



Competition Act, 2002

ABUSE OF DOMINANCE AND COMBINATIONS



Presentation

by

Augustine Peter

Economic Adviser

Competition Commission of India (CCI)

Tel: 011 26701681 Fax: 011 26107131 email: paugustine@nic.in

Website: www.competitioncommission.gov.in

INTRODUCTION



- Competition Act, 2002, like all modern competition laws:
 - Prohibits Anti-competitive Agreements: Horizontal and Vertical
 - Prohibits Abuse of Dominant Position
 - Regulates Combinations
 - Mandates Competition Advocacy



ABUSE OF DOMINANCE

- Analysis of Abuse of Dominance involves:
 - Determining status of firm as dominant; and
 - Examining conduct of dominant firm as abusive

DOMINANCE



- Position of strength enjoyed by an enterprise in the **relevant market** which enables it to:
 - Operate independently of competitive forces prevailing in relevant market
or
 - Affect its competitors or consumers or the relevant market in its favour

ELEMENTS IN DOMINANCE



- Ability to prevent effective competition and
- Ability to behave independently of two sets of market actors, namely:
 - Competitors
 - Consumers

RELEVANT MARKET



DOMINANCE IS IN THE CONTEXT OF RELEVANT MARKET

Relevant market is based on:

- Relevant product market; *and*
- Relevant geographic market

RELEVANT MAREKT

RELEVANT PRODUCT MARKET-1



- Relevant product market is the smallest set of close substitutes
- Determination of substitutability of products:
 - ❑ Demand side substitutability- shift of demand to competing product on price rise
 - ❑ Supply side substitutability- shift of production to meet demand

RELEVANT MAREKT

RELEVANT PRODUCT MARKET-2



- Factors to be considered while determining relevant product market:
 - Physical characteristic of product
 - End-use of product
 - Price
 - Consumer preference – empirical evidence
 - Classification of industrial products - NIC

RELEVANT MAREKT

RELEVANT PRODUCT MARKET-3



In determining 'Relevant Product Market', CCI is required to consider:

- Physical characteristics or end-use of goods
- Price of goods or service
- Consumer preferences
- Exclusion of in-house production
- Existence of specialized producers
- Classification of industrial products



RELEVANT MAREKT

RELEVANT GEOGRAPHIC MARKET-1

- Relevant geographic market can be defined as the area in which products are available at approximately the same price given transport costs and any increase in demand can be met from neighbouring areas profitably
- Elzinga - Hogarty test to determine relevant geographic market:
 - **LIFO (Little In From Outside)**
 - **LOFI (Little Out From Inside)**

Usually both should be at least 90% to define the relevant geographic market – shipment data required



RELEVANT MAREKT

RELEVANT GEOGRAPHIC MARKET-2

- **Factors to be considered:**
 - **Shipment cost** – very important
 - **Regulatory trade barriers** – octroi/sales tax
 - **Local specification requirements** – language display
 - **National procurement policy** – only local (state-level or national) suppliers permitted
 - **Adequate distribution facilities** – perishable products

RELEVANT MAREKT RELEVANT GEOGRAPHIC MARKET



In determining ‘Relevant Geographic Market’, CCI is required to consider:

- Regulatory trade barriers
- Local specification requirements
- National procurement policies
- Adequate distribution facilities
- Transport costs
- Language
- Consumer preferences
- Need for secure or regular supplies or rapid after-sales services

EXISTENCE AND EXERCISE

- Existence of dominance is not frowned upon
- Exercise of dominant position, if it falls in 'abuse', is void under the Act

FACTORS TO BE CONSIDERED IN DETERMINING DOMINANCE



Dominant position linked to a host of factors

- Market share of enterprise
- Size and resources of enterprise
- Size and importance of competitors
- Commercial advantage of enterprise over competitors

FACTORS TO BE CONSIDERED IN DETERMINING DOMINANCE



- Vertical integration
- Dependence of consumers
- Dominant position as a result of a statue
- Entry barriers
- Countervailing buying power
- Market structure and size of market
- Social obligations and costs
- Contribution to economic development
- Any other factor



ABUSE OF DOMINANCE

- Imposing **unfair** or discriminatory price or **condition** in purchase or sale
- Limiting production or scientific development to the prejudice of consumers
- Denial of market access in any manner
- Conclusion of contract subject to supplementary obligations
- Use of position in one relevant market to enter into or protect other relevant market



ABUSE OF DOMINANCE

- List of Abuses in the Act are **exhaustive**
- No action if an ‘act(ion)’ is not covered in ‘Abuse’
- Abuses are of two types:
 - > Exploitative (predatory pricing, e.g.)
 - > Exclusionary
(interference with competitive process)
- No concession in case of abusive use of intellectual property
- Appreciable adverse effect on competition need not be proved



REMEDIES

- Prohibiting the abuse in future
- Specifying future contracts terms and conditions
- Imposition of fines
- Structural remedies include 'division of enterprise'
- Such other order as may be deemed appropriate by Commission



THANK YOU

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