

A Comparative Analysis of Abuse of Dominant Position Between India and UK

K Vishnu Bharadwaj

PES University

Abstract

By making a distinction between companies that gain dominance via fair competition and those that abuse it to suppress market rivalry and take advantage of customers, India's Competition Act, 2002 seeks to prohibit the abuse of dominant market positions. Unfair pricing and discriminatory conditions that harm competitors and restrict consumer options are examples of behaviors that are addressed by the Act. In order to uphold the Act and encourage competitive market conditions that benefit customers and the expansion of the sector as a whole, the Competition Commission of India (CCI) was founded. But it might be difficult to tell the difference between abuse and legitimate authority. Key terminology like "enterprise" and "group" are defined throughout the Act to make its scope more clear. An "enterprise" is any organization that produces, distributes, or controls goods and services, whereas a "group" is made up of several businesses that have substantial voting rights or managerial authority over one another. Abuse of a dominating market position is prohibited by Section 4 of the Act, which lists actions such as restricting market access, unfair pricing, and barring rivals. Two primary viewpoints are used to assess dominance: structural (market share) and behavioral (capacity to function independently of rivals). When evaluating market power, the behavioral definition is used since it is more thorough. Prior to the Act, market share was the main determinant of dominance; however, the SVS Raghavan Committee placed a strong emphasis on analyzing a company's effect on competition. Comparably, in accordance with EU legislation, Section 18 of the UK's Competition Act 1998 forbids the misuse of market dominance. It draws attention to actions such as discriminatory terminology, restricting policies, and unfair pricing. By addressing matters such as merger control and market investigations, the Enterprise Act of 2002 promotes competition even more. In the UK, competition laws are enforced by the Competition and Markets Authority (CMA). Although the competition rules of the UK and India are similar, the UK Act more closely resembles EU law, particularly with regard to market dominance, albeit with minor jurisdictional distinctions.

Keywords: UK Law, Indian Law, Competition Law, Abuse of dominant Position.

Introduction

In order to combat the misuse of dominant positions in India's market environment, the Competition Act of 2002 is essential. It makes a distinction between businesses that gain dominance through fair, competitive methods and those who do so by unfair, anti-competitive methods. The Act focuses on instances in which a business not only unfairly gains a dominating position but also uses it to stifle competition and manipulate market conditions for its own benefit, frequently at the expense of customers. Abuse of dominant position refers to actions that hinder competition, such as leveraging a dominating market share to set terms that keep other rivals from succeeding, rather than the organic ascent of a

