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# "Abuse of Dominance: A Comparative Study of India, U.S.A and United Kingdom"

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**ABSTRACT**

Over the centuries, the world has gradually shrunk; it was incorporated and the companies operate in an extremely economic world, but at the same time of a political, ethnic and legal nature. The relationship between competition law and international trade law has a harmonizing function. The laws are national, but the markets do not stop at national borders. Competition law has a great impact on a country's foreign trade as it moderately regulates the conduct of the country when conducting international trade. As the 20th century, competition law became global. Establishing national and regional competition around the world has formed an international support and enforcement network. Anti competitive behavior can have negative economic effects in several jurisdictions, not limited by territorial borders. Thus, while competition law remains essentially national, competition problems have become increasingly international, creating a regulatory disjunction. Consequently, the need for international regulation of competition and related matters arose. Competition law deals with market failures due to restricted business practices in the market. The history of competition law generally dates back to the enactment of the Sherman Act in 1890 in the United States. This act was absorbed by the power and depredations of the large trusts formed following the industrial revolution, where a small control group acquired and maintained the stock of competitors, generally in assets, and controlled their businesses. Precisely because of the benefits of competitive markets, it has been seen to promote economic development. The researcher attempts to make a brief study on the competition law of the United States, the United Kingdom and India in support of essential case law, also intends to analyze the role of the organization of international trade and how it forced The majority of the government will reassess its national competition policy and introduce the necessary changes in light of the evolution of the world trade regime.

## CHAPTER 1 - INTRODUCTION

### 1.1. Background

Abuse of dominance is a important concept in recent times. It is said to occur when a group of companies or a single company uses its dominant position in the relevant market in an exploitative manner. Therefore, to make the market fair, the concept of abuse of dominance was introduced in the Competition Act, 2002. Section 4 of the act specifically talks about abuse of dominant position. It is also seen as an international phenomenon and is seen in

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almost all developed and developing countries. Each state has its own set of rules and regulations to stop and enforce the abuse of dominant position. Therefore, it is necessary to stop this unfair practice in the competitive market. This project will help to understand the comparison of the laws relating to the abuse of dominance in 3 different countries.

**1.2. Research Problem**:

In general, we see that several companies that have a lot of capital and control over the market to have a monopoly adopt measures that translate into an anti-competitive practice. There are several such practices performed by companies in different countries. The other companies that are new to the market find it very difficult to survive, since they have no chance in the current market. Previously there was no authority to control such practices. There were no specific laws regarding the arrest of such practices. Direct discrimination has been observed on the market. These companies would get a large amount of non-ethical profits. The state did not interfere in such practices before and, therefore, no penalties were imposed on them and they would be freed freely. Sanctions need to be imposed on these companies.

**1.3. Review of Literature**:

**Nair, Anoopa S. "Monopoly Power and Firm Dominance in Indian Manufacturing Sector: An Empirical Analysis."** ***Indian Economic Review,*** **vol. 47, no. 1, 2012, pp. 109–141.** ***JSTOR,*** **www.jstor.org/stable/41969720.**

This article talks about a particular area of domain. Explain how the Indian manufacturing sector abuses domination in Indian markets. Apply the existing domain analysis methodology on the Indian market. It also tries to find the relationship between the profitability of the companies and the domain. In the end, he tries to draw conclusions on the dominance of Indian manufacturing markets and make those manufacturing markets responsible for the abuse of domination.

**Dugar, S. M., Guide to Competition Law, Vol. 1, LexisNexis, 2016**

This book initially defines the provisions relating to the abuse of a dominant position. He also talks about the legislative support of the dominant position. It also speaks of the extent of the abuse of a dominant position. Define the relevant market theme in India with this theme. It also establishes the case law on the subject. So he talks about the concept of abuse of domain. It also provides clarity on the types of abuse. There is a specific issue according to which the special cases of the United States and the European Union.

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**T. Ramappa, Competition Law in India Policy, Issues, and Developments, Edition 3, Oxford University Press, 2014**

This book has a special chapter dedicated to the abuse of dominant position. In addition to specifying the definition of domain abuse, this book also compares India's competition law with the UK Competition Law. He also talks about concepts such as relevant market, collective dominance, abusive behavior outside the dominated market, unfair trading conditions, discriminatory prices, predatory pricing, lower-priced sales. In short, we are talking about specific areas where dominance can be abused.

