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Abuse of Dominant Position in India: An Analysis

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ABSTRACT

In developing economies like India, competition law enables fair markets and supporting long-term economic stability. These laws are especially important in ensuring new and smaller businesses have a fair market at early stages without being thrown out by monopolistic giants or unfair trade practices. India's competition framework has its roots in two major laws the Monopolistic and Restrictive Trade Practices Act of 1969 and the recent Competition Act of 2002. These repealed and Newly Enacted laws laid the groundwork for a modern approach to regulate market power and ensured an equal market. Over the years, several cases have helped to define what constitutes abuse of dominance in the Indian context. Which have brought much-needed clarity to the enforcement of these laws. Those cases were examined by the Competition Commission of India (CCI) and, in some instances, reviewed by the Competition Appellate Tribunal, illustrating the legal process involved in addressing anti-competitive conduct. This article looks at the evolution of India's competition policy, highlights landmark decisions, and explains how abuse of dominance is investigated and adjudicated under current Indian law

Keywords: Competition, Developing Economies, Abuse of Dominance, Anti-Competitive Agreement

I. INTRODUCTION

Competition law is vital for the growth and stability of developing countries. It helps create fair, open markets where both large and small businesses can compete on equally. For such nations, strong competition policies mean protecting local businesses and consumers from unfair practices, keeping prices fair and quality high. They also help these countries stand their ground in global markets, preventing exploitation by bigger international players. At its heart, competition policy is about fairness and long-term development. When markets are free and fair, innovation thrives, businesses grow, and economies strengthen. That's the reason competition law isn't just an economic regulation ³ but a very important factor in sustainable

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³ W. Lachmann, The Development Dimension of Competition Law and Policy, U.N. Doc.

growth and self-reliance. Every country has its competition laws according to its own economic needs. There's no common law which fits-all needs, instead, each nation strikes a balance between encouraging competition and ensuring economic stability. In India, this evolution is marked by two major laws the Monopolistic and Restrictive Trade Practices Act of 1969 and the Competition Act of 2002⁴. Together, these lays the groundwork for India's current framework to promote fair business practices and curb monopolistic behaviour.

II. EVOLUTION OF COMPETITION LAW IN INDIA

Pre-Independence Period Before India gained independence in 1947, there was no formal or comprehensive competition law framework in place. The Indian economy was largely colonial in nature and structured to serve British interests. During this period, the focus was more on trade regulation and controlling commercial practices to benefit the British Empire, rather than promoting free and fair competition. However, some indirect forms of regulation did exist through laws like the Indian Contract Act, 1872, which governed agreements between parties, including those that could potentially restrain trade. Another example was the Monopolies and Restrictive Trade Practices Ordinance of 1946, which was introduced towards the end of the colonial era. Although limited in scope and implementation, it was one of the earliest attempts to deal with unfair trade practices. Overall, the idea of promoting competition or curbing monopolistic behaviour was not a priority under colonial rule. The groundwork for modern competition law in India was laid only after independence, when the country began focusing on economic development, industrial regulation, and ultimately liberalization.

Post-Independence 1947 During colonial rule, industrial progress in India was sporadic, as the British had little interest in developing the country's economy. After independence, India prioritized rapid industrialization to boost socio-economic growth. The Industrial Policy Resolution of 1956 marked a major shift, placing the public sector at the forefront and limiting private industry through strict licensing. This gave a few well-connected businesses an unfair edge, stifling competition. Government control extended across sectors, often blocking market forces. Over time, this imbalance hurt ordinary citizens, prompting calls for reforms to promote fair competition and create a more level economic playing field.

The Period of MRTP Act 1969 India's journey toward a modern competition law framework has been shaped by a deep need to address the concentration of economic power and the

UNCTAD/ITCD/CLP/Misc.9 (1999), <https://unctad.org/system/files/official-document/poitcdclpm9.en.pdf>.

⁴ Pameela L., A Study on the Evolution and Historical Development of Competition Law, 4 INDIAN J.L. & LEGAL RSCH. 1 (2022).

challenges posed by anti-competitive practices. After independence, the government set up several committees to understand these issues and recommend reforms.⁵ The Hazari Committee Report of 1967 was one of the first to reveal how the industrial licensing system disproportionately favoured large business houses. Instead of encouraging broad-based industrial growth, the system unintentionally created monopolies, stifling smaller players. Earlier, the Mahalanobis Committee in 1960 had questioned the real impact of India's Five-Year Plans on income distribution and living standards. It found that financial institutions like the Industrial Finance Corporation and LIC had largely supported big businesses, unintentionally reinforcing monopolistic trends. The committee called for better data collection to align industrial development with social goals.⁶

