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**SUBJECTIVITY ON THE TERM DOMINANCE IN THE MARKET**

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*“Power Corrupts and Absolute Power Corrupts Absolutely”- Mendel Creighton***INTRODUCTION**

World Bank defines “competition” as “Independent international players striving in the market for buyers to gain business profit”.<sup>1</sup> Competition Law, 2002 enacted in 2003 with the vision of the Indian market stepping towards globalization for the benefit of the economy. It was created to create a healthy environment for the players in the market and keep check of the anti-competitive agreements and abuse of dominant position in the relevant market. The preamble of the act and section-18 of the act also support functioning, and healthy competition and ensure freedom of trade with consumer interests in the market<sup>2</sup>.

The term collective dominance can be defined as when two or more entities independently or jointly abuse the position of dominance in the relevant market in which they hold sufficient power to control the market and function independently despite constraint imposed by the other players in a relevant market. The act does not contradict its objective to provide freedom of trade and does not restrain any entity to hold a dominant status in the market since holding such a position is not per se illegal; however, Section-4 of the act prohibits the abuse of dominant status, which majorly affects consumers. In the competition amendment bill, 2012, some words were included in the section as to “No enterprise or group shall abuse its power.” It is a common misconception that only joint undertakings can hold a dominant position. However, separate

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1 Daniel D Bradlow, ‘External Review of the Inspection Panel Toolkit’ (2018)

<https://documents1.worldbank.org/pdf/External-Review-of-the-Inspection-Panel-s-Toolkit.pdf> accessed on 27 february 2022.

2 ‘Introduction of the competition amendment bill, 2012 in India’ <http://www.kochhar.com/pdf/Rationale%20For%20Competition%20Laws%20%20SALIENT%20FEATURES%20OF%20THE%20BILL%20AND%20THE%20IMPLICATIONS%20THEREOF..pdf> accessed on 6/2/2022.

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undertakings can also have dominant position in the relevant market. The status of dominance does not concern whether it's a 'Group' or 'Single' enterprise; all it is concerned with is the abuse of such dominant position in the market. The two major drawbacks of misusing the power of dominance in the relevant market are that it will first kill the effective and healthy competition and then promote monopoly. The existence of monopoly is the curse on the market as even the Sherman Act, 1890, which is considered the origin of the anti-trust laws, has criticized monopoly. For a sustainable and effective market, there must be an equal and level field for all. There is no streamlined mechanism to understand the abuse of dominant status and its misuse. To check whether there has been an abuse of dominant position, one first needs to understand the ambit of the market which is relevant and the 'market-dominant enterprise is controlling; secondly, determine how is this dominance being exerted on the market and what are the effects of such dominance and lastly to curb the abuse of collective dominance in the relevant market and to provide a level field for all the players in the market.

### **SCOPE OF RELEVANT MARKET**

The restricted definition of relevant market aids the continuous occurrence of enterprises in a dominant position in the market.<sup>3</sup> The term Relevant Market is defined in the competition act under section-2 (R) and section-19(5), respectively, which says, "The commission may define the market with reference to the relevant product market or the relevant geographical market."<sup>4</sup> The United States law defines the relevant market as the area of effective competition in which the enterprise functions.<sup>5</sup> The study of pertinent market is crucial to determine whether there is any dominant enterprise. The case of *Belaire Owners Association v DLF Limited* in which CCI considered that the true meaning of the relevant market is extensive and to limit its scope is unfair. Therefore the importance of pertinent market determination cannot be ignored.

The Indian competition act suggests there are two kinds of markets<sup>6</sup>

- (I) Relevant Product Market,

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3 D. P. Mittal, Competition Law (3 ed. 2010).

4 Competition Act 2002. art. 2(r).

5 Avinash Tripathi, Abuse of Dominance, astreal legal,

<http://www.astreallegal.com/abuse-of-dominance-under-the-indian-competition-regime>, accessed on 26 February 2022.

6 Competition Act 2002, art. 18.

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(II) Relevant Geographical Market.

