India: Abuse of Dominant Position an Anti-Competitive Practice

The Competition Act, 2002 focuses to sustain competition, protect the interests of the consumers and ensure freedom of trade in markets in India. It enables a healthy competitive culture that inspires the business to be fair, competitive and innovative. This enhances consumer welfare and supports economic growth.

**DOMINANT POSITION** (under Section 4 Competition Act, 2002)

Dominant Position has been defined as a position enjoyed by an enterprise whereby 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 DOMINANT POSITION** (under Section 4 Competition Act, 2002)

An enterprise in dominant position performs any of the following acts:

(a) directly or indirectly, imposes unfair or discriminatory practices
(b) limits or restricts production of goods or provision of any services in any form
(c) indulges in practice or practices resulting in denial of market access
(d) makes conclusion of contracts subject to acceptance by other parties of supplementary obligations which have no connection with the subject of such contracts; or
(e) uses its dominant position in one relevant market to enter into, or protect, other relevant market.

**PREDATORY PRICE** (under Section 4 Competition Act, 2002)

The sale of goods or provision of services, at a price which is below the cost, as may be determined by regulations, of production of the goods or provision of services, with a view to reduce competition or eliminate the competitors.

**REMEDIES AVAILABLE** (under the provisions of Section 27 of the Competition Act, 2002)
In order to discourage Abuse of Dominant Position, the Competition Commission direct to discontinue such agreement, pay penalty or modify the agreement.

**JUDICIAL APPROACH**

Through a catena of cases, the Competition Commission of India has identified as to what constitutes abuse of dominant position to fall under the purview of anti-competitive practices.

- **Zero pricing by a dominant player** amounts to annihilating or destructive pricing being **beyond** the parameters of **promotional or penetrative pricing**.

- By providing **free services** cannot by itself raise competition concerns unless the same is offered by a dominant enterprise and shown to be tainted with an anti-competitive objective of excluding competition/ competitors.

- In a competitive market scenario, where big players are already operating in the market, it would **not be anticompetitive for an entrant to incentivise customers by giving attractive offers and schemes**.

- Providing services below the average variable cost unless **it coupled with abuse of dominant position** does not amount to predatory pricing in contravention to the Competition Act (Section 4).

- **Market share is one of the indicators for assessing dominance, but the same cannot be seen in isolation** to give a conclusive finding.

- **No restriction affecting the entry or expansion of other entrants into the market in indicative of lack of abuse of dominant position**.

- The narrow interpretation of the concept of dominance would mean that an **entrant armed with a new idea, a superior product or technological solution** that challenges the status quo in a

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1. MCX Stock Exchange Ltd. vs. National Stock Exchange of India Ltd. & DotEx International Ltd. (Case No. 13/2009) CCI
2. Bharti Airtel Limited Vs. Reliance Industries Limited & Reliance Jio Infocomm Limited (Case No. 03 of 2017) CCI
3. Fast Track Call Cab Pvt. Ltd. & Meru Travel Solutions Pvt. Ltd Vs. ANI Technologies Pvt. Ltd. (Case No. 6 & 74 of 2015) CCI
market and shifts a large consumer base in its favour would have to be erroneously held dominant.$^3$

- The interpretation of the Competition Act, 2002, does not allow more than one dominant player.$^3$

CONCLUSION

On account of sound economic positions, the enterprises may exercise such dominant position to restrict competition preventing other entities to evolve and carve out their place in the market. The Competition Act, 2002 monitors such unfair trade practices preventing sound market approach.

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