank Home Finance Ltd., Case No. 05 of 2009, Competition Commission of India (Nov. 12, 2010).

⁹ Sanjeev Rao v. Andhra Pradesh Hire Purchase Ass'n, Case No. 44 of 2011, Competition Commission of India (Oct. 17, 2013).

¹⁰ Meru Travel Solutions Pvt. Ltd. v. ANI Technologies Pvt. Ltd., Case No. 25 of 2017, Competition Commission of India (June 19, 2018).

¹¹ Airen Metals Pvt. Ltd. v. Hindalco Industries Ltd., Competition Commission of India (June 2025).

VIII. ATTEMPTS AT AMENDMENT AND THE REASONS FOR FAILURE

The Competition (Amendment) Bill, 2012 was introduced in Parliament by the Minister of Corporate Affairs, seeking to amend several aspects of the Competition Act, 2002. One important aspect was the inclusion of the concept of collective dominance in Section 4, to meet the contemporary needs of the competition regime. Clause 4 of the Bill sought to amend Section 4 of the principal Act as follows:

In section 4 of the principal Act, in sub-section (1), after the words “or group,” the words “jointly or singly” shall be inserted.¹²

The Bill thus sought to insert the words “jointly or singly” after “or group,” so that the principal Act would read: “No enterprise or group, jointly or singly, shall abuse its dominant position.” This amendment would have introduced the concept of collective dominance into the Indian competition-law regime: were it passed, it would convert the single-enterprise model of abuse of dominance into one covering single or joint dominance, which might be sufficient to deal with collective dominance under Section 4.

On the inclusion of collective dominance, the Competition Law Review Committee, in its report, observed that no amendment was necessary at that juncture, as the case of collective dominance could be covered under Section 3 on anti-competitive agreements.¹³ The Committee reasoned that collective dominance involves an agreement between enterprises to engage in a practice causing an appreciable adverse effect, and therefore gave the opinion that the existing law was sufficient. This paper submits that the argument is unsound, because in most cases of collective dominance there is no explicit agreement between the enterprises, which makes it more difficult to fix their liability under Section 3. The enterprises in collective dominance have only a tacit coordination to hold a collective, rather than individual, dominant position, using various abusive strategies that may harm the interests of consumers and other competitors.

Further, since no formal agreement exists between the parties in cases of collective dominance, whereas the first and foremost element to be proved under Section 3 is the existence of an agreement, that element is difficult to establish in such cases. The opinion of the Competition Law Review Committee, that the existing law is sufficient, therefore cannot be accepted. An

¹² The Competition (Amendment) Bill, 2012, § 4, Bill No. 136 of 2012.

¹³ COMPETITION LAW REVIEW COMMITTEE, *Report of the Competition Law Review Committee* 98 (2019), <https://www.ies.gov.in/pdfs/ReportCompetition-CLRC.pdf>.

amendment of the kind proposed in the Competition (Amendment) Bill, 2012 is necessary to deal with the contemporary and growing issue of collective dominance in India.

IX. CONCLUSION AND SUGGESTIONS

On analysing the present circumstances and the law relating to collective dominance in India, it is clear that a lacuna exists in Indian competition law. In a growing economy, with an increasing number of global players in the Indian market and the emergence of large enterprises across different markets, the shortcomings of competition law, and its narrow interpretation by the CCI and the courts, pose a serious threat. These circumstances make competition law ineffective and prevent it from achieving the true intent of the legislature, the foremost object of which is to maintain fair competition and protect the interests of consumers. As discussed, Section 3 of the Competition Act, 2002 deals with anti-competitive agreements and speaks broadly of an agreement between two competing enterprises to engage in a practice causing an appreciable adverse effect.

The agreements mentioned in Section 3 require an express or implied agreement between the parties, which is an essential and *prima facie* ingredient that must be proved to attract the section, and the conduct of the parties must harm the market, competitors, and consumers. Section 4 deals with the abuse of a dominant position by an enterprise or group that has the effect of causing an appreciable adverse effect and harming consumers. The main drawback of the section is that it recognises abuse only by an individual enterprise or group, which poses a challenge in dealing with collective dominance by two or more enterprises. In the peculiar case of collective dominance, the enterprises abusing their collective dominant position will have no express agreement; indeed, no agreement or understanding exists between them, only a tacit coordination. It is therefore concluded that the Competition Act, 2002 is not sufficient to deal with cases of collective dominance.

This paper accordingly suggests an amendment to the Competition Act, 2002 to include the concept of collective dominance. The model provided by Clause 4 of the Competition (Amendment) Bill, 2012 is sufficient to deal with the contemporary issue. Section 4 should be amended so that, in sub-section (1), after the words “or group,” the words “jointly or singly” are inserted. The word “jointly” in particular would secure the concept of collective dominance. As the CCI and the courts are strict in their interpretation of the abuse of a dominant position under Section 4, this word would create space for them to interpret and extend the abuse of a dominant position to collective dominance exercised by enterprises.

It is further expected that the CCI and the courts will give a liberal interpretation in cases of collective dominance, because there can be no evidence of an agreement between the enterprises, only a tacit coordination. In considering such cases, the CCI and the courts should look into the conduct of the enterprises, their pricing strategies, and similar factors, in order to reach a conclusion about the collective dominance exercised by them. It is found that, in matters of competition law, the CCI and the courts apply a strict and narrow interpretation. While interpreting the provisions of competition law, they must ensure that they fulfil the legislative intent of maintaining fair competition in the market. The interpretation must eliminate practices causing an appreciable adverse effect, being neither too strict nor too liberal, while fulfilling the mandate placed on them by the Competition Act, 2002 to maintain fair competition in the Indian market.