The former kind of market (Relevant Product Market) means the market comprising all sort of products or services which are considered interchangeable or substitutable by the consumers due to the price and characteristics of the service or the nature of the product or the intention of its use.<sup>7</sup> In the case of *Surinder Singh Barmi v BCCI*, CCI recommended that definition of product market should be looked at from both the demand and supply perspective, considering the characteristics of the product and the intended use of such product; as in this case, the question was on the substitutability of the form of entertainment for cricket matches on which CCI said that it is not a relevant market as neither characteristics nor intention to watch is same for everyone. Similar reasoning was used in *MCX Stock Exchange v NSE*,<sup>8</sup> where it was said that a trader of grains who also indulges in the trade of vegetable does not imply that these two commodities are substitutable or their markets are interchangeable and the relevant market for both the commodities cannot be the same.

The latter kind of market means the market area in which the prerequisites of competition for furnishing goods or provisions regarding services or need of goods and services are homogeneously distinct and can be demarcated from the requirements of the outsourcing in the neighboring areas of the relevant market.<sup>9</sup> This kind of pertinent market can be local or national, depending on the case, but such cases cannot be extended beyond the national boundaries.<sup>10</sup> These markets are where the demand and supply of goods and services are distinguishable depending on the markets of neighboring areas. Many other factors also play an active role in determining relevant markets e.g. trade barriers, local specified needs, national policies, and transport costs, etc. if all these factors are uniform in the whole nation, then whole nation will be a relevant market.

It is of utmost importance to understand the requisites for considering the relevant market for a particular product or service in determining the nature and dominance of enterprise. Dominance of an enterprise in the market is calculated through the relevant market in which the enterprise

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7 *Atos Worldline v Verifone India*, [2012] Case No. 56.

8 *MCX Stock Exchange v NSE* [2009] 13 CT.

9 *Ibid.*

10 *Bijay Poddar v Coal India Ltd.*, [2013] 59.

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operates.<sup>11</sup> There are no specific guidelines to determine the relevant market; it has to be determined from case to case, for example, the merger of Flipkart and Walmart where both operate on online and offline platforms. There is no specific distinction between online and offline markets. The case of *National Stock Exchange v Metropolitan Stock Exchange of India*<sup>12</sup>, where the question was whether the stock exchange concerning the currency derivative (CD) is a different and relevant market or not. CCI relied on the internal committee's report, which states that a line of distinction must be drawn between different kinds of CD segments in the stock exchange market. The case finding leads to the conclusion that currency and equity are two distinct things, and hence market will also be different in *Ashish Ahuja v Snapdeal and ors.*<sup>13</sup> CCI had to deal with the question of whether the online market is the same relevant market as that of offline market. CCI considered the characteristics of both online and offline markets as they differ on many factors, especially in shopping. However, CCI was on the point of view is that since the main motive here is shopping and if the online market offers more discount, consumer will turn towards the online market. Therefore CCI held that even though characteristics of both the markets are different and channels differ, but it does not make them two different relevant markets. The relevant market has a vasting and should be looked upon from product and geographical perspective. The study of pertinent market is essential to determine the position of dominance.

### **DETERMINATION OF POSITION OF DOMINANCE IN RELEVANT MARKET**

The dictionary meaning of the term 'Dominant' is overriding or influential. Simply put, in layman language, when the enterprise operates without any fear of competition, customers, suppliers etc, will be considered dominant. The term "Dominant Position" has been defined in the section-4(b) of the Competition Act, 2002 as "The status of dominance in which an enterprise enjoys in the relevant market, which entitles it to operate independently in the relevant market irrespective of competitive market forces, or in the relevant market it can affect the consumers or

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11 Cyril Shroff & Nisha Kaur Uberoi, India: Abuse of Dominance, Global Competition Review, <http://globalcompetitionreview.com/reviews/69/sections/235/chapters/2749/>, accessed on 26 February 2020.

