Page 4240 - 4256 **DOI** *https//doij.org/10.10000/IJLMH.1110318*

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 8 | Issue 3

2025

Collective Dominance in India: A Study of Benefits and Pitfalls

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ABSTRACT

The Competition Act, 2002, has been the guiding force behind India's antitrust regime in the 21st century. To tackle the ever-changing nature of the market and its offenses, the Competition Commission of India must regularly interpret the provisions of law in the contemporary context. An analysis of the market, along with judicial decisions, shows that the CCI has been successful in discharging its duties. However, certain aspects are bound to be either left untouched or too complex to determine. One such aspect is "Collective Dominance," which proposes that completely separate entities can act in a manner that operates independently of competitive constraints. The Indian antitrust regime, however, only acknowledges single-firm dominance, while the rest of the market behaviour is governed through Section 3 of the Competition Act. While these provisions have generally been effective, there have been instances where the market would have benefited from the existence of explicit provisions for regulating collective dominance.

This article explores the concept of "Collective Dominance" in the context of the Competition Act, 2002, and its recent amendments, along with administrative comments. The article draws a comparative analysis with foreign jurisdictions to draw upon their experiences and propose adequate suggestions for the Indian context. While giving due regard to the underlying challenges of implementation of such provisions, there exists a proper balance that can be achieved through explicit provisions that help the Indian anti-trust regime.

Keywords: *Collective Dominance; Competition Act 2002; Oligopoly; Algorithmic Collusion; Competition Policy Reform.*

I. INTRODUCTION

Economic policy in the early decades after Independence relied on industrial licensing, tariff barriers, and public-sector domination. Market power was therefore controlled administratively rather than through a modern competition statute. Wide public concern over the concentration of economic power and restrictive trade practices culminated in the Monopolies and Restrictive Trade Practices Act 1969 (MRTP Act). The Act established and

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empowered the newly constituted MRTP Commission to curb monopolistic behaviour.[3]

Although path-breaking for its time, the MRTP regime soon revealed critical weaknesses. Its focus on curbing size, rather than anti-competitive conduct, caused procedural rigidity and discouraged efficient growth.[4] When India liberalised in 1991, the inefficiencies of command-and-control regulation became acute. The Government appointed the High-Level Committee on Competition Policy and Law, chaired by SVS Raghavan, to draft a 'forward-looking' framework.[5] The Committee's report provided the blueprint for replacing the MRTP Act with a new law aligned with global best practice and the World Trade Organisation's competition principles.

Parliament enacted the Competition Act 2002, thereby creating the Competition Commission of India (CCI) as a single, expert authority to enforce rules against anti-competitive agreements, abuse of dominance, and combinations.[6] Constitutional challenges delayed operationalisation until 2009, but the Act marked a decisive shift from size-based controls to an effects-based assessment of market power. Subsequent amendments in 2007, 2016 and most recently in 2023 have refined jurisdictional thresholds, strengthened investigative powers, and introduced settlement and commitment mechanisms modelled on the EU's practice.[7] These reforms reflect India's progressive alignment with mature competition jurisdictions while retaining flexibility to address local market realities.

Therefore, the evolution from the MRTP Act to the present Competition Act represents more than statutory substitution; it signals the maturation of India's competition policy from protectionist roots to a consumer-welfare standard that prizes innovation and dynamic efficiency.

II. DEVELOPMENT OF ABUSE-OF-DOMINANCE PROVISIONS

Section 4 of the Competition Act encapsulates India's abuse-of-dominance framework. Dominance is defined as the ability to operate independently of competitive constraints or to affect competitors or consumers in a relevant market.[8] The CCI has also interpreted the factors given under section 19 of the Act and incorporated them into practice. The CCI undertakes a structured analysis: first delineating the relevant market (product and geographic) by applying

[3] Monopolies and Restrictive Trade Practices Act 1969, §1 (India).
[4] SRINIVASAN CHAKRAVARTHY, *Metamorphosis Of Indian Competition Law*, *in* THE DEVELOPMENT OF COMPETITION LAW 237 (Edward Elgar Publishing 2010).
[5] High-Level Committee on Competition Policy and Law, Report (Government of India 2000) para 5.1.1.
[6] Competition Act, 2002 § 3-6 (India).
[7] Competition (Amendment) Act, 2023 §6(1), §6(2) (India).
[8] Competition Act, 2002 § 4 Explanation (a) (India).

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demand-side substitutability and, where appropriate, supply-side interchangeability; then evaluating factors such as market share, size and resources, economies of scale, vertical integration, and counter-vailing buyer power.[9]

CCI's approach has received affirmations from the Supreme Court on multiple instances most prominent being the case of *Belaire Owners' Association v DLF Ltd* where the CCI held the respondent real-estate developer dominant in the market for high-end apartments in Gurgaon, emphasising entry barriers created by land-banking and regulatory approvals wherein CCI imposed a hefty penalty.[10] The Competition Appellate Tribunal (Compat) and the Supreme Court upheld the finding of abuse while adjusting the penalty methodology, thereby affirming the CCI's effects-based approach.