business to prominence. Customers are eventually left with fewer options as a result of this behavior, which restricts their access to superior goods, services, and costs. Because the distinction between lawful market dominance and unlawful abuse of such dominance is hazy, resolving this question is difficult. The Competition Commission of India (CCI) and the Competition Act, 2002 were created to address this. The main goals of the Act are to safeguard consumers and guarantee the growth of industry competitiveness. It draws attention to the serious effects that the misuse of power has on the market and economy as a whole, in addition to on individual customers. Market competition is essential to free trade systems, and when one or a small number of firms control the majority of the market, it can impede industry expansion and negatively impact the economy as a whole. Important terms like enterprise and group are defined in the Act and are essential to comprehending the reach of competition law. With few exceptions for government tasks, Section 2(h) defines a "enterprise" as any individual or government agency engaged in operations such as the manufacture, distribution, supply, or control of products and services. A "group," as defined in Section 5, is any two or more businesses that have the ability to exert influence over one another, for example, by controlling the management and operations of another business or by having a sizable voting stake. The Competition Act's Section 4 forbids any business or organization from abusing its dominating position and lists a number of behaviors that fall under this category. These include denying market access, limiting output or development, enforcing unfair or discriminatory prices, and abusing market dominance in one market to penetrate other areas. In essence, abusive behaviors can be exclusionary (like keeping rivals out of the market) or exploitative (like charging exorbitant rates). The two primary definitions of dominating position are structural and behavioral. While the structural definition highlights market share as a crucial sign of dominance, the behavioral definition concentrates on a company's capacity to function independently of rivals. Because the behavioral approach enables a more comprehensive assessment of market dominance and barriers to entry, it is typically preferred by jurisdictions. Dominance was often understood in terms of market share prior to the Competition Act's passage. A more precise definition was proposed by the SVS Raghavan Committee, which examined India's competition rules and placed emphasis on a company's capacity to influence market dynamics and function free from competitive pressure. As a result, the existing legislation mandates that a dominating position be examined not just for its size but also for its effect on competition. In order to ensure fair competition in India's marketplaces and safeguard the welfare of consumers, the Competition Act of 2002 attempts to stop anti-competitive actions that result from the misuse of market dominance. India's dynamic approach to promoting competition and controlling market conduct is seen by the way its competition law has developed over time, influenced by both the Act and case law. Section 18 of the UK's Competition Act 1998, which forbids certain actions that impact commerce within the country, deals with the problem of abuse of a dominant market position. In particular, it declares that any actions taken by one or more businesses that exploit their market dominance are forbidden, so long as they have the potential to impact commerce inside the United Kingdom. The Act cites a number of instances of abusive behavior, including the imposition of unfair trade or pricing conditions, the restriction of production or development to hurt customers, the provision of terms that differ from those of comparable transactions, and the inclusion of irrelevant supplemental requirements in contracts. Section 18 does not, however, specify exactly what a dominating posture is. In order to provide clarity, Section 60(1) of the Act states that UK competition law is intended to be consistent with EU competition law, guaranteeing uniformity between the two countries. Therefore, the interpretation of dominant position of the European Court of Justice is frequently cited. Since the UK's Competition Act predates India's, the UK's competition legislation, albeit being intricate

and subtle, has had more time to evolve than India's. The Enterprise Act of 2002 is a key component of the UK's competition framework, in addition to the Competition Act of 1998. This law addresses topics including market investigations, merger control, and making cartel activity illegal. The Enterprise Act upholds free trade principles and created the Competition and Markets Authority (CMA), which is responsible for enforcing competition law in the United Kingdom, but it is less specific about the misuse of dominant positions. It combined the operations of the Office of Fair Trading with the old Competition Commission. As the primary regulator in the UK, the CMA makes sure that competition rules are followed. Its functions are not comprehensive, though, since it shares some regulatory obligations with other specialized organizations. Despite minor jurisdictional distinctions, the UK's approach to competition law closely complies with Article 102 of the Treaty on the Functioning of the European Union (TFEU). With the important exception that it applies to cases where commerce is impacted within the UK, even if the dominant position is not substantial, or where abuse takes place outside the UK but affects the UK market, Section 18 of the Competition Act 1998 reflects the EU approach. The Competition Act of 1998 takes a broad approach, depending on EU legislation for guidance, rather than offering a detailed list of illegal conduct. In contrast to EU law, which generally does not recognize such exclusions, Section 19 of the Act creates exceptions to these restrictions. Most of the UK's competition laws are still in line with EU rules even after the country left the EU.

Literature Review

Demystifying the Competition Implications of “Abuse of Dominance” (Concept and Compliances)

by Divyesh Patel and Naresh Patel: It states that when a dominating company uses anti-competitive tactics to preserve or improve its market position, it is abusing its position and hurting customers and competition. The article lists several forms of abusive behaviors, including tying arrangements, exclusive agreements, and predatory pricing. It highlights how crucial it is to discern between legal commercial tactics and anti-competitive conduct. The essay also explores the legal frameworks that control abuse of dominance, emphasizing the need for corporations to comply in order to prevent infractions. The function of competition authorities in conducting investigations and enforcing laws is also examined. The article seeks to assist firms in guaranteeing adherence to competition rules and avoiding severe fines by elucidating the legal and practical aspects of abuse of power.