**Vickers, John. "Abuse of Market Power." *The Economic Journal*, vol. 115, no. 504, 2005, pp. F244–F261. *JSTOR*, www.jstor.org/stable/3590440.**

This article compares the concept of abuse of dominance of U.S and EC's Competition law. It is said that this is the most controversial issue for competition policy. It gives an economic assessment of developing legal standards in that area. This paper also talks about the need to have a stronger laws relating to concept of abuse of dominance.

**Afrika, Sasha-Lee, and Sascha-Dominik Bachmann. "Cartel Regulation in Three Emerging BRICS Economies: Cartel and Competition Policies in South Africa, Brazil, and India—A Comparative Overview." *The International Lawyer*, vol. 45, no. 4, 2011, pp. 975–1003. *JSTOR*, www.jstor.org/stable/23827260.**

This article gives a overview of the policies of different countries related to cartel regulation. It is seen that after forming a lot of cross-border cooperation between countries through bilateral agreements, a lot of anti-competitive cartel activities is noticed. This article talks about the state of anti-cartel policies and legislation in the selected jurisdictions. It also mentions the international institutions present that promote and coordinate international competition policies and anti-cartel initiatives.

**1.4. Research Questions:**

1) What led to origin and evolution of the abuse of dominance in competition law?

2) What are the comparative analysis of abuse of dominance in perception of U.S.A and U.K?

3) What is the perspective of Indian competition law on abuse of dominance?

**1.5.Objectives:**

1) To trace down the origin and to study the evolution of abuse of dominance.
2) To study the rules and regulations laid down by U.S government relating to abuse of dominance.

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3) To study the guidelines given by U.K government relating to abuse of dominance.
4) To also study the Indian competition law response on abuse of dominance

## CHAPTER 2: EVOLUTION OF COMPETITION LAW

While the term "Renaissance" originally referred to a cultural movement that characterized the period between the fourteenth and seventeenth centuries, it also referred to a historical epoch that affected other aspects of daily life, including trade and competition. During this period of the Renaissance, especially from the sixteenth century, international trade began to develop. Although much of this trade and the resulting wealth was illegal, the authorities felt that there was a need to regulate trade to create a spirit of fairness and free competition. The forerunner of modern patent laws, known as the Monopoly Statute, was approved by the England's Parliament in 1623.[1]Prior to the Monopoly Statute, patent laws were subject to abuse by the authorities. History reveals that it was known that Elizabeth I had granted patents for common household items such as salt and starch, creating a monopoly on needs. In the years that followed, several attempts were made to break up monopolies and enact laws that promoted competition and free trade[2]. But those who had good intentions often found that the merchants who maintained the monopolies had the kind of wealth they had bought in a privileged position with the authorities. Other developments that have finally led to modern competition law include trade restraint laws. As the term suggests, commercial moderation prevents parties from undertaking or carrying out similar activities in a reciprocal opposition.

Competition law is now generally accepted as based on the Sherman Act (1890) and the Clayton Act (1914), both established in the United States.[3] At that time, European countries had different forms of rules and laws governing monopolies and competition, but other developments, particularly after the Second World War and the fall of the Berlin Wall in 1990, are governed by the Sherman and Clayton Acts. [4]With the rapid development of international trade in the 21st century, competition laws and antitrust laws had to be maintained. It was after the First World War that other countries began to implement competition policies similar to those of the United States. Regulators of competition have been put in place to ensure compliance with antitrust and competition laws and policies. After the Second World War, the Allies put in place regulations to break the cartels and monopolies that had formed during the war. At that time, it was mainly aimed at Germany and Japan[5]. In the case of Germany, it was feared that big-industry cartels would be manipulated to give the Nazi regime total economic control of the country. With Japan, big companies were at hotbed of nepotism resulting in multi-industry conglomerates that controlled the Japanese economy. However, the surrender of Germany and Japan to allied forces at the end of the Second World War allowed the application of stricter controls, which were based on the principle of those

[1] www.britannica.com
[2] Scott, Andrew (2009) *The evolution of competition law and policy in the United Kingdom.* LSE law, society and economy working papers, 09-2009, accessed at www.eprints.lse.ac.uk
[3] www.ftc.gov
[4] ibid
[5] Supra no.3

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used in the United States.[6]In the United States, the term "antitrust" is most commonly used to refer to laws prohibiting the formation of cartels, also known as “business trusts”[7]. Although antitrust laws are generally separate from consumer protection laws, they provide consumers with a measure of protection against unscrupulous suppliers seeking to monopolize a market sector. Mergers and acquisitions undergo a rigorous selection process in accordance with antitrust and competition laws prior to obtaining approval.