In MCX Stock Exchange v National Stock Exchange (2011), the CCI held NSE dominant in stock-exchange services nationwide, despite competing bourses, because of network externalities and cross-subsidised "zero pricing"; it characterised persistent fee waivers as unfair under Section 4(2)(a)(ii).[11]

In Surinder Singh Barmi v BCCI (2013), the CCI declared the Board of Control for Cricket in India dominant in the "organisation of private professional cricket leagues" because it regulated stadia, players and tournament approvals. Denial of market access through exclusivity clauses in IPL media agreements constituted abuse under Section 4(2)(c).[12]

The 2021 Google digital dominance finding was the first major finding of dominance in the digital domain: Google's >70 % query share, multi-sided data advantages, and default pre-installation contracts yielded independence from competitors. The Commission imposed behavioural remedies requiring transparent ranking parameters.[13] Further, it was found that tying Google's proprietary billing system to in-app payments exploited developers' dependence on Android's distribution channel.

The Commission's remedies-behavioural commitments, fines proportionate to Indian revenue, and monitoring by external experts-show its willingness to craft market-specific solutions. The 2022/24 Google Play Store proceedings reinforced this doctrine. The CCI delineated three relevant markets-licensable mobile OS, Android app stores and in-app payment

[9] Meloria Meschi et al., *Assessing the Importance of Market Power in Competition Investigations,* COMPETITION COMISSION OF INDIA, https://www.cci.gov.in/public/images/economicconference/en/2assessing-the-importance-of-market-power-in-competition-investigations1652334908.pdf.
[10] Belaire Owners' Association v. DLF Ltd., 2011 CompLR 0239 (CCI).
[11] MCX Stock Exchange Ltd. v. National Stock Exchange & Ors., Case No. 13/2009 (CCI).
[12] Surinder Singh Barmi v. BCCI, Case No. 61/2010 (CCI).
[13] XYZ (Confidential) v. Alphabet Inc. & Ors., Case No. 07/2020 (CCI); Match Group, Inc. v. Alphabet Inc. & Ors., Case No. 14/2021, Alliance of Digital India Foundation vs. Alphabet Inc. & Ors., Case No. 35/2021 (CCI).

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processing-holding Google dominant in the first two on account of ecosystem lock-in and "must-have" access.[14] Tying of proprietary billing and discriminatory commission rates was deemed exploitative under Section 4(2)(a).

Intel's 2021 investigation shows that recognition of dominance does not guarantee infringement: although Intel was found dominant in server micro-processors, evidence did not sustain alleged warranty-related abuse, leading to dismissal.[15] The order illustrates the CCI's willingness to distinguish dominance from abusive conduct.

The Supreme Court's 2019 decision in Uber India Systems v Meru Travel Solutions upheld a COMPAT directive for a Director-General investigation, holding that deep discounts generating an average loss of INR 204 per trip could indicate both dominance and predation.[16] The Court accepted that below-cost pricing, reinforced by network effects, may itself demonstrate "special strength," signalling a pragmatic evidentiary approach. Earlier, the CCI had dismissed similar allegations against Ola because market-entry phase discounts did not coincide with structural dominance-underscoring context-sensitive analysis.[17]

Although Section 4 applies only to single-firm dominance, the idea of 'Collective Dominance' has started a policy debate since 2012. The Competition Law Review Committee (CLRC) recommended introducing an explicit provision modelled on Article 102 TFEU to address oligopolistic inter-dependence that falls short of a cartel but still harms the market.[18] Parliament, however, omitted collective dominance from the 2023 amending Act, preferring to monitor enforcement experience before expanding the statutory remit. Critics argue that reliance on Section 3 (anti-competitive agreements) and the doctrine of "hub-and-spoke" collusion is insufficient because it requires proof of agreement, whereas collective dominance could be inferred from market structure and parallel conduct.

Section 4(1) prohibits any enterprise from abusing a dominant position; Explanation (a) defines "dominant position" as a position of economic strength enabling independent operation or appreciable influence over competitors or consumers, while Explanation (b) ties "predatory price" to Average Variable Cost, leaving precise cost metrics to CCI regulations.[19]

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[14] Ibid.
[15] Velankani Electronics Private Limited v. Intel Corporation, Case No. 16/2018 (CCI).
[16] Uber India Systems Pvt. Ltd v Competition Commission of India, Civil Appeal No. 641 of 2017.
[17] Dhruv Rajain et al., *Predatory Pricing — Not only abuse but also proof of dominance*, SCCONLINE (Feb. 7,2020), https://www.scconline.com/blog/post/2020/02/07/predatory-pricing-not-only-abuse-but-also-proof-of-dominance/.
[18] Report Of Competition Law Review Committee 2019, Pg. 98, https://www.ies.gov.in/pdfs/Report-Competition-CLRC.pdf.
[19] Competition Commission of India, ADVOCACY BOOKLET- PROVISIONS RELATING TO ABUSE OF DOMINANCE (Competition Commission of India, 2022).

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Market power is assessed case-specifically under the Section 19(4) factors- market share, entry barriers, buyer power, vertical integration, and excess capacity; echoing the structured approach found in OECD and EU guidance.[20]

Indian enforcement treats market definition as the analytical cornerstone. The Commission routinely deploys demand-side substitutability and the Small but Significant Non-transitory Increase in Price test, adapting SSNIP to quality or data parameters in digital markets.