A Comparative Study of Dominant Position by Prashanti Upadhyay: The author examines how various countries approach and regulate the idea of dominating market position in competition law. India, the US, and the EU are among the key nations whose legal systems and practices are compared in this study. It draws attention to the definitions of dominance, market power requirements, and anti-competitive performance standards. The article explains that while dominance in and of itself is not unlawful, it may become problematic when it is exploited to hurt customers or competitors. Price manipulation, unwillingness to negotiate, and monopolistic tactics are just a few of the abusive activities that Upadhyay examines. She also talks about how competition authorities can identify and punish dominance misuse.

Abuse of Dominant Position and Globalization & Protection and Disclosure of Trade Secrets: This explores two critical areas of competition law. It examines how firms with market dominance can misuse their power to engage in anti-competitive behavior, harming consumer welfare and market fairness. The book also addresses the challenges posed by globalization, where multinational corporations may exploit their dominance across different jurisdictions. Additionally, it discusses the importance of safeguarding trade secrets, offering legal frameworks to protect confidential business information from unfair

disclosure. Overall, it highlights the balance between fostering competition and protecting business interests globally.

Addressing the Abuse of Dominance in India Under the Competition Act, 2002: This explores how India's legal framework addresses anti-competitive practices by dominant firms. It outlines the provisions of the Competition Act, 2002, which aims to prevent abuse of dominance through practices like price manipulation, exclusionary tactics, and unfair competition. The article analyzes the role of the Competition Commission of India (CCI) in investigating and penalizing such practices. It highlights challenges in enforcement and compliance and emphasizes the importance of protecting market competition to ensure consumer welfare and a fair business environment.

Abuse of Dominant Position and Laws in India

The enactment of the Competition Act 2002, has played a significant role in tackling the abuse of dominant position within India. It is important to note here that the abuse of dominant position does not mean the process of a company's rise to success and achieving a dominant position within its market and industry through legitimate business practices and healthy and sustainable competition. The type of situation which the Act aims to tackle is the company which has acquired a dominant position within its own industry firstly through unfair and underhanded means, and secondly uses that position of dominance not only to prevent healthy competition from uprising but also dictates the terms as to how the existing competition should operate. The majority of the market share exists with one or a group of companies and every trick in the book is utilized to maintain the market share, at the cost of not only the competition but also a product of better quality, ultimately leaving the consumer with no choice. Controlling such practices however, is easier said than done, even with the enactment of such a law, since the border between abuse of dominant position of an enterprise and the practices which enabled the business to maintain dominance within the industry in a legal way is blurred. Hence the enactment of the Act and in turn the establishment of the Competition Commission of India. The problem of abuse of dominant position has much heavier implications on consumers and on the country than can be just seen on and assumed on the surface level. In any market which follows the values of free trade, one of the intrinsic factors of such a system is the existence of competition for the market and as a subset the industry to grow to its fullest potential. The existence of a situation of abuse of dominant position, apart from being a problem for the consumer at the grass root level also presents an issue for the entire industry and in turn, the entire economy of a country gets affected. In order to understand a concept which is as broad and important as dominant position and its abuse, it is imperative to understand certain concepts which are important to both competition law and corporate law such as what is an enterprise and what can be defined as a group, the answers to which is given under the Act itself. Enterprise is defined in the Competition Act in S.2(h) as follows:

“enterprise” means a person or a department of the Government, who or which is, or has been, engaged in any activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services, of any kind, or in investment, or in the business of acquiring, holding, underwriting or dealing with shares, debentures or other securities of any other body corporate, either directly or through one or more of its units or divisions or subsidiaries, whether such unit or division or subsidiary is located at the same place where the enterprise is located or at a different place or at different places, but does not include any activity of the Government relating to the sovereign functions of the Government including all activities carried on by the departments of the Central Government dealing with atomic energy, currency, defence and space.

Group is also defined in the Act in Explanation to S.5 as

“group” means two or more enterprises which, directly or indirectly, are in a position to —

- (i) exercise twenty-six per cent or more of the voting rights in the other enterprise; or
- (ii) appoint more than fifty per cent of the members of the board of directors in the other enterprise; or
- (iii) control the management or affairs of the other enterprise;

Understanding the definition and concepts of these two words is necessary to understand what the concept of abuse of dominant position is. In the Act, abuse of dominant position is made illegal in S.4(1) as

No enterprise or group shall abuse its dominant position.