Since attaining Independence in 1947, India, for the better part of half a century thereafter, adopted and followed policies comprising what are known as Command-and-Control laws, rules, regulations and executive orders. The competition law of India, namely, the Monopolies and Restrictive Trade Practices Act, 1969 (MRTP Act) was one such.[8]It was in 1991 that widespread economic reforms were undertaken and, as a result, the command and control economy began to evolve into a more open market economy. As in many countries, economic liberalization has taken hold in India and the need for an effective competition regime has also been recognized.

The competition law in India wastriggered by Articles 38[9] and 39[10] of the Constitution of India. These Articles are a part of the Directive Principles of State Policy. Pegging on the Directive Principles, the first Indian law on competition was promulgated in 1969and was christened the Monopolies and Restrictive Trade Practices, 1969 (MRTP Act). Articles 38[11] and 39[12] of the Constitution of India mandate, inter alia, that the State promote the well-being of people by guaranteeing and protecting as effectively as possible a social order in which social, economic and social justice inform all institutions of national life and the state, in particular, will direct its policy towards security.

1. That the ownership and control of the material resources of the community be better distributed in the service of the common good; is

[6] Eleanor M. Fox, ―US & EU Competition Law: A Comparison‖ accessed at www.iie.com
[7] Supra no.3
[8] Pradeep S. Mehta, ―Competition & Regulation in India‖, accessed at ww.cuts-ccier.org
[9] State to secure a social order for the promotion of welfare of the people. -
(1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.
(2) The State shall, in particular, strive to minimize the inequalities in income, and endeavor to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.
[10] Certain principles of policy to be followed by the State:-
The State shall, in particular, direct its policy towards securing-
(a) that the citizens, men and women equally, have the right to an adequate means to livelihood;
(b) that the ownership and control of the material resources of the community are so distributed as best to sub serve the common good;
(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;
(d) that there is equal pay for equal work for both men and women;
[11] Supra no.9
[12] Supra no.10

2. That the functioning of the economic system does not lead to a concentration of wealth and means of production to the detriment of all.[13]

In October 1999, the Indian government appointed a high-level committee on competition policy and competition law to define a contemporary competition law for the country, in line with international developments, and to recommend a legislative framework, which may entail a new law or appropriate amendments to the MRTP Act. The Commission presented its Competition Policy report to the Government in May 2000. The draft competition law was drafted and presented to the Government in November 2000. After some refinements, following extensive consultations and discussions with all interested parties, the Parliament passed in December 2002 the new law, namely, the Competition Act, 2002.[14]

## CHAPTER 3: THE PERCEPTION OF ABUSE OF DOMINANCE IN U.K.

In the United Kingdom several laws have been enacted to regulate consumer protection, such as the Consumer Credit Act 1974, Unfair Contract Terms Act 1977, Unfair Terms in Consumer Contract Regulations 1999, and Unfair Contract Terms Bill. All these laws complete the requirements of the European Union Directives on Consumer Protection[15]. Although cases of violations of consumer rights are mainly the result of wrongdoing or contracts, the evolution of the judicial and international approach has extended the scope of application to criminal liability. According to Article 2 of the Unfair Commercial Practices Directives of 2005 and as interpreted by the European Court of Justice, an average consumer is a normally informed, reasonably attentive and informed person. This definition is given taking into account social, cultural and linguistic factors.[16]

In the United Kingdom, two sets of laws operate simultaneously. If a British company holds a dominant position in the UK market, the provisions of Section 18 of the Competition Act 1998 (CA 1998 – as amended by the Enterprise Act 2002) apply; whereas if the UK company holds a dominant position on a market which extends to other EU member states, the provisions within Art 82 of the EU Treaty apply.[17]The EU law has been adopted into the U.K law, so the requirements that must be established for both are generally the same.[18]

### 3.1. To whom do the dominance rules apply? Are any entities exempt?

The rules on abuse of dominance apply to 'undertakings'. This is widely interpreted and covers all entities involved in economic activities, regardless of the legal status of the entity