The 2023 amendments nonetheless strengthen abuse of dominance enforcement in several respects. First, the settlement and commitment procedures create incentives for dominant enterprises to offer behavioural or structural remedies early in the investigation, expediting market correction. Secondly, the Act tightens timelines, mandating the CCI to form a prima facie opinion within 30 days and complete investigations within 150 days, thus reducing regulatory uncertainty. Thirdly, it introduces the concept of a "plus-factor test" for hub-and-spoke arrangements, signalling closer scrutiny of oligopolistic coordination that mimics collective dominance.[21]

Judicial review has refined penalty principles. In *Excel Crop Care Ltd v CCI,* the Supreme Court underscored proportionality, capping fines at 10 per cent of relevant turnover throughout the infringement rather than total turnover.[22] The Court also recognised the CCI's discretion to impose behavioural remedies tailored to restore competition rather than to punish per se. This jurisprudence, combined with CCI's evolving penalty guidelines, has increased predictability while preserving deterrence.

The case-law record shows that Section 4 of the Competition Act 2002 operates as a flexible, effects-based safeguard against market power in India. Judicial interpretation recognises "dominance" as the capacity to act independently of competitive discipline, assessed through multi-factor economic analysis. From DLF in real estate to the 2024 Google Play Store proceedings, the Competition Commission of India (CCI), the appellate bodies and the Supreme Court have refined the evidentiary tests for identifying dominance-market definition, structural barriers, network effects, and cost benchmarks-while stressing proportional remedies. The decisions surveyed below illustrate the steady convergence of Indian doctrine

[20] EC, Communication from the Commission, *Guidance on the Commission's enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings*, EURLEX, http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52009XC0224(01):EN:NOT.

[21] Indrajeet Sircar & Ratnadeep Roychowdhury, *Tyre Cartel: The CCI Rolls-on with Price Parellelism "Plus" Against Tyre Manufacturers*, NISHITH DESAI (April 29,2022), https://nishithdesai.com/SectionCategory/33/Competition-Law-Hotline/12/63/CompetitionLawHotline/5426/1.html.

[22] Excel Crop Care Ltd v Competition Commission of India (2017) 8 SCC 47.

with mature antitrust jurisdictions and expose residual gaps, notably the absence of explicit collective-dominance liability.

India, therefore, possesses a mature, economically grounded template for assessing dominance under Section 4, even though collective-dominance lacunae and the analytical challenges of multi-sided markets remain policy frontiers.

III. COMPARATIVE ANALYSIS OF COLLECTIVE DOMINANCE IN DIFFERENT COUNTRIES

The notion of collective dominance-two or more independent firms exercising market power together-originated in European competition law and spread, with variations, to several jurisdictions.[23] An overview of major legal systems shows that the European Union sets the analytical benchmark; Germany, the United Kingdom and South Africa codify or adopt similar approaches; Brazil, China and Canada graft collective-dominance concepts onto wider abuse-of-dominance or access-regulation frameworks; Australia and the United States still rely on single-firm monopoly rules but examine oligopolistic coordination under other doctrines. India stands apart: its Competition Act remains explicitly single-firm in scope, despite policy debates. Comparative experience suggests that well-designed collective-dominance provisions deter tacit collusion in concentrated markets while preserving incentives for efficiency gains.

- European Union jurisprudence introduced collective dominance through Article 102 TFEU and the Court of First Instance's line of merger decisions. The Commission's 2024 draft guidance devotes a dedicated section to the phenomenon, emphasising market transparency, retaliation mechanisms and deterrent effect as the three Airtours criteria.[24] Earlier, *Gencor v Commission* confirmed that a merger may be blocked when it creates a collective dominant position, even if the parties remain independent post-transaction.[25] The seminal *Airtours/First Choice* judgment then refined the evidentiary test, holding that the Commission must prove that coordinated conduct is economically rational, internally sustainable and externally immune to competitive disruption.[26]

[23] Albertina Albors-LLorens, *Collective Dominance: A Mechanism for the Control of Oligopolistic Markets?,* 59(2) The Cambridge Law Journal, 253-57 (2000).
[24] Liza Lovdahl Gormsen, *Collective Dominance*, CONCURRENCES, https://www.concurrences.com/en/dictionary/collective-dominance.
[25] Case T-102/96 *Gencor Ltd v Commission* [1999] ECR II-753.
[26] Case T-342/99 *Airtours plc v Commission* [2002] ECR II-2585.

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- Germany embeds a statutory presumption: when five or fewer undertakings hold at least two-thirds of the market, they are deemed collectively dominant unless rebutted.[27] Bundeskartellamt merger-control guidelines treat factors such as cost structure symmetry, multimarket contacts, and demand stability as reliable indicators. The presumption has practical bite in energy and retail investigations, although German courts rarely apply it outside merger control.

- The United Kingdom retains the EU model through section 18 of the Competition Act 1998, which prohibits abuse of both single and joint dominance.[28] Anticipating the Digital Markets, Competition and Consumers Act, the Competition and Markets Authority (CMA) has indicated that its new "Strategic Market Status" regime will target conglomerate gatekeepers even where power is distributed among a small cluster of platforms.[29]

- South Africa's Competition Act was amended in 2018 to clarify abuse of dominance and strengthen penalties, expressly recognising that two or more firms can hold a dominant position jointly.[30] The *Mittal Steel* excessive-pricing case illustrates enforcement reach: the Tribunal considered the steel producer a "super-dominant" firm partly because of mutual dependencies within the oligopoly.[31]

- Brazilian law does not codify collective dominance, yet CADE uses its broad abuse-of-dominance powers to curb oligopolistic conduct. A 2023 hub-and-spoke decision in public procurement imposed substantial fines on firms that coordinated without explicit communication, signalling functional convergence with collective-dominance logic.[32]

- China's 2022 Anti-Monopoly Law revision preserved language enabling abuse cases against "undertakings with joint market dominance," though the State Administration for Market Regulation (SAMR) prefers cartel or merger-control tools in practice.[33] SAMR, nevertheless, cited data-network effects and parallel algorithmic pricing as possible indicators of joint dominance in recently published draft guidelines.