12 NSE vs. MCX-SX, [2009] 13 CT.

13 Ashish Ahuja vs. Snapdeal & Ors., [2014] Case No. 14.

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competitors for its favor.<sup>14</sup> In European Law, the term means a bit different, it means when an enterprise or undertaking enjoys a position of economic strength which aids them to avoid effective competition in the relevant market and to keep it steady therefore granting them power to an extent to behave independently of its competitors and consumers.<sup>15</sup> The position of dominance can only be established after the relevant market is specified. Enterprise jointly linked must be linked so that it functions in the same kind of conduct and falls under the same relevant market.<sup>16</sup> Many factors are accounted for to determine the position of dominance as envisaged in section 19(4) of the Competition Act. The common practice of assessing the position of power in the relevant market is calculating the market share of an enterprise as it was said in Raghavan Committee report that there cannot be a standard for market share specified for every case, although a large difference in market shares of two enterprises may be a sign of dominant position,<sup>17</sup> but in the case of *Belaire Owners Association v DLF Ltd*<sup>18</sup> court opined that strength in the market should not be evaluated from the market shares alone, there are a whole lot of other factors which are accountable in determining the position of dominance in the market. The same was reaffirmed in *Mr. Ramakankini v Dr. L. H. Hiranandani Hospital*, which said that market shares cannot be the sole factor in determining the position of dominance, since it is one of the factors but not all of the factors as prescribed in section-19(4). As the importance of competitors, entry barriers and other factors also play a major role in assessing the position of dominance of an enterprise in the market, there may lay a possibility that enterprise with low market share may hold dominant positions.

In MRTP act, 1969 there was a provision in the act which said that if an enterprise holds certain percentage of share in the relevant market it can be said to hold a dominant position. Later, CCI examined and observed that shareholding is not the only criteria of determining the status of dominance. There may be cases where small enterprise holds a dominant position while the enterprise with more share is non-dominant enterprise just because of the competition in the

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<sup>14</sup> Competition Act 2002, art. 4(b)

<sup>15</sup> G.R Bhatia, Abuse of Dominance In Fact and In Law, competition commission of India, [http://www.competition-commission-india.nic.in/competition\\_forum/ABUSE%20OF%20DOMINANCE.pdf](http://www.competition-commission-india.nic.in/competition_forum/ABUSE%20OF%20DOMINANCE.pdf), accessed on 24 February 2022 .

<sup>16</sup> Amelo v NV Energiebedrijf IJsselmij [1994] ECR I-1477.

<sup>17</sup> Raghvan Committee report on Competition Law, Paragraph 4.4-4.8

<sup>18</sup> *Belaire Owners Association v DLF Ltd*, [2010] Case No. 19.

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relevant market.<sup>19</sup> Therefore in provision of the act itself, it was incorporated that there are factors other than shares which are involved in determining the position of dominance, for example,

- Resources and size of an enterprise which is an essential factor, as the less share the other competitors have the larger shareholding will be with dominant enterprise. Resources can be controlled by the dominating enterprise which in result will affect its expansion of business and eventually gain control over that enterprise.
- Commercial advantage over its competitors, as having the larger influence over the other competitors as well as the customers will more likely be the case of dominance. By controlling customers and providing price index in the market which will profit them, and such policies will definitely have advantage over its competitors.
- Dependence of the consumers, the market is very dynamic and customers play a vital role in it; customers have a power of bargaining which can change the conditions in the market, all policies of the market can be altered if dominating enterprise have control over the customers.
- Entry barriers, it is also a important factor in the assessment of dominance, considering if the barriers faced by the other competitors are high compared to the dominant entity, there will be less competition in the market and the dominant enterprise will continue its control. The enterprise with the highest market share can sustain the dominion status for long without competition.
- Dominant status due to government laws or statue; sometimes the policies of government or laws are so framed that it unintentionally aids the enterprise to get control over the relevant market.
- Relevant Market structure because not only can market policies be framed but can also be structurally regulated; therefore the dominant enterprise, through its activities, can alter the market process according to its will. Such control over the relevant market will grant access to dominant enterprises to mold market structure as they deem fit.

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19. G. R. Bhatia, Assesment Of Dominance,  
<http://www.manupatrafast.com/articles/PopOpenArticle.aspx?ID=8de19f8a-5bbd-42b6-a96a-692a0f376625&txtsearch=Subject:%20Commercial>, accessed on 25 February 2022.