The second clause of Section 4 also explains what practices can be construed as abuse of dominant position, and is given as

There shall be an abuse of dominant position under sub-section (1), if an enterprise or a group.—

1. directly or indirectly, imposes unfair or discriminatory—
 - a. condition in purchase or sale of goods or service; or
 - b. price in purchase or sale (including predatory price) of goods or Service
2. limits or restricts—
 - a. production of goods or provision of services or market therefor; or
 - b. technical or scientific development relating to goods or services to the prejudice of consumers; or
3. indulges in practice or practices resulting in denial of market access in any manner; or
4. makes conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts; or
5. uses its dominant position in one relevant market to enter into, or protect, other relevant market

To summarize the above section and concept of abuse of dominant position, it can be said dominance is generally considered to be a position of superiority and the ability to exercise a dominant position over another competitor.¹ To understand the concept to a deeper extent, it can be divided into two main categories which is exploitative which consists of actions such as excessive and discriminatory prices and exclusionary which consists of denial of market access² or taking over and discouraging healthy competition in the marketplace. Apart from the previously mentioned classifications given, there is also another classification which can be looked after understanding the various submissions of the members of the ICN, there were revealed two types of definition of the dominant position: behavioral and structural. The most important elements of the behavioral definition are, ability of a company to pursue its market policy in conditions of independence of disciplining its influence from the part of competitors. Structural definition proceeds from the companies’ market share. It doesn’t mean that share indices are not applied by competition authorities using the behavioral definition of dominance. However, they consider market share as one of criteria of market power (even though the most important), but not as an element of the definition of dominance. The majority of jurisdictions reviewed were holding the behavioral definition, and the structural. Some jurisdictions examine the possibility to introduce appropriate alterations to their competition legislation, turning from the structural definition to the behavioral one The behavioral definition of market power seems to be more preferable compare to the structural one, because it permits to conduct more multilateral analysis of factors defining the dominant position, first of all, barriers of

¹ Divyesh Patel & Naresh Patel, *Demystifying the Competition Implications of “Abuse of Dominance” (Concept and Compliances)*, 2023 ICSI J. 42,

² *Ibid.*

entrance.³ However, before the enactment of the competition act and even the issue of abuse of dominant position as a term had come into picture, another version of that had been looked at, defined as dominant undertakings, which had been targeting certain enterprises merely on the basis of their size⁴, and had been defined under S.2(d) as:

1. an undertaking which by itself or along with inter-connected undertaking produces, supplies, distributes or otherwise controls not less than one-fourth of the total goods that are produced, supplied or distributed in India or any substantial part thereof; or
2. an undertaking which provides or otherwise controls not less than one-fourth of any services that are rendered in India or any other substantial part thereof.⁵

The concept of abuse of dominant position was made important in India with the enactment of the Competition Act of 2002, in which the role of the SVS Raghavan Committee played an extremely important role. The committee had been set up by the government to give its review and suggestions on the competition laws currently existing within India. It was the suggestion of the committee that although dominance is a necessary condition for establishing violation of provision regarding abuse of dominant position; it is by no means a sufficient condition. Therefore the committee suggested that "dominance" and "dominant undertaking" may be appropriately defined in the competition law in terms of "the position of strength enjoyed by an undertaking which enables it to operate independently of competitive pressure in the relevant market and also to appreciably affect the relevant market, competitors and consumers by its actions⁶ and hence the current law as given under the Competition Act came into existence. However, this is not the only way the competition law has evolved within India. As is with any law and its evolution, the case laws and decisions which are passed by not only the Competition Commission of India but also the various other High Courts, Tribunals and the Supreme Court of the country. One of the arguably biggest cases which took place within India is CCI v Google LLC⁷ in which CCI had made several allegations that there had been abuse of dominant position by Google with respect to certain practices undertaken by it within the product market of online search engines. In addition to having serious consequences for Google, this historic case established a standard for strong enforcement measures against online behemoths. The lawsuit, which started with allegations from Bharat Matrimony and the Consumer Unity & Trust Society (CUTS), focused on Google's purported abuse of power over a number of online services in India, such as web search, search advertising, and advertising intermediation.⁸ Another major case which took place in order to establish the practices of healthy competition and fair practices is CCI v DLF Ltd⁹ in which A client (a homebuyer) complained to DLF Ltd., claiming that the firm was engaging in unfair trading practices and exploiting its dominating position in the real estate market. This complaint served as the basis for the start of the lawsuit. DLF Ltd was charged with enforcing unreasonable terms in its contracts with homeowners by abusing its dominating position. The business was also charged with