The Monopolies Inquiry Commission, in 1964, led by K.C. Dasgupta, confirmed that economic power was concentrated among a few dominant players, and restrictive practices were common.⁷ Later, the Sachar Committee reviewed the Monopolies and Restrictive Trade Practices Commission (MRTPC) and found it to be weak and mostly advisory. It suggested empowering the Commission and expanding its reach, including over public sector undertakings. The 1984 amendments to the MRTP Act reflected these ideas, introducing stricter rules against deceptive advertising and unfair trade practices. Liberalization in 1991 brought a shift from controlling business expansion to encouraging competition. Finally, the Raghavan Committee in the late 1990s laid the foundation for a modern competition law. It called for a strong legal framework to prevent anti-competitive behaviour and promote fair markets.⁸ These developments led to the creation of the Competition Commission of India, marking a major shift toward a transparent, consumer-friendly, market-driven economy.

Competition Act 2002

With the arrival of liberalization, privatization, and globalization in the 1990s, India's economic landscape changed dramatically and the MRTP Act quickly began to show its age. It lacked the tools needed to tackle emerging market challenges like cartels, collusion, price fixing, and abuse of dominance. Courts and the MRTP Commission alike pointed out its shortcomings, reinforcing the call for a stronger legal framework. Recognizing this need, the

⁵ Industrial planning and Licensing policy: Summary of the Hazari Report 25/05/2025 <https://www.jstor.org/stable/4357835>

⁶ Siddharth Tyagi, DEVELOPMENT OF COMPETITION LAW: AN INTRODUCTION AND THE MRTP ACT 1969 Indian Journal of Integrated Research in Law Volume IV Issue V 2024

⁷ V. D. Kulshreshtha, REPORT OF THE MONOPOLIES INQUIRY COMMISSION: AN EVALUATION, volume-8, Journal of the Indian Law Institute, <https://www.jstor.org/stable/43949911>

⁸ Ms. Preeti Singh JOURNEY OF COMPETITION LAW IN INDIA Volume 4 <http://journal.lawmantra.co.in/wp-content/uploads/2017/05/1.pdf>

government set up a High-Level Committee in 1999, headed by S.V.S. Raghavan, to assess whether India needed an entirely new competition law or an overhaul of the MRTP Act. The committee recommended a fresh start, offering 137 suggestions for a modern competition regime. A draft bill followed in 2000, shaped by consultations with industry experts and consumer groups. After careful scrutiny by a Parliamentary Committee, the bill was passed in December 2002, leading to the birth of the Competition Act, 2002 ushering in a new era of fair market regulation.

III. CCI AND ITS CONTROL OVER THE ABUSE OF DOMINANT POSITION

Before the enforcement of the Act, there were lot of committee report, opinion from the commission and later on the Competition Act came into force on 13th January 2003, even after implementation there were changes/ amendment from time to time, regarding Antitrust provisions, merger and acquisition, period between 2007-2009, its main object was to prevent practices having adverse effect on competition, to sustain and promote markets, in the interest of consumers. The Act provides for establishing a quasi-judicial body named Competition Commission of India and the same started working since October 14, 2003. Before tracing evolution of Competition Act 2002 since its inception. The CCI can investigate into violation of any part of the Act Suo-moto or on receiving any information from anyone and any such reference from federal government of India. The decisions of Competition Commission of India could be challenged⁹

Understanding Abuse of Dominant Position Definition and Case Studies

Definition of Abuse of dominant position¹⁰ No enterprise or group shall abuse its dominant position dominant position” means a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to

- (i) operate independently of competitive forces prevailing in the relevant market; or
- (ii) affect its competitors or consumers or the relevant market in its favour

Abuse of dominance occurs when a company that holds a strong position in a relevant market uses its power to suppress competition, exploit consumers, or block new entrants from entering or expanding in the market. Under Section 4 of the Competition Act, 2002, a company is considered to be in a dominant position if it can operate independently of competitive pressures or significantly influence other players in the market, including consumers and competitors. It is important to draw a clear line between merely being

⁹ Section 53A of the Competition Act 2002

¹⁰ Section 4(1)(a) competition Act 2002

dominant and abusing that dominance. Competition law does not prohibit a company from being successful or holding a dominant market position. What raises legal and regulatory concerns is the misuse of that position.¹¹

To determine whether a company is dominant, the Competition Commission of India (CCI) relies on the criteria outlined in Section 19(4) of the Act. These factors include the company's market share, financial strength, access to resources, barriers to market entry, the level of customer dependence, vertical integration, and the ability of buyers to counter the company's influence. Once dominance is established, the CCI examines whether the company has engaged in any of the prohibited practices listed under Section 4(2). These may include actions such as limiting production or technological development, denying access to the market, imposing unfair prices or contractual terms, or leveraging its dominant position in one market to gain an advantage in another¹²