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[27] Katharina Apel & Friedrich Andreas Konrad, *Germany*, in DOMINANCE 2020 103 (Lexology 2020).
[28] Competition Act, 1998 § 18 (UK).
[29] Verity Egerton-Doyle, James Hunter, *The UK's New Digital Markets Regime: Unfettered Discretion and Power for the CMA*, KLUWER COMPETITION LAW (Oct. 7,2024), https://competitionlawblog.kluwercompetitionlaw.com/2024/10/07/the-uks-new-digital-markets-regime-unfettered-discretion-and-power-for-the-cma/.
[30] The Competition Amendment Act, 2018 Premble (South Africa).
[31] Squire Patton Boggs, *Competition Tribunal finds steel producer abused dominance*, LEXOLOGY (May 23, 2007), https://www.lexology.com/library/detail.aspx?g=8eeee7f5-708d-43d1-9145-7950b8f8301d.
[32] Vinícius Klein & Isabella Triebess, *Main Developments in Competition Law and Policy 2024 – Brazil*, KLUWER COMPETITION LAW (Jan. 20, 2025), https://competitionlawblog.kluwercompetitionlaw.com/2025/01/20/main-developments-in-competition-law-and-policy-2024-brazil/.
[33] Anti-Monopoly Law (2022 ed) art. 22 (China).

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- Canada recognises "joint dominance" under section 79 of its Competition Act and applies it in telecom access regulation. In Telecom Decision 2023-358, the CRTC mandated fibre-to-the-premise access after finding that Bell and Rogers together wield sufficient power to restrain competition, despite individually sub-monopoly shares.[34] A follow-on 2024 policy decision insisted on implementation timelines, underscoring the regulator's willingness to treat oligopolists as de facto dominant.[35]
- Australia bars misuse of "substantial market power" rather than formal dominance. The ACCC contemplates collective-effects theories when several supermarkets or digital platforms jointly lessen competition through aligned strategies, yet it pursues such matters under the general section 46 standard instead of a bespoke collective-dominance rule.[36]
- United States antitrust law continues to focus on single-firm monopoly power under section 2 of the Sherman Act. Courts occasionally explore a "shared monopoly" concept, but the evidentiary threshold-proof of agreement or conscious parallelism plus facilitating practices-resembles cartel doctrine rather than collective dominance per se.[37] Academic commentary, nevertheless, notes that modern digital-platform ecosystems could reopen the debate.

Across these jurisdictions, three patterns emerge. First, where statutes mirror Article 102 TFEU (EU, UK, Germany, South Africa, China), collective dominance functions as a safety net against oligopolistic tacit coordination. Second, regulators without explicit provisions adapt alternative tools: merger control (Germany, Brazil), access regulation (Canada) or general monopoly rules (Australia, USA). Third, procedural clarity-presumptions, burden-shifting and remedial flexibility correlate with higher enforcement success.

IV. SINGLE NATURE OF DOMINANCE IN INDIA

India's Competition Act 2002 prohibits only the abuse of a "dominant position" held by a single enterprise. Section 4 defines dominance as the ability to operate independently of competitive constraints or to influence consumers or competitors. Parliament deliberately omitted the collective-dominance concept during enactment, preferring to address coordinated conduct through the anti-competitive-agreement provision in section 3.[38]

[34] CRTC, Telecom Decision 2023-358 (6 Nov. 2023).
[35] CRTC, Telecom Regulatory Policy 2024-180 (13 Aug. 2024).
[36] Australian Competition and Consumer Commission, *Guidelines on misuse of market power*, ACCC (August 2018), https://www.accc.gov.au/system/files/Updated%20Guidelines%20on%20Misuse%20of%20Market%20Power.pdf.
[37] Kenneth S Reinker & Lisa Danzig, *United States*, in DOMINANCE 2020 103 (Lexology 2020).
[38] Report Of Competition Law Review Committee 2019, Pg. 98, https://www.ies.gov.in/pdfs/Report-

The Competition Law Review Committee's 2019 report revisited the issue and concluded that section 3, combined with emerging "hub-and-spoke" jurisprudence, already captures most forms of joint market power. It therefore advised against transplanting the EU model, warning that an additional provision could over-deterrently chill efficient joint ventures.[39] Subsequent public consultations reflected a split: consumer groups favoured explicit recognition to tackle oligopolistic sectors such as cement and aviation, while industry associations raised predictability concerns.

When Parliament enacted the Competition (Amendment) Act 2023, it embraced settlement and commitment procedures, deal-value thresholds and faster investigative timelines, but again declined to insert collective dominance.[40] Government statements in the Standing Committee proceedings argued that Indian markets are still transitioning from state control and that the CCI needs enforcement experience under the new settlement regime before expanding its remit.[41]

In practice, the CCI uses section 3 to prosecute concerted refusals to deal, price parallelism and hub-and-spoke collusion. The 2024 Google Play Store order, for example, relied on section 4 for single-firm abuse but signalled that evidence of "plus factors" could support a section 3 inference if multiple gatekeepers were involved. Academic commentary suggests that this patchwork leaves analytical gaps: Section 3 requires proof of agreement, whereas collective dominance may arise from tacit coordination alone.[42]

India, therefore, stands at a crossroads. Retaining a single-firm paradigm avoids duplicative regulation, yet concentrated digital and infrastructure markets test section 3's evidentiary limits. Comparative experience indicates that a carefully circumscribed collective-dominance clause-triggered only in highly concentrated markets and subject to economic effects analysis-could close enforcement lacunae without undermining legitimate cooperation. Policymakers' willingness to revisit the 2019 recommendation will shape India's ability to discipline oligopolistic power in the coming decade.