[13] ibid
[14] Vijay Kumar Singh, 'Competition Law & Policy in India: The Journey in a Decadel', accessed at www.nujslawreview.org
[15]Lawrence, J and Moffat, J 'A dangerous new world – practical implications of the Enterprise Act 2002' [2004] 25(1) ECLR 1
[16]Middleton, K, 'The Americanization of UK competition law' 2003 SL PQ 27
[17]Frazer, T, 'Competition policy after 1992: the next step' (1990) 53 MLR 609
[18]Gerber, D, Law and Competition in Twentieth Century Europe, 1998, Oxford: Clarendon

or its method of financing,[19]in accordance with EU legislation.[20]Therefore, if public bodies are engaged in an economic activity, they are subject to the abuse of dominance rules.[21]

Exemptions from the Chapter II Prohibition exist for:[22]

- undertakings entrusted with the provision of economic services of general economic interest interest' (to the extent that the Chapter II Prohibition would prevent them from carrying out those services);[23]
- mergers subjects to EU or UK merger control regulations;
- conduct that is carried out to comply with a legal requirement; and
- conduct that the Secretary of State declared as being excluded from the Chapter II Prohibition in order to avoid a conflict with the UK's international obligations or for reasons of public policy.

In practice, the Secretary of State has only rarely exercised the power to exclude conduct from abuse of dominance rules. In 2007, the Secretary of State issued an exemption on security grounds relating to complex weapons. This exemption was revoked in 2011.[24]

### 3.2. Case laws

- ***Albion Water Limited v Dwr Cymru Cyfyngedig***[25]

In *Albion Water* (and with Shepherd and Wedderburn acting for Albion), Dwr Cymru had abused its dominant position by charging Albion an anti-competitive and unlawfully high price for use of water pipe infrastructure. This resulted in 1) a reduction in the profitability of Albion's water supply to customers and 2) the loss of a profitable supply contract.

The Competition Appeal Tribunal (CAT) found that Albion needed to establish both loss and causation.

In establishing causation, the CAT concluded that "it was entirely foreseeable that, by offering an abusive access price and thereby preventing Albion from pursuing its business under a common carriage arrangement, Albion would be hampered in the development of its business". To work out the loss, the CAT compared the amount that Albion would have

[19]DG Competition Discussion Paper on the Application of EC Article 82 to Exclusionary Abuses, December 2005
[20]Available at http://ec.europa.eu/comm/competition/annual_reports/2006
[21]Marsden, P and Whelan, P, '"Consumer Detriment" and its Application in EC and UK Competition Law' [2007] ECLR 569.
[22]A. Jones and J. Davies, "Merger control and the public interest: balancing EU and national law in the protectionist debate", [2014] 10(3) European Competition Journal 453.
[23]Kur, Annette, International Review of Intellectual Property and Competition Law 2014 Trade marks function, don't they? CJEU jurisprudence and unfair competition practices IIC 2014, 45(4), 434-454.
[24]OECD Background Note: Policy Roundtables on Abuse of Dominance and Monopolisation:
[25][2013] CAT 6

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earned in the absence of the anti-competitive price (during the period in which the price was charged) with the actual price earned, by choosing the average value in the range of reasonable numbers.

When assessing the loss under the second head of claim, the quantum would be the relevant percentage of profit which Albion would have made under the supply contractIt was accepted that there was no certainty (or near certainty) that Albion had won the contract, but it was determined that Albion was very likely to have won a supply contract. To reflect this uncertainty and in line with previous jurisprudence, the CAT has reduced the damages awarded by one third.

- ***Travel Group Plc (in Liquidation) v Cardiff City Transport Services Ltd***[26]

In this case, the Office of Fair Trading (now the Competition and Markets Authority) found that Cardiff City Transport (CCT), as an operator of buses, had abused its dominant position by engaging in predatory conduct aimed at a new entrant to the market, 2 Travel.The CAT awarded damages in respect of 2 Travel's claim for lost profits (for the period from the date the infringement commenced to the date the Claimant went into liquidation) but did not accept 2 Travel's other claims which included, loss of a capital asset, loss of a commercial opportunity, and liquidation costs. The CAT found that the liquidation was likely to have occurred notwithstanding CCT's behavior and so there was no causation between the infringing action and the other losses 2 Travel sustained.