Case studies

Leading cases to determine abuse of dominant position decided by the Competition Appellate Tribunal as follows:

JSW Paints (P) Ltd. v. Asian Paints Ltd In 2020, JSW Paints filed a complaint with the Competition Commission of India (CCI) against Asian Paints, alleging anti-competitive practices that obstructed its entry into the decorative paints market, particularly in Karnataka, Telangana, and Tamil Nadu. JSW Paints accused Asian Paints of abusing its dominant market position by intimidating dealers allegedly reducing credit limits, delaying or stopping supplies, lowering dealer tiers, and pressuring them to remove JSW Paints' promotional materials. The central issue was whether Asian Paints violated Section 4(2)(c) of the Competition Act, which prohibits conduct that results in denial of market access. Based on preliminary evidence, the CCI found a prima facie case and ordered a detailed investigation into Asian Paints' conduct. However, in September 2022, after concluding its investigation, the CCI found insufficient evidence to support JSW Paints' allegations and dismissed the case, stating that Asian Paints had not engaged in anti-competitive practices. JSW Paints, dissatisfied with the decision, expressed intent to pursue further action to safeguard its market interests and promote fair competition.¹³

Together We Fight Society v. Apple Inc In December 2021, the non-profit organization filed a complaint with the Competition Commission of India (CCI) against Apple Inc., alleging anti-

¹¹ Pinak Kumar choudhary, Understanding Abuse Of Dominance” Volume 13 IJCRT 2025

¹² Supra 4

¹³ *JSW Paints (P) Ltd. v. Asian Paints Ltd* , CCI 2022

competitive conduct. The complaint focused on Apple's restrictive App Store policies, including mandating exclusive app distribution through its App Store, requiring developers to use Apple's in-app payment system (which charges a 30% commission), and enforcing potentially arbitrary App Store review guidelines. The core issue was whether these practices amounted to an abuse of Apple's dominant position under Section 4 of the Competition Act, which prohibits imposing unfair or discriminatory conditions in the sale of goods or services.¹⁴ The CCI found merit in the allegations and ordered a detailed investigation. In July 2024, the investigation concluded that Apple had indeed exploited its dominant position in the app store ecosystem, harming developers, consumers, and alternative payment processors. Apple denied wrongdoing, arguing that it holds only a small share of India's smartphone market compared to rivals. As of March 2025, the CCI's senior officials are reviewing the investigation findings, and a final decision on the matter is expected soon.

Google Android In 2018, the Competition Commission of India (CCI) initiated an investigation into Google following complaints that it was abusing its dominant position in the Android smartphone market. The complaints alleged that Google required smartphone manufacturers to pre-install its apps such as Google Search, Chrome, and YouTube as a condition to access the Play Store, thereby restricting competition and limiting the use of rival apps and alternative Android versions, issues included whether Google's mandatory pre-installation policies and restrictions on alternative app stores and modified Android versions amounted to abuse of dominance under the Competition Act. The case questioned if Google's practices stifled innovation and reduced consumer choice.¹⁵

In October 2022, the CCI found Google guilty of anti-competitive conduct, imposed a ₹1,337.76 crore fine, and directed Google to amend its policies allowing manufacturers to pre-install competing apps and app stores and prohibiting restrictive agreements. Google appealed to the National Company Law Appellate Tribunal (NCLAT), which upheld the fine with some modifications. Google subsequently challenged the decision in the Supreme Court of India, where the case remains pending.

Investigation of Abuse of Dominance by CCI and Process of Inquiry The competition act 2002, has provided a well-defined definition which prohibits anti-competitive practices, abuse of dominant position, and Regulation of combinations section 3 defines anti-competitive agreements and section 4 defines Abuse of Dominant position and section 6 defines

¹⁴ Together We Fight Society v. Apple Inc, <https://www.scconline.com/blog/post/2022/01/03/apple-charging-a-commission-of-up-to-30-on-all-payments-made-through-its-in-app-purchase-system/>

¹⁵ <https://indianexpress.com/article/technology/tech-news-technology/google-cci-pleas-android-antitrust-case-supreme-court-9578620/>

Regulations of combinations. The second chapter of the Competition Act 2002 deals with detailed stages and procedural aspects of the CCI

Filing of Information the CCI can take up cases of anti-competitive behaviour either on its own (Suo-motu) or based on information filed under Section 19(1) of the Competition Act, 2002. The Act empowers the CCI to look into any conduct that may adversely affect market competition. Once such information is received, the Commission can initiate an inquiry to assess whether there has been a violation of antitrust provisions. The law allows a broad range of individuals and entities to file a complaint. This includes not just individuals and firms, but also Hindu Undivided Families (HUFs), companies, local authorities, co-operative societies, consumer associations, trusts, and even artificial juridical persons.¹⁶ This wide eligibility reflects the Act's objective of promoting and preserving fair competition in the market.