A consensus has yet to emerge on whether India should graft an explicit collective-dominance

Competition-CLRC.pdf.

[39] Ibid.

[40] Avaantika Kakkar & Kirthi Srinivas, *2023 Amendments to Indian Competition Law: Bringing Down The Hammer on Anti-competitive Conduct (Part 2)*, KLUWER COMPETITION LAW (May 4, 2023), https://competitionlawblog.kluwercompetitionlaw.com/2023/05/04/2023-amendments-to-indian-competition-law-bringing-down-the-hammer-on-anti-competitive-conduct-part-2/.

[41] Standing Committee on Finance, *Fifty Second Report*, https://prsindia.org/files/bills_acts/bills_parliament/2022/SC%20Report_Competition%20(A)%20Bill,%202022.pdf.

[42] Priyadarshee Mukhopadhya, *The advent of CCI 2.0: Marching Towards a New Indian Competition Law Regime*, LAW SCHOOL POLICY REVIEW (Oct. 8, 2019), https://lawschoolpolicyreview.com/2019/10/08/advent-of-cci-2-0-marching-towards-a-new-indian-competition-law-regime/.

clause onto the Competition Act 2002. Policy papers since 2012 have explored draft wording, yet successive amendment Bills-culminating in the 2023 reform-have stopped short of legislative adoption. Advocates emphasise the need to discipline oligopolistic power in digital and infrastructure markets; sceptics cite evidentiary complexity and overlap with section 3. Comparative experience shows that a calibrated clause can coexist with single-firm abuse provisions while providing a safety net against tacit coordination. The analysis below traces the principal proposals, weighs predicted welfare gains, and identifies implementation risks for the Competition Commission of India (CCI).

V. PROPOSED CHANGES

The first systematic attempt to recognise collective dominance appeared in the Competition (Amendment) Bill 2012. Draft section 4 would have proscribed abuse by enterprises acting "jointly or singly", thereby importing the language of Article 102 TFEU into Indian law.[43] Parliamentary dissolution shelved the text, yet it sparked academic debate on the adequacy of section 3 to capture tacit coordination.

When the Competition Law Review Committee (CLRC) delivered its landmark report in July 2019, it advised against introducing collective dominance. The committee reasoned that conduct attributable to jointly powerful firms- price parallelism, collective refusals to deal, hub-and-spoke facilitation- already fell within section 3. It also noted that limited enforcement overseas and feared undue compliance burdens in nascent markets.[44]

The CLRC's stance informed the Draft Competition (Amendment) Bill 2020, which concentrated on merger thresholds, settlements, and "green-channel" approvals, leaving section 4 untouched.[45] Stakeholder submissions nevertheless urged the Ministry of Corporate Affairs to revisit the issue, citing sectors such as cement and aviation where oligopolists allegedly manipulate prices without overt agreements.[46]

In August 2022, the Government tabled a revised Amendment Bill before Parliament. The Standing Committee on Finance reviewed the text but did not press for collective-dominance language, observing that the CCI's growing hub-and-spoke jurisprudence might suffice in the

[43] Vatsla Shrivastava & Ritvik Maheshwari, *Exigency of Indian competition law: The concept of collective dominance*, NLUJ LAW REVIEW (May 29, 2020), https://nlujlawreview.in/competiton-law/exigency-of-indian-competition-law-the-concept-of-collective-dominance/.

[44] Report Of Competition Law Review Committee 2019, Pg. 98, https://www.ies.gov.in/pdfs/Report-Competition-CLRC.pdf.

[45] Shardul Amarchand Mangaldas, *Competition Matters,* AMSSHARDUL (14 Aug 2019), https://www.amsshardul.com/wp-content/uploads/2019/09/Alert-CM-Competition-Law-Review-Committee-August-2019.pdf.

[46] Business Standard, *Tackling abuse of dominance by checking monopolies*, CUTS CCIER (June 21, 2008), https://cuts-ccier.org/tackling-abuse-of-dominance-by-checking-monopolies/.

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interim.[47] The Competition (Amendment) Act 2023, therefore, retained a single-firm architecture while adding a statutory "plus-factor" test for concerted practices, tighter investigative timelines, and a settlement-and-commitment regime.[48]

Civil-society advocates have argued for inserting a rebuttable presumption of collective dominance where five or fewer undertakings control at least two-thirds of a market, mirroring section 19(2) of the German Act against Restraints of Competition.[49] Academic proposals range from clarifying that "group" in section 4 includes economically linked undertakings, to empowering the CCI to issue sectoral market-power determinations that trigger tailored remedies.[50] None of these suggestions has yet progressed beyond discussion drafts, but the Ministry has indicated that post-2023 enforcement experience will inform any further round of amendments.[51]

VI. BENEFITS

Concentrated oligopolies frequently yield parallel outcomes that harm welfare even when direct evidence of agreement is elusive. The OECD's seminal 1999 round-table recorded consensus among competition authorities that structural market features- transparency, symmetry of costs, retaliation mechanisms- can sustain supra-competitive prices in the absence of collusion findings.[52] European practice transformed that insight into the Airtours criteria and applied them in merger control; the same logic justifies an ex-post tool in abuse cases. A statutory presumption, limited to markets where five or fewer undertakings command at least two-thirds of sales, would supply that tool and reduce reliance on fragile cartel evidence.