This case gave rise to some crucial principles for exemplary damages. The CAT found that the defendant had acted "in knowing disregard of an appreciated and unacceptable risk that the Chapter II would probably have been violated or would have clearly or deliberately closed his mind to this risk". The CAT noted that the aim of exemplary damages is to 'punish and deter', and while such an award is rare, 2 Travel was awarded the sum of £60,000, nearly twice the amount of compensation awarded for lost profits.

## CHAPTER 4: THE NOTION OF ABUSE OF DOMINANCE IN THE USA

### 4.1. Sherman Act, 1890

The Sherman Act has declared illegal all contracts, combinations or conspiracies prohibiting trade or commerce between states or territories or with foreign countries. The basic requirement is that there must be mutual agreement or commitmentto engage in a common course of anticompetitive conduct.

### 4.2. Monopolize and Conspiracy to monopolize

Section 2 of the Sherman Act[27] outlawed (a) Monopolization (b) attempt to monopolize (c) conspiracies to monopolize

[26] [2012] CAT 19

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This section has two basic elements

1) Possession of monopoly power in relevant market
2) The willful maintenance of the power.

A person is not guiltyonly if he or she has monopoly power, that is, the power to control prices and to exclude competition. Therefore, the crime of monopolization requires monopoly power and intent to monopolize, but there is no monopoly if the defendant's monopoly power develops as a result of superior product, meaning commercial or historical accident.

The competition act has included monopolization but it has not included conspiracy to monopolize. Sherman Act proscribes even attempt to monopolize.[28]The difference between true monopolization and the attempt at monopolization is that the general intention to act is required in the actual monopolization situation, but in order to monopolize the specific intent, which can be established by the evidence of unfair tactics on the part of the accused. To establish conspiracy to monopolize three basic things are to be proved:[29]

a. proof of conspiracy
b. specific intention to monopolize
c. An overt act in furtherance of conspiracy and there is no need to establish the market power.

### 4.3. Price Fixing

Competition Act has included the term association of price i.e. price fixing but it hasn‘t elaborated the vertical and the horizontal price fixing. If a manufacturer, by using his dominant position, fixes the price with retailer then it is vertical price fixing but if manufacturer fixes price with other manufacturer then it is horizontal price fixing. The vertical price is also called price maintenance, for example the agreement between a film distributor and an operator is illegal. A patentee cannot control its resale price through price maintenance agreements. Generally prices are fixed when they are agreed upon.

Section 132 of the Sherman Act also states that the dissemination or exchange of price information does not per se constitute a violation ofsection 1,but that price information and the criminal intent of set prices violates section 1 of Sherman act. However a combination or conspiracy within section 1 where there is an agreement between competitors to provide information on the price of the application.

[27] Section 2. Monopolizing trade a felony; penalty
Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $10,000,000 if a corporation, or, if any other person, $350,000, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court.
[28] www.corporate.findlaw.com
[29] www.justice.gov

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### 4.4. Tying Agreement

The Competition Act, 2002 has not elaborated the various sorts of tying agreement. It has only defined tie-in agreements as "tie-in arrangementinclude any agreement requiring a purchaser of goods, as a condition of that purchase, to purchase other goods. But the Sherman act has been very well explained. The Sherman act defines binding agreements as an agreement entered into by a party to sell a product, but only if the buyer also buys a different product or agrees that he will not buy that product from another supplier.[30] Tying agreements are not illegal per se. An illegal tying agreement takes place when a seller requires a buyer to purchase another, less desired or cheaper product, in addition to the desired product, so that the competition in the tied product would be lessened. The Sherman act also emphasized the need to separate connected products because, if the products are identical and the market is identical, there is no unlawful tying agreement.

### 4.5. Amalgamation

Competition Act has used the word amalgamation many times but it hasn‘t explained much about it. As per the Sherman Act an Amalgamation is unlawful in two ways firstly if the amalgamation eliminates substantial competition and secondly if it created a monopoly.[31] Basically there are two types of amalgamation horizontal and vertical. for example, two firms are important competitive factors in a relevant market; a merger or consolidation between them violates the Sherman Act if such an action ends the competitionHowever, if a company loses money and decides to liquidate, its horizontal amalgamation is not illegal. In vertical amalgamation it is illegal only if its illegality is activated:[32]

a) The purpose or intent with which it was conceived
b) The power it creates in the relevant market.

