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Maudhanda Kurichi, Srirangam,

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Phone : +91 94896 71437 – [info@iledu.in](mailto:info@iledu.in) / [Chairman@iledu.in](mailto:Chairman@iledu.in)



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## DOMINATING POSITION OF BIG ESTABLISHMENTS OVER NEW COMPETITORS IN INDIA – WITH SPECIAL REFERENCE TO COMPETITION ACT

**AUTHOR –** GAYATRI JADHAV, SCHOLAR AT DES NAVALMAL FIRODIA LAW COLLEGE

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### **ABSTRACT –**

*Abuse of dominant position by the well-established companies is done to increase the profit of the companies by restraining the competitors to enter the markets using various techniques.*

*The monopolies and restrictive trade practices act was passed in 1969, it was the first act to be ever enacted in the India to curb the problem of unfair competition in India, later it was replaced by the competition act 2002. A newly established organization now a days are facing various problems while entering the market due to malpractices done by other companies in the market, it includes entering into anti-competitive agreements, unfair pricing, etc.*

*in India due to such malpractices the fair competition is affected and rights of the companies to carry on the trade is violated. Various ways are adopted by the companies to abuse their dominant position, which includes imposing unfair or discriminatory conditions on purchase or sale of goods and service, restraining or denying their market access. The importance of trade has increased immensely in current days, it is required to maintain the healthy competition in the market to help the economy and avoid monopoly. The competition act provides remedies to avoid the abuse of dominant position in the market, by the way of imposing various regulations and penalties on the companies for imposing such the abovementioned abuse on the new companies. The researcher has taken this topic to study the effective enforcement of the competition act to avoid the problem of abuse of dominant position.*

Keywords – abuse, dominant, competition, company, monopoly.

### **1. INTRODUCTION –**

Since last few decades globalization has boomed and businesses are flourishing, big establishments has been acting as a boon to the economy by contributing huge amounts of taxes, however small-scale industries are also playing a vital role in augmenting the growth of Indian economy, contribution by large scale businesses as well as small industries are the factors to create the balance in the currency fluctuation in the country, to retain such balance it is important for the government to keep the interest of the small industries protected, the innovations which takes place in India majorly comes from the small scale industries which is nearly 60% to 70% of the total innovations, the major challenge faced by the small scale industries is the abuse done by the

large enterprises of their dominant position in the market. The competition act via section 4 puts restriction on abuse of a dominant position by any enterprise, which states that no enterprise shall abuse its dominant position, and provided for the acts which constitutes the abuse of dominant position.<sup>246</sup>

Dominant position implies a significant degree of market power held by a particular company, allowing it to act independently of competitive forces. When a dominant firm engages in practices that harm competition, it can lead to adverse consequences such as higher prices, reduced innovation, and limited consumer choice. The Competition Act seeks to prevent such abuses and foster an environment where

<sup>246</sup>Competition law, advocacy, [https://cci.gov.in/public/images/advocacy\\_speeches/en/speech1683542053.pdf](https://cci.gov.in/public/images/advocacy_speeches/en/speech1683542053.pdf), last seen on 15/11/2023.



competition can thrive.

Typical forms of abuse of dominant position include predatory pricing, exclusive dealing, tying and bundling, discriminatory practices, and refusal to deal. Authorities responsible for enforcing competition laws are empowered to investigate and penalize entities engaging in these practices. The overarching goal is to create an environment that encourages fair competition, innovation, and the efficient allocation of resources for the benefit of both businesses and consumers.

The legal framework surrounding the abuse of dominant position plays a crucial role in maintaining a competitive marketplace, fostering innovation, and safeguarding the interests of consumers. As such, understanding and addressing instances of abuse of dominant position is essential for the effective functioning of a dynamic and healthy economy.

## 2. HISTORY OF THE COMPETITION ACT –

The competition policy framework in India has evolved over the years, with the current legislation being the Competition Act, 2002. Here is a brief overview of the history of competition law in India:

2.1. Monopolies and Restrictive Trade Practices (MRTP) Act, 1969 – The MRTP Act was the first major legislative step in India to address issues related to monopolies and restrictive trade practices. It aimed to prevent the concentration of economic power, control monopolistic and restrictive trade practices, and ensure fair competition in the market.

2.2. Economic Reforms and Liberalization (1991) – In the early 1990s, India embarked on a path of economic liberalization and reforms to open its markets and encourage competition. The need for a more modern and comprehensive competition law became evident as the economy moved towards a market-oriented approach.

2.3. Raghavan Committee (1999) – In 1999, the government appointed a committee headed by Raghavan to review and suggest changes to the existing competition law regime. The committee recommended repealing the

MRTP Act and introducing a new competition law to align with the changing economic landscape.