³ Prashanti Upadhyay, *A Comparative Study of Dominant Position*, Manupatra, <http://docs.manupatra.in/newsline/articles/Upload/49B54588-42DE-4173-A967-90790B35ED50.pdf> (last visited Jan. 5, 2025).

⁴ *Ibid*

⁵ *Ibid*

⁶ *Ibid*

⁷ *Google LLC and Another v. Competition Commission of India Through its Secretary and Others*, 2023 SCC OnLine NCLAT 147.

⁸ Surender Kumar et al., *Addressing the Abuse of Dominance in India Under the Competition Act, 2002*, 6 Int'l J. for Multidisciplinary Rsch. (IJFMR) 1, Page 1-7, (2024).

⁹ Competition Appeal (AT) No.82 of 2018

limiting competition by making decisions on its own that hurt customers. The 2011 decision in "CCI v. DLF Limited" was a turning point in the enforcement environment and demonstrated the CCI's steadfast dedication to preventing abuse of power in a variety of industries. The CCI reiterated its crucial role in promoting competitive markets and protecting consumer interests by levying heavy fines on DLF and requiring remedial measures. This case is a powerful reminder of how important it is for competition authorities to stop anti-competitive behavior and provide fair competition for all market players.¹⁰ Hence the competition law in India even though is not entirely set in stone, has various enactments throughout Indian Legal history such that it is enough for various authorities to protect the free market within India.

Abuse of Dominant Position and Laws in the UK

The United Kingdom enacted Competition Act 1998, in which it also talks about the abuse of dominant position which is given under S.18 as

1. Subject to section 19, any conduct on the part of one or more undertakings which amounts to the abuse of a dominant position in a market is prohibited if it may affect trade within the United Kingdom.
2. Conduct may, in particular, constitute such an abuse if it consists in—
 - directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
 - limiting production, markets or technical development to the prejudice of consumers;
 - applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
 - making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of the contracts.
3. In this section—
 - a. "dominant position" means a dominant position within the United Kingdom; and
 - b. "the United Kingdom" means the United Kingdom or any part of it.
4. The prohibition imposed *by subsection (1) is referred to in this Act as "the Chapter II prohibition"*.

Section 18 does not provide what is meant by dominant position. Section 60 (1) of the UK Competition Act provides that the purpose of this section is to ensure that so far as is possible (having regard to any relevant differences between the provisions concerned), questions arising under this part in relation to competition within the United Kingdom are dealt with in a manner which is consistent with the treatment of corresponding questions arising in Community law in relation to competition within the Community. Accordingly, the Competition Authorities of the United Kingdom have placed reliance on the definition of dominant position laid down by the European Court of Justice.¹¹ The competition law in the UK however has various complexities and nuances which makes it more challenging to practice. However, the fact remains that the law in UK has had more time to mature as it is older than Indian law, but the primary law is Competition Law 1998. The Competition Act 1998 is a statute exclusively concerned with competition law, which takes effect across the entirety of the United Kingdom. It is not the only statute that concerns competition law—the other major piece of primary legislation is the Enterprise Act 2002, which contains the UK's merger control rules, rules on market studies and investigations and creates a

¹⁰ Surender Kumar et al., *Addressing the Abuse of Dominance in India Under the Competition Act, 2002*, 6 Int'l J. for Multidisciplinary Rsch. (IJFMR) 1, Page 1-7, (2024).