### 4.6. Clayton Act

After the Sherman Act supplementing the Sherman Act, another law was proclaimed in 1914 named as Federal Antitrust Laws: Clayton Act.

### 4.7. Mergers

This act defined vertical and horizontal fusions. The vertical merger is a merger between buyer and seller and the horizontal merger is a merger of direct competitors. A merger that is neither vertical nor horizontal is a conglomerate merger.[33] Competition Act has not mentioned about the conglomerate mergers. According to the Clayton Act, a pure conglomerate merger is an unrelated merger between the buyer and the acquired company.

[30] www.justice.gov
[31] ibid.
[32] William Blumenthal, ―Merger analysis under the US Antitrust Laws‖, accessed via www.kslaw.com
[33] Herbert Hovenkamp, ―Clayton Act‖, accessed via www.enotes.com

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## CHAPTER 5 - INDIAN COMPETITION LAW PERSPECTIVE ON ABUSE OF DOMINANCE

### 5.1 Dominant Position

“Overriding” or “influentialare the meanings of the dictionary for the term "dominant". In this sense, predatory means on the other hand to control the exploitation to acquire ends or financial profits. A firm that maintains a "dominant" position is only possible if it has the ability to behave independently or separately, without fear of competitors, customers, suppliers and end consumers. The market that holds the dominant power of the company allows you to control the price according to your wishes or your needs. This will enable them to sell lower quality products or services or innovation costs that are lower than they actually exist in a competitive market.[34]

*Dominant position has two major aspects:*

Firstly, dominant enterprises position such as it enables it to operate independent of competitive forces generated by its rivals. This is important because healthy competition between competitors promotes productivity, allocates efficiency gains and optimizes consumer surplus. For example, if a company acts to create barriers to entry, expel existing competitors, control production or prices, there are concerns.

Secondly, the domain aspect provided in explanation (a) (ii) of section 4 of the Act concerns the ability of a firm to influence its competitors or consumers or the relevant market. In a sense, this is a greater force in which a company can freely adopt the pricing or non-tariff strategy to overcome the downward pressure on competitors' incomes, or to capture or connect the consumer or create a competitive environment. a market environment that would discourage the most recent resolution, both in terms of competing companies and competing products.[35]

The determination of the dominant position depends on two main factors: the market share and the conditions of entry. It is important to keep in mind that to achieve a dominant position through legitimate means, for example through product innovation, superior production or distribution techniques or increased marketing efforts. The Competition Commission of India has recognized certain conditions while determining the agreements dominant status as per section 19 of the Competition Act. The determination of the dominant position through market shares, sales data and active shares. But in most cases the market power is determined on the basis of the functional characteristics of the products based on the consumer behavior model.Section 19 essentially emphasizes the duty of the Competition

[34] Ateliers Paris, Dominant position - Institute of Competition Law Concurrences.com (2017), http://www.concurrences.com/en/droit-de-la-concurrence/glossary-of-competition-terms/Dominant-position (accessed on Sep 28, 2019).
[35]VershaVahini, Indian Competition Law(1 ed. 2017).

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Commission to take into account these aspects while dealing with factors of dominant position. This allows us to conclude that we consider these crucial steps to establish whether a company has a dominant position and abuses it-

1. Defining the relevant market.
2. Assessing Evaluate the strength of the market to determine if the company has significant power.
3. Consider whether the conduct of the undertaking amounts to abuse.[36]

### 5.2 Abuse of Dominance

The idea of the concept of "abuse" is very objective as it relates to the behavior of the undertaking placing itself into the dominant position to influence the structure of a market. This involves the presence of the dominant entity on the market and the degree of competition is weakened by the use of methods adopted by the entity that are different from the generally normal conditions in the competition of product or service transactions. This has an effect that hinders the maintenance of a healthy degree of competition that still exists in the market and the growth of such competition.

The general idea of maintaining a regulation or a law for the competition of tariffs on the market is that a monopoly situation is not contrary to public welfare policy, but to use the same state in which it operates for the benefit of all its potential. and in front of real competitors. The law does not prohibit companies from becoming the "dominant" player or having a "dominant" position. There is no physical control that prevents the company from becoming dominant or superior. The moral and objective of the Law is to prohibit the "abuse" of the dominant position. The law, for its part, prohibits "the abuse of domination", not the "dominant position". This is the moral behind the Law, which is right and is a step towards a truly global and liberal economy.