To file a complaint, the information must be submitted to the Secretary of the CCI or an authorized officer. The filing fee depends on the nature of the complainant ₹5,000 for individuals, HUFs, NGOs, consumer associations, co-operatives, or registered trusts ₹20,000 for firms and companies with turnover up to ₹1 crore in the previous year ₹50,000 for any other category of complainant Additional supporting documents must be filed as a "Paper Book" at least seven days before the scheduled hearing. These documents must be certified true copies, and proof of serving copies to the opposing parties must be submitted. This process ensures a fair opportunity for all stakeholders to raise concerns against anti-competitive practices.

Inquiry by the commission Once the Competition Commission of India (CCI) receives information or a formal complaint regarding a possible violation of competition law, it does not immediately launch a detailed investigation. Instead, the process begins with an initial scrutiny of the submitted material. This is done by the Secretary of the Commission, who examines whether the information or reference is complete and free from procedural defects. If any deficiencies are found, they are communicated to the party who filed the information. In the case of submissions under Section 19(1)(a) or 19(1)(b) of the Competition Act, the Secretary has 15 days to notify the informant about the defect. For references under Section 21, the communication must be made within seven days. Once the defects, if any, are rectified, the information is placed before the Commission for consideration.

At this stage, the Commission evaluates whether a prima facie case exists. If it believes there is sufficient ground to investigate further, it passes an order under Section 26(1) directing the

¹⁶ Section 19(1) of the competition Act 2002

Director General (DG) to initiate an investigation. This order is purely administrative in nature and does not determine any party's rights or obligations. Since it is not a judicial or adjudicatory action, it is not subject to appeal, and the principles of natural justice such as the right to a prior hearing do not mandatorily apply. However, the Commission retains the discretion to grant a hearing if it considers it necessary based on the facts of the case. If, on the other hand, the Commission concludes that no prima facie case exists, it closes the matter under Section 26(2) and communicates this decision to the relevant parties, including the Central or State Government or any statutory authority involved.

Following an order under Section 26(1), the DG begins the process of investigation. While the DG conducts a fact-finding investigation, the Commission's inquiry runs parallel to this. Once the DG completes the investigation, he or she submits a detailed report to the Commission under Section 26(3). The Commission then sends a notice to all affected parties, enclosing copies of the original information as well as the DG's report. The parties are invited to submit their objections and suggestions in response.

Based on the DG's report and the responses received, the Commission may decide that no contravention of the Act has occurred. If so, it will close the matter under Section 26(6) and formally communicate this conclusion to all relevant parties and authorities. However, if the Commission finds that additional investigation is necessary, it may direct the DG to conduct further investigation under Section 26(7) or it may proceed with further inquiry on its own under Section 26(8). In either case, the parties are once again given an opportunity to present their responses and objections to the updated findings.

If, after completing its inquiry, the Commission concludes that a violation of the Competition Act has indeed occurred, it takes appropriate action under Sections 27 and 28. These provisions empower the Commission to impose penalties, issue cease-and-desist orders, or in more severe cases, order the division of an enterprise to eliminate the adverse effects on competition. The entire process is designed to ensure that the Commission exercises its powers in a fair, reasoned, and procedurally sound manner, balancing the need for market regulation with the principles of natural justice and due process.

Investigation by Director General The act empowers Director General to investigate into the matters on a direction issued by commission under section 26(1) of the act.¹⁷ The DG required to submit a report under section 26(3) within such time as may be specified by the commission, which ordinarily shall not exceed sixty days from the date of receipt of the

¹⁷ Section 26(1) of the competition Act 2002

direction of the commission. The report of the director general contains his findings on each allegation made in the information or reference, as the case may be, together with all evidence or documents or statements or analysis collected during the investigation.¹⁸

Orders and penalty the commission after conducting enquiry into the alleged contravention of the agreement or abuse of dominant position is empowered to pass appropriate order or impose penalty under section 27 and 28 of the acts. The power under section 27¹⁹ and section 28 can be exercised only by a reasoned order after, applying its mind to existence of prima facie case and issuance of direction to director general for conducting investigation under S. 26(1), and recording its due satisfaction as well as its view that it deemed necessary not to give notice to the other side, recording that material on record indicate likelihood of irreparable and irretrievable damage or adverse effect on competition in market.²⁰