2.4. Competition Act, 2002 – Based on the recommendations of the Raghavan Committee, the Competition Act was enacted in 2002 and came into force in stages. The Competition Commission of India (CCI) was established as the regulatory body to enforce the provisions of the Act. The Act aimed to prevent anti-competitive practices, promote and sustain competition, protect the interests of consumers, and ensure freedom of trade in the Indian market.

2.5. Amendments to the Competition Act – The Competition Act has undergone several amendments to strengthen its provisions and address emerging challenges in the business environment. Amendments have been made to enhance the powers of the CCI, streamline the merger control process, and address issues related to the digital economy.

2.6. Landmark Cases and Enforcement – The CCI has actively engaged in enforcing the provisions of the Competition Act, addressing cases related to anti-competitive agreements, abuse of dominance, and mergers and acquisitions.

The Competition Act, 2002, and its subsequent amendments represent India's commitment to fostering a competitive market economy. The legislation aims to create a level playing field, protect the interests of consumers, and promote economic efficiency and innovation in the rapidly evolving business landscape.

## 3. SCOPE OF COMPETITION ACT –

The Competition Act, 2002, in India, provides a comprehensive framework for regulating and promoting fair competition in the market. The scope of the Act extends to various aspects of economic activity, aiming to ensure that markets operate efficiently, consumers have choices, and businesses compete fairly<sup>247</sup>. Here are key aspects that define the scope of the Competition Act, 2002, in India:

<sup>247</sup> Neha vyas, competition law, (1<sup>st</sup> ed. 2021)



3.1. Anti-Competitive Agreements - The Act prohibits agreements that cause or are likely to cause an appreciable adverse effect on competition in the market. This includes cartels, price-fixing agreements, bid-rigging, and other collusive practices among competitors.

3.2. Abuse of Dominant Position - The Act addresses the abuse of dominant position by entities in the market. It prohibits practices by dominant players that harm competition, such as predatory pricing, discriminatory pricing, tying, and bundling, and refusal to deal.

3.3. Regulation of Combinations (Mergers and Acquisitions) - The Act regulates combinations, including mergers and acquisitions, that may have an appreciable adverse effect on competition in the relevant market. Parties to such combinations are required to notify the Competition Commission of India (CCI) for approval.

3.4. Competition Advocacy - The Act empowers the CCI to engage in advocacy activities to promote competition awareness and a competition culture in the country. This includes advising the government on competition-related issues and conducting educational programs.

3.5. Competition Commission of India (CCI) - The CCI, established under the Act, acts as the regulatory authority responsible for enforcing the provisions of the Act. It investigates complaints, conducts inquiries, and takes measures to address anti-competitive practices.

3.6. Consumer Welfare - The Act aims to protect the interests of consumers by ensuring fair competition, preventing unfair trade practices, and promoting consumer choice.

3.7. Leniency Provisions - The Act provides for leniency provisions, allowing entities involved in anti-competitive practices to receive reduced penalties if they cooperate with the CCI during investigations.

3.8. Appeals and Redressal - The Act establishes a mechanism for appeals against the decisions of the CCI, ensuring a fair and transparent process for addressing grievances.

3.9. Exemptions and Thresholds - The Act provides for exemptions in certain cases, and it sets thresholds for determining when a combination requires mandatory notification to the CCI.

3.10. Sectoral Regulation and Competition Impact Assessment - The Act allows for collaboration with sectoral regulators to address competition concerns in specific industries. It also empowers the CCI to conduct competition impact assessments of proposed legislation or policies that may affect competition.

The Competition Act, 2002, plays a pivotal role in shaping the competitive landscape in India, contributing to economic efficiency, innovation, and consumer welfare. Its broad scope reflects a commitment to creating a market environment that fosters healthy competition and benefits all stakeholders in the economy.<sup>248</sup>

#### 4. MEANING OF ABUSE OF DOMINANT POSITION -

As per section 4 of the competition Act, 2002, dominant position means a position of strength, enjoyed by an enterprise in the relevant market which enables it to operate independently of competitive forces prevailing in the relevant market or affect its competitors or the consumers or relevant market in its favor and to do the sale of goods and services at predatory price which means to sell at the price which is below the cost of production to eliminate the competitor.

legislature has provided for the practices which constitute the offence of abuse of dominant position, which are as follows:

4.1. Directly or indirectly imposing unfair or discriminatory conditions in purchase or sale of goods or services

4.2. Directly or indirectly imposing unfair or discriminatory price in purchase or sale of goods or services

4.3. Limiting or restricting the production of goods or provision of services or market

<sup>248</sup> Avatar singh, competition law, (2<sup>nd</sup> ed. 2021)



4.4. Limiting or restricting the technical or scientific development relating to goods and services to the prejudice of consumers

4.5. Denial of market access by indulgence in the activities causing the denial

4.6. Entering into anti-competitive agreements

4.7. Using the dominant position in one relevant market to enter into or protect other relevant markets.

4.8. Selling the goods or services at a price below the cost to make it difficult for new enterprises to cope up with the market pricing and to establish in the market, the practice is also called "predatory pricing."<sup>249</sup>

## 5. IMPORTANCE OF THE COMPETITION ACT 2002 –

5.1. The Competition Act makes sure that the healthy competition is being carried on in the market by eliminating the malpractices done by the established companies to practice the monopoly over the market.