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- Lastly economic status of an enterprise over its competitors, it is often the case that an enterprise with large economic value will have more reputation and trust than its competitors; this factor will indirectly provide aid to gain a position of dominance in the market.<sup>20</sup>

These factors are given the black letter form but in the case of *In Re M/s ESYS Information Technologies P.v.t. Ltd v Intel Corporation (Intel Inc) &Ors.*<sup>21</sup> Court said that some unorthodox factors are also supposed to be considered, such as brand value, substantial entry barriers, etc. These factors are the amalgamation of the abilities of an enterprise through which it can influence the size and structure of the market in which it operates. Any of the factors stated above can assert dominance in the relevant market. To be in a dominant position is not illegal however the abuse of such a dominant position is what illegalizes the status in the market as it destabilizes the healthy competition in the market.<sup>22</sup> Therefore the study of activities that are termed as causing abuse in the relevant market is very essential.

### **ABUSE OF DOMINANT POSITION AND CCI'S APPROACH**

The term 'Abuse' has a very ambiguous nature, as the activities of the dominant enterprise can be in any manner to structure the market according to its will. The idea behind the whole act is to regulate the situation of monopoly, which is not illegal in the face of it. However, gaining an advantage out of such monopoly and overshadowing other competitors is unlawful. The common misconception in the market is that holding a dominant status in the market is illegal; however, having a dominant position in the market is not per se illegal, but abuse of such status and disturbing the healthy competition in the relevant market is what the competition commission of India prohibits.<sup>23</sup> The sign of abuse can be determined by the practices of an enterprise, whether exercised directly or indirectly when it uses its dominant position to exercise either exclusionary activities or exploitative activities. The former kind of activity is where the dominant enterprise

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20 Augustine Peter, Treatment of Abuse of Dominance, competition commission of India, [http://cci.gov.in/images/media/presentations/peter\\_15may\\_20080522152546.pdf](http://cci.gov.in/images/media/presentations/peter_15may_20080522152546.pdf), accessed on 27 February 2022.

21 *In Re M/s ESYS Information Technologies Pvt Ltd v Intel Corporation (Intel Inc) &Ors.*, [2011] Case 48.

22 *Ibid.*

23 Competition Law 2002, Kochhar, <http://www.kochhar.com/pdf/Rationale%20For%20Competition%20Laws.pdf>, accessed on 25 February 2022.

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restricts the entry of competitors<sup>24</sup>, by this restriction, the dominant authority not only controls the competition in the market but also controls the number of competitors. The latter exploitative activity, as the name suggests, is when a dominant enterprise imposes discriminatory or unjust conditions on other enterprises and exploits them. These conditions will be to gain maximum benefit for themselves while destroying the healthy competition in the market.

The abuse of dominance by the exploitative activities was discussed thoroughly in the case of *Belaire Owners Associations v DLF Ltd & HUDA*; in this case, it was alleged that DLF holds a dominant position in the real estate market in Gurugram and abused its dominion status in market by including arbitrary clauses regarding its apartments. In this case, CCI observed that DLF did hold the dominant position in the high-end residential market, and it did abuse its power on policies of allotment of flats.<sup>25</sup> The methodology applied to understand the position and abusive activities was in accordance with the act. DLF being the dominant enterprise, used exploitative methods to control the market by formulating policies for their benefit and adding arbitrary clauses added extra pressure on owners. No provisions in the Competition Act, 2002 explicitly prescribe how an enterprise can misuse its dominant position. However, certain practices mentioned in the competition act may aid in determining such abuse of power.<sup>26</sup>

These practices can be understood from the clause (a) to (e) of sub-section-2 to section-4 of the competition act, which is as follows-

- Discriminatory or unfair preconditions or price
- Curbing or restriction the production of goods or provisions of services or market
- Restricting scientific or technical development to the preconception of the customers
- Restricting access to the market in any manner
- Prejudice about the conclusion of the contract, which is subject to the other party, which has no relation to the subject matter of the contract and has supplementary obligations
- Abusing the position of dominance to enter another market or protect the market.