Digital commerce intensifies the need. The OECD's 2017 report on "Algorithms and Collusion" explains how self-learning pricing engines rapidly optimise parallel strategies that outperform tacit collusion by humans, yet leave no discoverable agreement.[53] The report recommends giving antitrust agencies the power to infer joint market power from outcomes

[47] Supra Note 39.
[48] Supra Note 38.
[49] Liza Lovdahl Gormsen, *Collective Dominance*, CONCURRENCES, https://www.concurrences.com/en/dictionary/collective-dominance.
[50] Rohan Bhargava, *Collective Dominance-A Concept Still Unknown to the Indian Competition Regime*, CCL-NLUO (Sept. 21, 2019), https://ccl.nluo.ac.in/post/collective-dominance-a-concept-still-unknown-to-the-indian-competition-regime.
[51] Charu Sharma & Rishabh Periwal, *Collective Dominance Through Tacit Coordination: Application of Game Theory to Indian Antitrust Law*, IRCCL (April 26, 2022), https://www.irccl.in/post/collective-dominance-through-tacit-coordination-application-of-game-theory-to-indian-antitrust-law.
[52] OECD, *Roundtable on Oligopoly* (DAFFE/CLP(99)25, 1999).
[53] OECD, *Algorithms and Collusion: Competition Policy in the Digital Age*, OECD Roundtables On Competition Policy Papers, No. 206, (Paris, OECD Publishing 2017), https://doi.org/10.1787/258dcb14-en.

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and intervene before coordination becomes entrenched. Australia's Digital Platforms Inquiry reached a similar conclusion after documenting the "winner-takes-most" dynamics of search, social media, and display advertising.[54] The Australian Competition and Consumer Commission endorsed ex-ante duties for gatekeepers precisely because section 46's single-firm test could not address collective leverage among ecosystem partners.

The European Commission's 2020–24 Strategic Plan identifies exclusive data repositories in insurance and financial services as emerging competition risks and commits to pursuing "abuse of joint dominance" theories where necessary.[55] India's Unified Payments Interface demonstrates how shared data infrastructure can either spur rivalry or entrench incumbents depending on governance rules; a collective-dominance test would give the CCI leverage to impose interoperability and data-access obligations when market outcomes deteriorate.

The United Kingdom reforms supply a legislative template. The Digital Markets Taskforce advised Parliament to empower a new Digital Markets Unit to impose conduct requirements on clusters of platforms that together exert "Strategic Market Status".[56] Government white papers accept that status may be shared-for example, between the dominant mobile operating systems-because their interdependent design choices lock in developers and users. Anticipating strong behavioural remedies, the Guardian reported that fines of up to 10 per cent of global turnover may be levied on violators, signalling credible deterrence.[57]

Adoption in India would also close the cement sector enforcement gap. The Builders Association of India litigation exposed price parallelism across producers even after repeated cartel penalties; analysts attribute continued coordination to high entry barriers, inelastic demand, and multimarket contact among the same firms across regions-classic collective-dominance factors.[58] A clause allowing the Competition Commission of India (CCI) to infer joint power from such structural evidence would complement, rather than duplicate, section 3 cartel prohibitions.

An explicit collective-dominance provision would present India with threefold benefits.

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[54] ACCC, *Digital platforms inquiry 2017-19*, ACCC (July 26, 2019), https://www.accc.gov.au/focus-areas/inquiries/digital-platforms-inquiry/final-report.

[55] European Commission, *DG Competition Strategic Plan 2020-2024*, EUROPEAN COMMISSION (October, 2024), https://commission.europa.eu/system/files/2020-10/comp_sp_2020_2024_en.pdf.

[56] ACCC, *Digital platforms inquiry 2017-19*, ACCC (July 26, 2019), https://www.accc.gov.au/focus-areas/inquiries/digital-platforms-inquiry/final-report.

[57] UNCTAD, *Digital Economy Report 2021*, UNCTAD (2021), https://unctad.org/system/files/official-document/der2021_en.pdf.

[58] Luis Blanquez, *The FTC Has Algorithmic Price-Fixing In Its Antitrust Crosshairs*, MONDAQ (May 29, 2024), https://www.mondaq.com/unitedstates/antitrust-eu-competition/1469114/the-ftc-has-algorithmic-price-fixing-in-its-antitrust-crosshairs.