These are the few types of "abuse of dominant position" situation analyzed as under-

1. Predatory Pricing- As per section 4(b) of the Act it explains how the practice with which the sale of goods or the provision of services is carried out at a price rate lower than the cost price in order to reduce competition or eliminate competitors.
2. Refusal to supply- This practice involves purposefully withholding the supply of the product or service thus increasing the demand for it and thus forcing customers to purchase the product or service at a higher price, thus manipulating the customer's needs . This refusal has a significant negative impact on the state of fair competition in the relevant market.

[36]Sneha Singh & Syed Ahmed, Abuse Of Dominant Position Academike (2015), http://www.lawctopus.com/academike/perfect-competition-and-abuse-of-dominant-position/ (Accessed on Sep 30, 2019).

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3. Limiting Supply- The practice of limited supply of products of luxurious and precious nature thus having the advantage of raising the price because of its scarcity. The appropriate example for this is the diamond market, though large quantities of them are in kept in storage, only a small quantity is only polished and made available to the customers, thus resulting in its high price.
4. Barriers to entry or denial of the market assess - Barriers to entry includes patent as well as strategic first mover advantages.
5. A group of collusion multiple suppliers appreciably affecting the relevant market. One such case being ***Ajay Devgan Films***[37], the informant alleged that the opposite party is tying up two of its films and is forcing single-screen theatres to buy either two or none.

It was averred that the opposite party released its mega – starrer film *Ek Tha Tiger* on 15 August 2012 was contemplating to release another untitled film, later name as *Jab Tak Ha Jaan* (JTHJ), at the time of Diwali. The opposite parties before the release of *Ek Tha Tiger* had put a condition on singlescreen theatres that if they wanted to exhibit the other film, JTHJ, at the time of Diwali. The informant contended that since *Ek Tha Tiger* was a big ticket film, it was bound to be block buster, and its exhibition was profitable for the single screen theatres; thus, a majority of the single screen theaters entered into the agreement for exhibition of both the films of the big name and dominance of the opposite party. The grievance of the informant arose because the informant feared that he would not get enough theaters for his own film *Son of Sardar* because of the agreement of single- screen theaters with the opposite parties at the time of the release of *Ek Tha Tiger*. The CCI noted that as per the information available in public domain, in Bollywood itself, 107 and 95 films were released in 2011 and 2012 (till now), respectively.Apart from that, the opposite side produced only two or four films each year. It cannot be said that this also means domination in the Bollywood industry, leaving aside the film industry in India. The case was closed pursuant to Section 26(2) of the Act.

Also in ***Re, Maharastra State Power Generation Company Ltd.,***[38]A number of complaints were filed against Coal India Ltd.(CIL) for abuse of dominant position. CIL and its subsidiaries are clearly in a monopolistic position because of its legal monopoly created by law. Complaints alleged that fuel supply agreements (FSA‟s) entered into by CIL with power- producing and other companies were one sided, without negotiations and were in favor of it. In this case, CCI analyzed the market structure and legal and regulatory framework of the coal industry in India. The ICC noted that after the nationalization of coal mines in 1973, the coal industrywas reorganized into two major public sector companies, viz. CIL and National Coal Development Corp.(NCDC), which have the main responsibility of supplying coal to all end users. CIL has eight subsidiaries. It concluded that CIL and its

[37] Ajay Devgn Films v. Yash Raj Films, MNAU/CO/009/2012:2012 Comp LR 1099 (CCI): [2012] 16 SCL 593 (CCI).
[38] In Re Maharashtra State Power Generation Company Ltd v. Mahananadi Coalfields Ltd. And Coal India Ltd ., 2013 Comp LR 910 (CCI) : MANU/CO/0068/2013.

subsidiaries had acquired monopoly power for the production and distribution of coal in India. As a result, coal companies have acquired a dominant position and are not under any competitive pressure or horizontal challenge in the market. The same thing happened in *Ashoka Smokeless*[39] case too. Referring to various factors mentioned in section 19(4), the CCI found that the argument of CIL not being able to act independently regarding the supply and customers is misconceived. The CCI opined that CIL through its subsidiaries operates independently of market forces and enjoys undisputed dominance in the relevant market. This was reiterated in Madhya Pradesh Power Generating Co. Ltd.[40]