The only objective behind these practices for determining abuse of dominance is to disincite the dominant enterprise from such practice. The dominant position may be exercised by a group of

<sup>24</sup> In Re Shri ShamsherKataria v Seil Honda, [2011] Case No. 03.

<sup>25</sup> Belaire Owners Associations v DLF Ltd & HUDA, [2010] Case No. 19.

<sup>26</sup> Abuse of Dominance, competition commission of india,

[http://www.cci.gov.in/images/media/Advocacy/Awareness/Abuse\\_Dominance.pdf](http://www.cci.gov.in/images/media/Advocacy/Awareness/Abuse_Dominance.pdf), accessed on 25 February 2022.

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enterprises collectively operating in the same relevant market, which is called collective dominance. The term 'Group' has the same meaning as envisaged in section-5 of the CCI, act which reads when two or more enterprise, directly or indirectly, are in a position to exercise twenty-six percent or more voting rights in another enterprise; can appoint fifty percent of members in the board of directors in other enterprises; control affairs of the other enterprise. The meaning of direct or indirect control extends in both de jure and de facto manner. To prove that groups of enterprise have abused its dominant position, it should be established that their joint actions for their mutual benefit are in regard to their common policies and are independent of other competitors.<sup>27</sup>

The penalty for abuse of dominant position is given under section-27 of the CCI act, in which the court may ask to prohibit and discontinue abusive practices in the market and impose a penalty of not more than ten percent of the average turnover of last three financial years.<sup>28</sup> Furthermore, if the dominant enterprise abused its status by controlling infrastructure facilities or restricting access to its other competitors, CCI may pass a remedial order when the dominant enterprise will have to share its facilities with other competitors. If the case is referred to the competition appellate tribunal for compensation as the result of the practices of the dominant enterprise court will grant compensation to the applicant if proven. The case of *Microsoft v Commission of the European communities*,<sup>29</sup> in this case, the European Union alleged that Microsoft is abusing its dominant position in the software market. The commission took the preliminary action against Microsoft for two causes it failed to supply interoperability information to competitors and failed to sanction the competitors for developing the same product in the market, and; the sale of software affected the multimedia market and was fined 467 million pounds. This case not only laid a sanction on a dominant enterprise but also penalized heavily for their abusive activity in the market. The question of abuse should always be looked upon from every possible factor the dominating enterprise has been affecting in the market. The market is volatile and can affect everyone through slight alterations in the market. The role of CCI should not just be limited to

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<sup>27</sup> Arshiya Rail Infrastructure Ltd (ARIL) v Ministry of Railways (MOR) and Container corporation of India Ltd (CONCOR), [2010] case no. 64.

<sup>28</sup> Atos Worldline v Verifoneindia, [2012] Case No. 56.

<sup>29</sup> Microsoft Corp.v Commission of the European Communities T-201/04, ec europa, [http://ec.europa.eu/dgs/legal\\_service/arrets/04t201\\_en.pdf](http://ec.europa.eu/dgs/legal_service/arrets/04t201_en.pdf), accessed on 25 February 2022.

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prohibit the practices of the dominant enterprise but also to lay grounds for the future so that there may never be the same situation. There are various laws covering the abuse of dominance which CCI should collaborate with and frame a flexible yet strong policy to avoid the issue of dominance in the market.

### **DIVERSE PRACTICES IN DIFFERENT COUNTRIES**

Every nation has its own competition or anti-trust laws to regulate according to market conditions. Due to such diverse market practices worldwide, the approaches to understanding the market policies also becomes wider and this aids in the steady growth of healthy competition. The major economies have diligently formulated their stand over 'Collective Dominance' and 'Abuse of Dominance' and its study will provide us a comparative analysis of the Indian Competition Act.