Penalty The commission under sub-section (b) of Section 27 is also empowered to impose penalty for violation of Section 3 or 4 of the act depending on the seriousness of the infringement. A maximum penalty up to 10% of the average turnover for the last three preceding financial years can be imposed upon each of such person or enterprises, which are parties to agreement or abuse. In case of cartel under Section 3(3) of the act, the commission may impose a penalty up to three times its profit for each year of the continuance of such agreement or ten percent of its turnover for each year of the continuance of such agreement, whichever is higher on each of the participant of the cartel. However, the commission may impose lesser penalty vide section 46 if it is satisfied that full and true disclosure is made in respect of the alleged allegation. Before imposing penalty under the Chapter VI of the act, the commission shall give the person a show-cause notice and reasonable opportunity to represent his case before the commission.²¹

Appeal The competition act establishes appellate tribunal to hear and dispose of appeals ²²and adjudicate any claim for compensation that may arises from the finding of the commission. The National Company Law Appellate Tribunal constituted under Section 410 of the Companies Act, 2013²³ is empowered to exercise function of appellate tribunal under the competition act.²⁴ Procedure and powers of Appellate Tribunal: Section 53 Of²⁵ provides for

¹⁸ Section 26(1)(3) of the competition Act 2002

¹⁹ Section 27 & 43 of the competition Act 2002

²⁰ Section 26(1), 27 & 28 of the competition Act 2002

²¹ Section 27(b), 3,4, 3(3), 46 of the competition Act 2002

²² Section 53A(1)(a) of the competition Act 2002

²³ Section 410 of the companies Act 2013

²⁴ Section 53 A of the competition Act 2002

²⁵Section 53 of the competition Act 2002

procedure and power of the appellate tribunal. The appellate tribunal empowered to regulate its own procedure keeping in mind the principal of natural justice.

The appellate tribunal is not bound by the procedure laid down under civil procedural code. As per this section, “The appellate tribunal shall have all the powers, which are vested with the civil courts under CPC for the purpose of discharging the function under the act and these powers includes summoning and enforcing the attendance of any person and examining him on oath; requiring the discovery and production of documents; receiving evidence on affidavit subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or copy of such record or document from any office issuing commissions for the examination of witnesses or documents; reviewing its decisions; dismissing a representation for default or deciding it ex parte setting aside any order of dismissal of any representation for default or any order passed by it ex parte any other matter which may be prescribed Every proceeding before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code (45 of 1860) and the Appellate Tribunal shall be deemed to be a civil court for the purposes (48) of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).²⁶

Compensation awarded An application may be preferred before the Appellate Tribunal “to adjudicate on claim for compensation that may arise from the findings of the Commission or the orders of the Appellate Tribunal in an appeal against any findings of the Commission or under section 42A or under sub-section (2) of section 53 of the Act²⁷ The Appellate Tribunal may, pass an order “directing the enterprise to make payment to the applicant, of the amount determined by it as realisable from the enterprise as compensation for the loss or damage caused to the applicant as a result of any contravention of the provisions of Chapter II of the Act Section 3,4,5 &6.” of the act

Appeal to supreme court as per Section 53, “The Central Government or any State Government or the Commission or any statutory authority or any local authority or any enterprise or any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal. Provided that the court may, if it is satisfied that

²⁶ Section 53 (3) of the competition Act 2002

²⁷ Section 53 N of the competition Act 2002

the applicant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed after the expiry of the said period of sixty days.”²⁸

IV. CONCLUSION

In conclusion, competition law plays prominent role in shaping fair markets, especially in developing countries like India. It ensures that no single business can dominate unfairly, giving all entrepreneurs whether in large scale or small scale a chance to grow. Over time, India has moved from the older MRTP Act of 1969 to the more modern and effective Competition Act of 2002. This change marked a shift from simply controlling monopolies to actively encouraging healthy competition. The law now clearly lays out what counts as anti-competitive behaviour, how abuse of power is handled, and how large business mergers are regulated.

The Competition Commission of India (CCI) is the heart of this system. It investigates complaints, takes action where needed, and ensures businesses follow the rules. If someone wants to challenge a decision, they can go to the National Company Law Appellate Tribunal (NCLAT), which acts fairly and follows the principles of natural justice. Strong competition laws help keep prices fair, improve quality, and boost innovation. They also protect consumers and allow local businesses to compete globally. For a growing economy like India, competition law isn't just about rules it's about building a fairer, stronger, and more self-reliant future.

²⁸ Section 53 (T) of the competition Act 2002