¹¹ Prashanti Upadhyay, *A Comparative Study of Dominant Position*, Manupatra, <http://docs.manupatra.in/newsline/articles/Upload/49B54588-42DE-4173-A967-90790B35ED50.pdf> (last visited Jan. 5, 2025).

criminal “cartel offence”, as well as rules on the investigation and enforcement of certain consumer law matters.¹² The Enterprise Act which had been enacted by the UK has also played a major role within the enforcement of values of free trade and free markets within the country. This was enacted in 2002, right as and when Competition Act was enacted in India. The Enterprise Act, while though not being that explicit about abuse of dominant position, does have some laws with respect to abuse of dominant positions, and much like India, established a competition commission of India. Section 11 of the Enterprise Act 2002 enables a designated consumer body to make a “super-complaint” to the Competition and Markets Authority (CMA), which requires the CMA to respond within 90 days stating whether (and if so, what) action it will take to deal with the complaint. In the UK, the CMA is the primary body enforcing competition law. It combines the functions of the former Competition Commission and the Office of Fair Trading, which have been abolished.¹³ The CMA performs a very important function within the framework of UK Markets as it acts as a market regulator within the area of competition laws. However, it does not monitor all the aspects of the markets, i.e. does not control each and every industry existing within the UK, but acts as, loosely defined, as a parent regulator to many others and distributes its functions to various other regulatory organisations. There are several Memoranda of Understanding between the CMA and specific regulators on the exercise of concurrent powers, guidelines on the use of enforcement powers and prioritisation principles.¹⁴ Another point to note here is that the Competition Act within UK does not fully define or list out whether the practices which are prohibited are indicative or exhaustive, but on the other hand, it follows the words of Article 102 of TFEU, and the questions which arise under the prohibitions should be dealt with questions which are also raised within the law of the community with respect to competition arising within.¹⁵ S.18 of the Competition Act, 1998 also follows the same pattern, even following the same Article 102 of the TFEU, the only difference being that of Jurisdiction, in three main areas. In the first instance, trade should have been affected within the UK and not between the member states. Secondly, the dominant position should have been within the UK or any part of it, even if it is not significant, and it can be inferred that prohibition can also be experienced in local markets.¹⁶ Thirdly, prohibition may also be applied if the abuse has taken place outside the UK, provided that the dominant position and effect on trade are both inside the UK. However, there are some variations from the general UK law from the EU law and other competition laws existing in Europe. Section 19 of the Competition Act gives certain exceptions which are not included in the cases given in Chapter II which contains prohibitions. This is contradictory to the law within the rest of the EU, where the concept of exclusion is not entirely given legal recognition. This however, is only one of few inconsistencies since most of UK law is designed to be at par with the rest of the EU, even though it has not been a part of the EU for almost 10 years. The competition law in the UK has taken inspiration and its evolution not only from the various laws both enacted by EU and by the UK individually, but also from the various cases which has been decided by the courts of law in the land. The very first decision which should be looked at is the case of Cardiff Bus.¹⁷ In Cardiff, bus services were run by Cardiff Bus (the Respondent). Cardiff

¹² Abuse of Dominant Position and Globalization & Protection and Disclosure of Trade Secrets and Know How Page no 263 - 291 (Bruce Kilpatrick et al. eds.).

¹³ *Ibid*

¹⁴ Abuse of Dominant Position and Globalization & Protection and Disclosure of Trade Secrets and Know How Page no 263 - 291 (Bruce Kilpatrick et al. eds.).