Firstly, it would close the evidentiary gap between cartel enforcement and single-firm abuse. Section 3 demands proof of agreement; collective dominance would allow the CCI to infer power from structural features such as symmetry of costs, market transparency, and credible retaliation mechanisms- criteria already familiar from EU case-law (*Airtours/First Choice*, *Gencor*).[59] Indian commentators highlight cement and telecom circles where prices move in lock-step despite repeated CCI cartel acquittals for lack of documentary evidence.[60]

Secondly, the tool would future-proof Indian antitrust against algorithmic collusion. Digital platforms can achieve parallel outcomes through self-learning pricing algorithms even without human coordination. A collective-dominance standard anchored in market characteristics and outcomes would let regulators intervene before consumer harm becomes irreversible.[61]

Thirdly, statutory recognition would enhance remedial flexibility. The CCI could accept behavioural undertakings-data-sharing obligations, interoperable standards, and capacity auctions from a cluster of gatekeepers without having to prove an illegal agreement or identify a single ringleader. Such solutions mirror the EU's Digital Markets Act and South Africa's 2018 amendment, both of which treat concentrated digital ecosystems as loci of shared power.[62]

Proponents also foresee ancillary benefits: clearer guidance for courts, reduced litigation over market definition (because coordinated strength, not individual share, becomes dispositive), and alignment with India's aspiration to join the International Competition Network's steering committee, whose model rules incorporate collective dominance.[63]

VII. CHALLENGES

Giving due regard to the benefits of having an explicit provision for collective dominance, we should also consider the challenges such a provision will bring in its wake. An overly broad clause could entangle legitimate joint ventures or dynamic oligopolies that compete vigorously on innovation. UNCTAD's 2021 Digital Economy Report warns that ill-designed regulation in fast-moving technology markets may curb investment without improving

[59] Philip Bergkvist, *Collective Dominance and EU Competition Law: An assessment of the concept and the challenge facing the European Court of Justice*, ÖREBRO UNIVERSITY (Örebro University, 2019), https://oru.diva-portal.org/smash/get/diva2:1352645/FULLTEXT01.pdf.

[60] Amit Ghosh et al., *A study on the collective dominance concept and its application in the Indian radio-taxi market*, 10(1) Int. J. Public Law and Policy 91 (2024).

[61] Liza Lovdahl Gormsen, *Collective dominance: An overview of national case law*, BIICL (Nov. 6,2012), https://www.biicl.org/documents/10061_554_collective_dominance.pdf.

[62] Prajwal Vishwanath et al. , *Collective Dominance: Need For Laws Relating To Collective Dominance And Difference Between Cartels*, 6(6) JETIR 186 (2019).

[63] Swetha Somu, *Oligopoly, Competition, Cartels and Beyond: Establishing the Need for 'Collective Dominance'*, INDIACORPLAW (Jan. 5, 2022), https://indiacorplaw.in/2022/01/05/oligopoly-competition-cartels-and-beyond-establishing-the-need-for-collective-dominance/.

consumer outcomes.[64] Legislators, therefore, face a calibration problem: define trigger thresholds narrowly enough to target durable coordination but not routine parallelism driven by efficiency or regulatory compliance.

The Federal Trade Commission emphasises that an "agreement to use a common algorithm" constitutes an agreement for Sherman Act purposes, but proving such an arrangement still demands discovery of communications or technical integration; an Indian collective-dominance standard would shift focus to market facts, yet courts must be prepared to weigh complex econometrics and algorithmic-audit evidence.[65]

Comparative success stories reveal the availability of deep economic analysis resources in the European Commission, CMA, and ACCC. The OECD round table already cautioned that collective-dominance investigations consume more staff hours than single-firm abuse cases because authorities must assess multi-firm strategies, market signals, and counter-factual rivalry.[66] The CCI's amended 150-day investigation clock can cope only if Parliament couples the new clause with budget allocations for specialised digital forensics units and continuous training.

Remedial design must align with proven international practice. Behavioural remedies-transparent pricing algorithms, firewalls between data sets, fair-access undertakings-often suffice and preserve incentives for efficient cooperation. Structural remedies should be confined to persistent failures after behavioural commitments lapse. The CMA advice provides graduated intervention models that India can adapt, including sunset clauses and mandatory review of remedy effectiveness. [11]

The major challenges can be summarised as follows:

- **Statutory coherence:** Section 4 currently speaks of "an enterprise" or "a group". Extending liability to multiple independent firms risks blurring the boundary between abuse of dominance and anti-competitive agreements, thereby creating forum shopping and due-process concerns. The CLRC cautioned that duplication could chill legitimate joint ventures and information exchanges.[67]

[64] Builders Association of India v. Cement Manufacturers' Association and Ors., Case No. 29/2010 (CCI).
[65] The Guardian, *Tech Giants May Face Billions in Fines from New UK Watchdog,* THE GUARDIAN (Dec. 8, 2020), https://www.theguardian.com/business/2020/dec/08/tech-giants-may-face-billions-of-pounds-in-fines-from-new-uk-watchdog.
[66] OECD, *Algorithms and Collusion: Competition Policy in the Digital Age*, OECD Roundtables On Competition Policy Papers, No. 206, (Paris, OECD Publishing 2017), https://doi.org/10.1787/258dcb14-en.
[67] Shardul Amarchand Mangaldas, *Competition Matters,* AMSSHARDUL (14 Aug 2019), https://www.amsshardul.com/wp-content/uploads/2019/09/Alert-CM-Competition-Law-Review-Committee-August-2019.pdf.