In the **United States of America**, there are still no developed laws on the principle of 'Joint' or 'Collective' dominance, as has been accustomed by many other nations.<sup>30</sup> The US Sherman Act covers the anti-trust laws, as its section-1 regulates joint trade in the US market, but its nature is considered more of a 'restraint of trade'. This section reads as every contract, combination, or conspiracy amounting to the restraint of trade is illegal.<sup>31</sup> The variety of enterprises coming together and molding the market according to their will and in furtherance limits the competitors. Whereas, Section-2 keeps check the illegal monopolization of the market. US anti-trust law does not forbid monopolization; its main objective is to protect the market from illegal intentional monopolization. If an enterprise creates dominance in the market due to a lack of effective competition and somehow becomes a monopoly, it will not be prohibited.<sup>32</sup> Section-2 keeps a check on unlawful monopolization, which means unlawful and unfair practices to attain dominance by excluding other players from the market.<sup>33</sup> In the case of the US v American Tobacco Company, two US-based firms and two English-based firms involved with the trade of tobacco and products were alleged to establish unlawful monopoly under section-2 and section-1 for restraint of trade for its competitors in the tobacco sales and exports market. Which Supreme Court agreed that they established an unlawful monopoly and dominance over the tobacco sales

30 Mark R. Joelson, An International Antitrust Primer, Kluwer Law International, 3rd Edition, 2010, page 161.

31 Manfred Neumann and Jürgen Weigand, The International Handbook on Competition, II Edition, 2013, page 5.

32 Karolina Rydman, supra n. 1, page 12.

33 Taken from: <http://www.stolaf.edu/people/becker/antitrust/statutes/sherman.html>

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and export market. The factual grounds were sufficient to establish that they used unfair means to drive competitors out of the market.<sup>34</sup>In another case of *American Tobacco Co. v United States*<sup>35</sup> where it was alleged that the defendant compelled its competitors out of the market by fixing prices, which court decided that defendant used unfair means to exclude competition in the market which is illegal under section-2 and was said it has the intent and power to exert pressure in its contest to exclude them from the competition. American laws focus on curing the issues of intentional monopolization and the price control methodology to gain dominion in the market, but it's not their sole objective. As being one of the biggest platforms for all companies it might be natural that there might be a monopoly, but what matters is the intention; if a trust is made through lack of competition, then it's legal; otherwise, it will be considered illegal. Compared to Indian competitive laws th, there is not a big difference as both countries strive towards the same goal of maintaining healthy and fair market competition.**Canadian Law** provision regarding abuse of dominant position is prescribed in section-78 and section-79 of the competition act.<sup>36</sup> Section 78 reads out a certain list of practices that may lead to anti-competitive action, and such approaches will lead to abuse of the dominant position. Section 79 reads as when one more person holds control in the market or indulges in anti-competitive practices or such practices enabling to lessen competition in the market, to be prohibited.<sup>37</sup>The language of the section with regards to the term 'one or more persons' explained by the competition bureau by issuing guidelines is that it means independently or jointly holding control over the market by indulging in anti-competitive practices.<sup>38</sup> There are no certain existing case laws on the type and extent of economic connection for independent or joint enterprises to establish dominance over the market. It's similar to Indian competitive laws as both have prohibited common or independent control or dominance over the market. Canadian laws have also banned the practices of the enterprise which holds dominion in the market and the practices which in any manner disturb the healthy competition as they can restrict the entry of competitors or may fix the price of commodities to gain benefit. Canadian laws and Indian laws regarding collective dominance

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34 Mark R. Joelson, *Supra* n. 15, Page 161.

35 *American Tobacco Co. v. United States*, [1946] 328 U.S. 781.

36 The Canadian Competition Act 1985, C-34.

37 Taken from: <http://www.laws.justice.gc.ca/eng/acts/C-34/page-50.html#h-34>

38 Mark R. Joelson, *Supra* n. 15, Page 457,458.

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have the same stand as both countries do not consider monopoly as illegal but do not support it either.