¹⁵ *Ibid*

¹⁶ *Ibid*

¹⁷ Case No. CA98/01/2008 Cardiff Bus, OFT decision of 18 November 2008

Bus and Newport Bus were found to have engaged in anti-competitive behavior by the Competition and Markets Authority (CMA). Cardiff Bus and Newport Bus entered into a collusive agreement that limited competition by exchanging private information on pricing schemes and routes. It was discovered that they had coordinated their actions to keep prices high in some places and prevent competition with one another. Whether this behavior breached Section 2 of the Competition Act 1998, which forbids anti-competitive agreements between enterprises, was the main point of contention. It specifically addressed cartel practices including market-sharing and price-fixing. The CMA's inquiry revealed that both businesses had diminished competition by disclosing commercially sensitive information, hurting customers by maintaining inflated rates and limiting service enhancements. In its Cardiff Bus decision, the OFT found that the defendant undertaking was dominant in the market for bus and train services running into and out of Cardiff.¹⁸ The main focus of the case is an inquiry into the activities of Lothian Buses¹⁹, Edinburgh's leading public transport provider, which was charged with anti-competitive behaviour that harmed competition in the local bus services market. The CMA was particularly worried that Lothian Buses had made it more difficult for new rivals to enter the market by entering into exclusive contracts with several other bus operators. Lothian Buses was also charged with engaging in price-coordination and information-sharing agreements with other operators, allegedly resulting in less competition and higher bus tickets in Edinburgh. The main questions pertaining to competition law were whether Lothian Buses' activities restricted competition in the bus industry and if they violated Section 2 of the Competition Act 1998, which forbids anti-competitive agreements and practices. The lawsuit also looked at Lothian Buses's ties with other local bus operators and whether their cooperation prevented new competitors from entering the market or resulted in unwarranted price increases for customers.

Conclusion

India's Competition Act, 2002 aims to prevent the misuse of dominant market positions by differentiating between companies that achieve dominance through fair competition and those that exploit it to hinder market competition and take advantage of consumers. The Act addresses practices like unfair pricing and discriminatory conditions that negatively affect competitors and limit consumer choices. To enforce the Act and foster a competitive market that benefits consumers and supports sector growth, the Competition Commission of India (CCI) was established. However, distinguishing between legitimate dominance and its abuse can be challenging. The Act defines essential terms such as "enterprise" and "group" to clarify its reach. An "enterprise" refers to any organization involved in producing, distributing, or controlling goods and services, while a "group" consists of businesses with significant voting rights or managerial control over each other. Section 4 of the Act prohibits the abuse of a dominant market position, listing actions such as restricting market access, imposing unfair pricing, and excluding competitors. Market dominance is assessed using two main perspectives: structural (based on market share) and behavioral (focused on a firm's ability to operate independently of rivals). The behavioral definition is preferred for a more comprehensive evaluation of market power. Before the Act, dominance was primarily defined by market share, but the SVS Raghavan Committee emphasized assessing a company's impact on competition. Similarly, Section 18 of the UK's Competition Act 1998 prohibits the abuse of market dominance, following EU law. It highlights practices like unfair pricing, discriminatory terms, and

¹⁸ Abuse of Dominant Position and Globalization & Protection and Disclosure of Trade Secrets and Know How Page no 263 - 291 (Bruce Kilpatrick et al. eds.).

¹⁹ Case No. CA98/05/2004 First Edinburgh/Lothian, OFT decision of 29 April 2004

restrictive policies. The Enterprise Act 2002 further supports competition through provisions on merger control and market investigations. In the UK, the Competition and Markets Authority (CMA) enforces competition law. While the competition laws of both countries are similar, the UK Act is more aligned with EU regulations, particularly regarding market dominance, though there are minor jurisdictional differences. Hence it is important to notice the various nuances within the laws of the two countries. Although it is no surprising fact that British laws have had a lot of influence on Indian laws, even going as far as to India having some laws from the colonial era, it becomes very necessary for the evolution of the said laws to notice the fact that there are many subtleties within both countries, and also various similarities, and it is agreed upon the fact that the abuse of dominant position also happens in both countries, and one has to analyse the geographical, legal and economic positions of both countries before making any decision which can impact the long term economy or legal position of the country.

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