5.2. The Competition Act safeguards the rights of the small companies by providing regulations as well as the penalties for the offences which includes abuse of the small companies trying to enter the market.

5.3. The Competition Act helps small companies to enter into the market and start the trade without being dominated by the already existing big enterprises in the market doing this it opens up a way to the healthy competition in the market.

5.4. The Competition Act helps to avoid the monopoly in the market to make sure the consumers are getting ample of choices in the availability of the products.

5.5. The Competition Act gives the provisions to effectively avoid the problem of cartels and states the penalty for practicing the cartels.

5.6. The Competition Act regulates the mergers, amalgamations, and acquisitions to curtail the activities of abuse by the dominant

firms.

5.7. Under the Competition Act the provisions related to the formation of the competition **250**commission of India (CCI) are mentioned, the competition commission of India is a governing body of the competition in the market, which frames the policies and controls the malpractices which are being practiced in the market.

5.8. The Competition Act provides the regulations for eliminating bid rigging, bid rigging is the practice which is done by the people who are supposed to fill the tender individually but instead the discuss the pricing and fills the tender to get the desired price.

## 6. NEED OF THE COMPETITION ACT –

The Competition Act, 2002 plays an important role in curbing the problem of anti-competitive practices being carried on in the market like entering into anti-competitive agreements, bid rigging and cartels, etc.

In order to maintain the healthy competition in the market it is necessary to ban the activities which affects the competition on the market and creates monopoly, new firms entering in the market helps the economy to boom and hence avoiding market monopoly is necessary.

Competition act provides for the aid and the penalties for carrying out the activities which are banned by the competition act which helps the new firms to grow in the market.

## 7. THE COMPETITION COMMISSION OF INDIA –

Under the Competition Act, 2002, the act gives power to the central government to form the "Competition Commission of India" by notification.

The competition commission is body corporate having perpetual succession and a common seal, with powers to acquire, hold and dispose off immovable and movable property, with the right to contract and sue and to be sued in the aforesaid name. It shall have a chairperson and two to six members appointed by central

<sup>249</sup> Ibid

<sup>250</sup> Neha vyas, competition law, (1<sup>st</sup> ed. 2021)



government.

#### **8. OFFENCES COVERED UNDER THE COMPETITION ACT 2002 –**

Anti-competitive Agreement – (sec 3) anti-competitive agreements refer to the agreements made in respect of production, supply, distribution, storage acquisition or control of goods or provisions of services which causes or are likely to cause an adverse effect on competition within India. Such agreements if made will be void.

8.1. Cartels – [sec 2 (c)] includes an association of producers, sellers, distributors, traders, or service providers who makes an agreement between themselves to limit, control or attempt to control the production, distribution sale or price of trade in goods or provisions of services.

8.2. Bid Rigging – [sec 3 (d)] bid rigging is a practice done by businesses who come together and secretly raises the prices of the services or goods or lowers the standard of the services or goods instead of competing with each other.

8.3. Abuse of Dominant Position – An enterprise is said to be in a dominant position if it is directly or indirectly imposing unfair or discriminatory conditions in purchase or sale of goods or services, directly or indirectly imposing unfair or discriminatory price in purchase or sale of goods or services, Limiting or restricting the production of goods or provision of services or market, Limiting or restricting the technical or scientific development relating to goods and services to the prejudice of consumers, Denial of market access by indulgence in the activities causing the denial, Entering into anti-competitive agreements, Using the dominant position in one relevant market to enter into or protect other relevant markets,

8.4. Predatory Pricing – Selling the goods or services at a price below the cost to make it difficult for new enterprises to cope up with the market pricing and to establish in the market, the practice is also called “predatory pricing.”

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8.5. Combinations – (sec 5) combination is the merger between two or more enterprises or firms, or the business sector acquisitions by other business enterprise. There are various types of the combinations like horizontal combination and non-horizontal combination, non-horizontal combinations further have two types namely, vertical combination and conglomerate combination.<sup>252</sup>

#### **9. PENALTIES UNDER COMPETITION ACT-**

chapter VI of the competition Act, 2002 gives the provisions related to the penalties, which are as follows:

9.1. Contraventions of the orders of commission – (sec 42) if any person without reasonable cause fails to comply with the orders or directions of the commission issued under section 27, 28, 31, 32, 33, 42-A, and 43-A of the competition act, 2002, he shall be punishable with fine which may extend upto rupees one lakh for each day during which such noncompliance occurs, subject to a maximum ten crore, as the commission may determine. If still the contravention extends then imprisonment upto three years and fine upto rupees twenty-five crores or both can be imposed on the party.

