

Chapter 15

Scrutinizing the Notion of Abuse of Dominant Position in India and the European Union

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ABSTRACT

The abuse of dominant position is a significant issue in competition law, impacting both consumer welfare and market dynamics. To address this, nations like India, the EU, the USA, and the UK have enacted comprehensive legislation. In India, rules to curb misuse of dominance were first established in 1969, evolving over time. The Competition Act of 2002 now governs this area, prohibiting practices that distort market balance. The Competition Commission of India enforces these regulations. Similarly, the EU has had a legal framework since 1958, with the European Commission updating rules to tackle contemporary challenges. The 2023 guidelines emphasize protecting consumer welfare by curbing abusive practices

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and discriminatory pricing. This chapter analyzes the concept of abuse of dominant position in both the Indian and EU legal frameworks, examining relevant case laws and recent European Commission guidelines.

INTRODUCTION

Competition law is the legal governing framework that is planned and premeditated to check and ensure that fair competition and the regular functioning of enterprises are maintained within the market. It governs the practices of the companies in the market and, therefore, averts those practices that are abusive in nature as well as unfavourable for the customers and dynamics of the market. The purpose and objective of the law is to encourage proficiency and creativity in the marketplace. Also, it acts to regulate the behaviour of the corporations in the manner of how the companies will act at the marketplace and how it will function so as to maintain the notion of free trade and practice at marketplace. The competition law, in general, covers all the facets of the proper and standard functioning of any business within the market. The notion of abuse of dominant position is a central and weighty part of the competition law of any country, which is a grave facade of competition law. It is challenging for any type of market around the world in various countries (Singh, 2019).

The term dominance means exhibiting some power or authority over other firms or corporations in the marketplace. Abuse of dominant position is defined and it further implies as a situation in which any corporation that has a robust grasp over the market involves itself in those activities that harm the market, free and fair trade, and participation in the market by both buyers and sellers. It provides businesses with the capability and aptitude to control and manage the pricing of different products in markets, lessen their competition, and put forward various hostile terms in front of other stakeholders. In markets, when the powers are abused, the concept of free and fair-trade practice submerged in the dark ally of unfair competition. The monopolization, although a challenging sector, has some distinctive position in the economy of different nation-states. The competition laws that aim to curb anti-competitive practices should not disturb or damage those organizations that lawfully take hold of the market and form their dominant position. In the market, apart from this, various practices appear to be misuse of dominance on the face of it but serve lawful purpose in many other conditions. On the position of misuse of dominance, the competition law of any country globally embraces certain mutual elements. However, the detailed provisions and their practical applications vary from nation to nation (Bhardwaj & Sindhvani, 2022). Before smearing the law to curb and eradicate the misuse of dominance from the market, it is vital to describe the

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