- **Evidentiary complexity:** Collective dominance requires proof that undertakings are sufficiently interdependent to sustain coordinated conduct unaided by explicit support. EU experience shows frequent litigation over criteria such as multimarket contact, structural links, and demand volatility. The BIICL has labelled the doctrine a "complicated problem" that should be approached through sectoral market investigations rather than case-by-case litigation.[68]

- **Administrative capacity:** The CCI faces resource constraints: under the 2023 timelines, it must complete abuse investigations within 150 days. Measuring joint market power demands sophisticated econometric tools and dynamic simulation models, skills still scarce in Indian enforcement agencies. Without commensurate budget increases, collective-dominance cases could crowd out other priorities.[69]

- **Risk of over-deterrence:** A rebuttable presumption based on market concentration might penalise parallel conduct driven by efficiency-enhancing factors such as cost homogeneity or regulatory mandates. Firms could respond by fragmenting markets, foregoing economies of scale, or declining collaborative innovations. Critics argue that existing section 3 hub-and-spoke jurisprudence and merger control already supply adequate safeguards.[70]

- **Judicial uncertainty:** Indian appellate courts have not yet interpreted collective-dominance language. Early enforcement errors could invite constitutional challenges akin to those that delayed the CCI's establishment in 2002. Predictability, therefore, depends on detailed guidelines, clear safe harbours, and possibly a phased introduction limited to specified sectors.[71]

VIII. CONCLUSION

India's debate on collective dominance has traversed two decades of statutory consultations, policy reports, and comparative benchmarking. The Competition Law Review Committee's 2019 report declined to endorse an explicit clause on the ground that section 3 could already address coordinated market power; the stance influenced Parliament's decision to preserve single-firm language in the Competition (Amendment) Act 2023, despite simultaneous

[68] Liza Lovdahl Gormsen, *Collective dominance: An overview of national case law*, BIICL (Nov. 6,2012), https://www.biicl.org/documents/10061_554_collective_dominance.pdf.
[69] Competition (Amendment) Act, 2023 (India).
[70] Charu Sharma & Rishabh Periwal, *Collective Dominance Through Tacit Coordination: Application of Game Theory to Indian Antitrust Law*, IRCCL (April 26, 2022), https://www.irccl.in/post/collective-dominance-through-tacit-coordination-application-of-game-theory-to-indian-antitrust-law.
[71] Standing Committee on Finance, *Fifty Second Report*, https://prsindia.org/files/bills_acts/bills_parliament/2022/SC%20Report_Competition%20(A)%20Bill,%202022.pdf.

adoption of advanced tools such as settlements and commitments.[72]

Enforcement practice confirms that section 3 punishes cartels and hub-and-spoke schemes, yet several concentrated sectors-including cement, aviation, and app stores-exhibit sustained parallel pricing patterns that escape liability when documentary proof of agreement is absent.[73]

Comparative experience demonstrates viable legal architectures for curbing joint market power. European jurisprudence articulates the Airtours three-pronged test of transparency, retaliation, and deterrence; merger rulings such as Airtours/First Choice and Gencor/Lonrho illustrate successful intervention against likely tacit coordination.[74] Germany embeds a statutory presumption based on concentration ratios, while the Digital Markets Act deploys ex-ante behavioural obligations to multi-gatekeeper ecosystems.[75]

These regimes supply structured indicators- symmetry of costs, multimarket contact, network effects- that Indian enforcement could adapt without abandoning its effects-based philosophy.

Legislative precision and institutional readiness remain essential. A narrow statutory trigger-limited to highly concentrated markets or designated digital sectors-can prevent over-deterrence while preserving collaborative efficiencies. Detailed guidelines on economic tests, safe harbours, and remedial measures would reduce judicial uncertainty and administrative burden. Budgetary support for advanced econometric tools and digital forensics will equip the CCI to apply a collective-dominance standard within the compressed timelines introduced in 2023.

The benefits of embracing collective dominance outweigh the challenges when calibrated to India's competitive landscape. Such a provision would bridge the evidentiary divide between single-firm abuse and cartel conduct, protect consumers in oligopolistic markets, and align India with evolving global best practice. Policymakers now possess empirical evidence from domestic sectors, analytical models from foreign jurisdictions, and procedural innovations within the amended Act. A measured statutory update, anchoring collective dominance in economic effects rather than formal agreements, will complete the modernisation of India's competition regime and fortify it against the pitfalls of digital and data-driven markets.

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[72] Report Of Competition Law Review Committee 2019, Pg. 98, https://www.ies.gov.in/pdfs/Report-Competition-CLRC.pdf.

[73] Pariekh Pandey, *CCI's Jurisdictional Conflict with the Proposed Cement Industry Regulator: An Analysis*, 3 Journal on Competition Law and Policy 113 (2022).

[74] Case T-342/99 *Airtours plc v Commission* [2002] ECR II-2585.

[75] *Digital markets act - European Parliament*, EUROPEAN PARLIAMENT (Nov. 1, 2022), https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/690589/EPRS_BRI(2021)690589_EN.pdf.

 [ISSN 2581-5369]

Experience abroad suggests a phased introduction. Parliament could empower the government to designate sectors where collective-dominance presumptions apply, starting with cement, telecom spectrum markets, and app-store ecosystems. The CCI would then issue detailed guidance on evidentiary thresholds, safe harbours for efficiency-enhancing cooperation, and model commitments. An appellate review limited to points of law would maintain legal certainty while preventing dilatory tactics.

India's statutory reforms since 2002 demonstrate adaptive capacity. A collective-dominance provision represents the next logical step in aligning with global best practice and safeguarding competition in oligopolistic and algorithm-driven markets. Tailored thresholds, robust institutional support, and clear remedial frameworks will convert theoretical advantages into tangible welfare gains.

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 [ISSN 2581-5369]