In the **United Kingdom**, provision related to the abuse of a dominant position is prescribed in section 18, chapter II of the competition act, 1998. The idea behind this section is been borrowed from the Article 102 of the Treaty on the functioning of the EU, which states that ‘any practice on the part of independent or joint undertaking amounting to the abuse of dominant position in the market is prohibited.’<sup>39</sup> The term joint or separate undertaking means that any economic entity can occupy a dominant position in the market. As stated in the *Flat glass case* but what concerns is the misuse of that dominant position. Certain activities are prohibited explicitly by the UK competitive laws and may be caused by anti-competitive agreements such as price fixing, share control, restriction on entry barriers, and controlling transport of supply. These practices are unfair and pose a danger for the country's economy as it will restrict any development in market conditions. EU already had an opinion that dominion over the market can be possible, which may cause loss for all the member nations, and to curb such problem, they already had formulated laws to regulate. UK and Indian Competitive practices are similar as both hold the misuse of dominion over the market and control all the anti-competitive activities or any anti-competitive agreements which would form a monopoly in the market. Independent or group of enterprises dominating the market is not illegal in the countries but the abuse of such power is illegal in both the countries.

In **China**, the laws related to collective dominance and its abuse of power are mentioned in anti-monopoly rules spread in many articles.<sup>40</sup> Article 2 provides that AML applies to monopolistic activities performed inside the boundary of China and will not extend beyond it. Article 3 defines monopolistic activities as when AML applies, according to anti-monopolistic laws, the activities so conducted will form a monopoly in the market, and such monopoly will be intentionally used to gain benefit for themselves without concern for its competitors. Monopoly can be created in the market through monopolistic agreements among Business partners, abuse of dominant position by business partners, and restricting or eliminating competition by business partners. Article 12 restricts practices that lead to abuse of dominant position and defines the

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39UK Competition Act 1998, section 18.

40 [http://www.china.org.cn/government/laws/2009-02/10/content\\_17254169.html](http://www.china.org.cn/government/laws/2009-02/10/content_17254169.html)

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term “dominant position” According to the article, it means when an enterprise can control price, quantity, or other commodities in a relevant market or restrict other competitors from entering into the market. Article 18 and 19 provides factors through which it can be deduced that an enterprise holds dominance over the market: -

- Business operator holding 1/2 or more share in the relevant market share
- Joint share of two business operators holding 2/3 or more share in the relevant market share
- Joint share of three business operators holding 3/4 or more shares in the relevant market share.

And a business operator holding market share less than 1/10 can be considered as holding a dominant position in the relevant market. Basically, it is article 19 which clarifies that collective dominance does stand in anti-monopoly laws as it mentions the joint relevant market share.<sup>41</sup> Compared to Indian competition laws, China has framed guidelines when an enterprise will be considered as a dominant entity in the market, and monopoly in relevant market formed intentionally or unintentionally will be considered illegal in China. Indian and Chinese policies are similar as both countries look forward to curb the problem of collective dominance.

## **CONCLUSION**

After the extensive study on the topic, the only conclusion that can be drawn is that the issue of collective dominance and that too extending to the abuse of dominance is quite prevalent all over the world. Every nation in order to curb the issue of abuse of dominance strives to avoid monopoly in the market. Monopoly being per se is not illegal but it affects the market in a negative way, it not only limits the competition but also affects the consumers. The market is very dynamic it changes every second; it not only depends on the entities in the market but also on the consumers, as consumers bargain which completely alters the price of commodity. The

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41 Mark R. Joelson, Supra n. 15, Page 470.

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question of the relevant market is very subjective, and to classify a relevant market for any enterprise should be decided on grounds of product or geographical boundary. There are no strict guidelines to determine the relevant market for any case, and will depend from case to case. The position of dominance can be ascertained through many factors; majority shareholding is one of the factors, but the approach to determine it should be wider and to be looked upon from every possible factor. The power of dominance can be abused in many ways, as prescribed in Sec. - 19 but these are not the only activities; there lies a plethora of options through which dominance can be exerted. The Duty of CCI should not just be limited to restricting such activities but also to curb the problem from the ground and keep a proper record and control in the relevant market. After studying the laws of USA, UK, Canada, and China, which are among the world's major economies, it is crystal clear that those all have demoted the presence of monopoly in the market and framed laws to prevent such situations. If the situation of monopoly arises, competition laws are similar to that of India. The Issue of Collective dominance will occur every next day but if the regulatory body strives to look for unorthodox ways through which enterprises exert their dominion will curtail such practices.

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