### 5.3 Indian Competition Act

The Competition Act provides in section 4 for the prohibition of abuse of dominant position: Section 4: Abuse of Dominant Position:

(1) No enterprise shall abuse its dominant position.
(2) There shall be an abuse of dominant position under sub-section (1), if an enterprise, —

a) directly or indirectly, imposes unfair or discriminatory— (i) condition in purchase or sale of goods or services; or (ii) price in purchase or sale (including predatory price) of goods or service; or
b) limits or restricts - (i) production of goods or provision of services or market therefor; or (ii) technical or scientific development relating to goods or services to the prejudice of consumers; or
c) indulges in practice or practices resulting in denial of market access; or
d) 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
e) uses its dominant position in one relevant market to enter into, or protect, other relevant market. Explanation .- For the purposes of this section, the expression- (a) "dominant position" means a position of strength, enjoyed by an enterprise, in the relevant market, in India, which 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; (b) "predatory price" means 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.

The provision of the Competition Act in relation to abuse of dominant position clearly explains above that no undertaking or group shall abuse its dominant position. The dominant

[39] Ashoka Smokeless Coal(P) Ltd. V. Union of India (2007) 2 SCC 640.
[40] Madhya Pradesh Power Generating Company Ltd. And South Eastern Coalfields Ltd. & Coal India Ltd., 2014 Comp LR 68 (CCI): MANU.CO/0054/2014.

position is explained in the explanation to section 4 as a position of strength in the relevant market in India. The illustrations are inclusive and exhaustive. The explanation in Section 4 raises many ways to use such a force. These possibilities can be clearly examined separately or in combination, depending on each of the facts of the case.

The Explanation to section 4(2) (a) makes them immune from unfair or discriminatory trading situations or unfair or discriminatory prices rate or predatory pricing as referred in section 4(2) (a) (i) and (ii), preparing out those practices which are dominant in nature, from being referred as an "abuse of a dominant position" to meet competition. On the basis for this argument made by the undertakings who are involved in the competition and reformulating their trade practice strategies or plans to adhere to demand offer of competitors in a market as it grows, there is no „abuse" by any of the undertaking. They only reflect the evolution of the market situation. for example, if the rate of a product falls on the market, for non-null reasons to the action of a company, a reduction of the rate of the product by this company to match its rate to the new rate cannot be qualified as Unfair Rating or Predatory Price. This explanation could be used as a defense that may be used by an official for abusing a dominant position under section 4(2) (a). It should be noted that it is not available in the case of allegations of practices set out in section 4(2) (b) to (e).[41]

## CONCLUSION

Competition law is a complex mixture of legislative, economic and administrative measures of a country designed to foster competition in the economy. Since competition is considered essential for economic development, competition law seeks to protect this competitiveness in the economy. The theory behind competition law is the positive effect of competition on the market of an economy, acting as a protection against the misuse of economic power. The link between competition law and economic development emphasized over and over again seems rather undeniable and the need for a competition law seems to be on the agenda. The application of competition law by the prevention of anti-competitive agreements, the prohibition of abuse of dominance by companies and the regulation of combinations that could harm competition in the economy therefore seem crucial for India. It should not be forgotten that the Indian Parliament enacted the Competition Act, 2002. The preamble and the statement of the purposes and motives of the law also prove that broad economic development objectives were taken into account when the law was passed. During the past years, the number of jurisdictions with a competition law has exploded from approximately 25, of which few were seriously enforced, to some 100 today. As economic activity increasingly transcends national borders and jurisdictions applying competition law to companies and behaving outside their borders, it is important to achieve at least a reasonable degree of consistency and convergence in application of competition law.

[41]Rini Violet Tigga, The Critical Analysis of The Competition Law In India: With Special Reference to the Abuse Of Dominant Position, International Journal of Law and Legal Jurisprudence Studies: ISSN:2348-8212:Volume 4 Issue 2, pp 178.

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Although the basic principles of competition law remain the same, the objectives or results cannot be the same for all jurisdictions. In essence, a progressive realization of the objectives of competition policy would be the answer to an effective competition law regime in developing countries. Although the implementation of competition law, even at the beginning of economic development, is not bad in itself, its blind implementation on the path taken by developed countries can destroy its very aims. Thus, competition law is a complex creation of lawmakers that the Indian Government and the Competition Commission should take time to understand in light of the specific needs and requirements of the Indian economy and apply it accordingly.

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