9.2. Compensation in case of contravention of orders of commission – Without prejudice to the provisions of this Act, any person may make an application to the Appellate Tribunal for an order for the recovery of compensation from any enterprise for any loss or damage shown to have been suffered, by such person as a result of the said enterprise violating directions issued by the Commission or contravening, without any reasonable ground, any decision or order of the Commission issued under sections 27, 28, 31, 32 and 33 or any condition or restriction subject to which any approval, sanction, direction or exemption in relation to any matter has been accorded, given, made or granted under this Act or delaying in carrying out such orders or

<sup>251</sup> Debases Mishra, competition law in India, (1<sup>st</sup> ed, 2019)

<sup>252</sup> Ibid



directions of the Commission.<sup>253</sup>

9.3. Penalty for failure to comply with directions of commission and director general – (sec 43) noncompliance with directions of commission and director general shall be punishable with fine which may extend upto rupees one lakh for each day during which such noncompliance occurs, subject to a maximum ten crore, as the commission may determine.

9.4. Penalty for not furnishing of information on combination – [sec 43 (A)] if a notice is not given to the commission related to new combination as prescribed under sec 6 (2) penalty which may extend to one percent of the total turnover of the asset, whichever is higher of such a combination shall be imposed on a defaulter.

9.5. Penalty for making false statement or omission to furnish material information – (sec 44) if any person who is a party to a combination makes any false statement knowing it to be false or omits to furnish any vital material information knowing it to be material shall be liable to a penalty not less than fifty lakhs which may extend to rupees one crore, as may be determined by the commission.

9.6. Penalty for the offenses in relation to furnishing of the information– (sec 45) if a person who is required to furnish the information about the combination furnishes false information or omits any material fact or willfully alters, suppresses, or destroys any documents which are required to be furnished shall be punishable with fine which may extend to rupees one crore as the commission may deem fit.

## 10. IMPORTANT CASE LAWS ON ANTI COMPETITIVE PRACTICES –

### **Meru travel solutions private limited Vs. uber India system private limited –**

Meru Pvt. Ltd. Was started in 2007 whereas uber started its business in India in 2013, the process which was followed by Meru Pvt. Ltd. For booking

a cab was lengthy because there were no automation in the processes customer had to call the executives number to book a cab and then the further conversation was done on a call while on Uber taxi services the booking process was entirely different and fully automated, Meru claimed that by 2013 it became the biggest radio taxi service provider in the India, however due to alleged anti-competitive practice done by its competitor uber, Meru lost its market share, Meru alleged that uber has imposed “Predatory pricing” to with intention to reduce the profit of Meru and to steal its customers. However, the appellate tribunal ruled that, Uber hasn’t abused its dominant position and the allegation about predatory pricing were not upheld by the tribunal, later in supreme court the supreme court upheld the decision of the appellate tribunal.

### **Google LLC and Another v. Competition Commission of India Through its Secretary and Others, NCLAT 147. –**

CCI observed that by using its dominant position in the online search market, Google was denying access to competing search engines. It also noted that by making pre-installations of Google's proprietary apps mandatory in an android phone, the incentive and ability of device manufacturers to develop and sell devices operating on alternate versions of android was considerably reduced. Therefore, CCI directed Google to not force Original Equipment Manufacturers (“OEMs”) to pre-install a bouquet of applications, not offer any monetary or other incentives to OEMs for ensuring exclusivity for its search services, and not restrict the uninstallation of its pre-installed apps by the users. The Supreme Court on Friday decided to list on October 10, 2023, the appeal filed by the tech giant Google challenging the order dated 29.03.2023 passed by the National Company Law appellate Tribunal (NCLAT) which had upheld the imposition of Rs. 1337.76 Crores penalty on Google by the Competition Commission of India (CCI). Google has been

<sup>253</sup>Competitionlawnotes,competitionlaw,[https://www.sccc.edu/sites/default/files/B.com%20H\\_sem%20vi\\_Consumer%20affairs%20and%20Customer%20Care\\_Ms.%20Kavita%20Kamboj.pdf](https://www.sccc.edu/sites/default/files/B.com%20H_sem%20vi_Consumer%20affairs%20and%20Customer%20Care_Ms.%20Kavita%20Kamboj.pdf), last seen on – 16/11/2023



penalized for abusing its dominant position.<sup>254</sup>

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