

**TOPIC : ABUSE OF DOMINANT POSITION AND PREDATORY PRICING
UNDER COMPETITION ACT ,2002**

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**Submitted by :-
Gourav Pradhan**

**UPES , Dehradun
Btech CSE +LLB (in Specialization with Cyberlaw)**

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ABSTRACT

For a perfect competition, the consumers can maximize its welfare, but a seller may not always enjoy the perfectly competitive market sometimes monopoly also takes place. These monopoly holders also called the monopolists can increase the particular product price, discriminate the conditions or the prices or reduce the particular volume of the products. This position can be termed as the “dominant position”. As per the Oxford Dictionary the word “dominant” means to have control over the market so as to affect the competitors in the market. The Word Abuse generally makes the practice more importance because an enterprise could have a dominant position but none of the enterprise can abuse it. While investigating the abuse of dominant position is to be proved as by various interpretation of the Commission or the Tribunal. As per the competition Act, 2002 it encourages the provisions related to competition and protects the consumers against the Anti-competitive Practices, which contains the Abuse of Dominant Position. This Paper aims to give the proper types of Markets with respect to Relevant Market. Different Types of Relevant Market, Investigation of Abuse of Dominant Position and various important recent case laws dealing with Abuse of Dominance both Indian and International cases. Finally this paper will make an analysis on competition Law with respect to the Protection of Intellectual Property Rights as per the latest competition Amendment bill, 2020.

Keywords : Product Price, Dominant, Relevant Market, Commission

1. INTRODUCTION

Abuse of dominant Position is considered to be a very considerate action most enterprises practice in the recent market generation. The most relevant market by determining the shares, size of Competitors, market structure, Social obligation and many more are taken into consideration to identify the abuse of dominant Position. Once the relevant market is found, Abuse of Dominant position as per Section 4 and 19 of Competition Act, 2002 and along with the penalty as under Section 23 is given importance. Abuses are of different types abuse in discriminatory conditions, Abuse in Unfair and discriminatory Prices, putting limitation and restrictions and many more. The Relationship of IPR with Competition Law is an important part which also lights the recent amendment bill protecting Intellectual Property rights.

2. ANALYSIS OF INDIAN LEGAL PROVISIONS WITH JUDICIAL PRONOUNCEMENTS

2.1. MARKETS VIS-A-VIS RELEVANT MARKETS

A specified medium under which buyers and sellers of a particular good or product meet to transact or exchange is called a Market. It could also be defined as a region under consideration operating the Price based on the demand and Supply of such product. If any market sells similar or identical products without influencing the market price of their product and resources are perfectly mobile then it could be termed as a Perfect /Pure Competition Market.

For a market to be in a position of Perfect Competition both physically and virtually they are considered to respectfully follow the rules of the Market. So in a perfect competitive market as there is no Control in the market price of any product hence, there is considered to be a "Fair Play" in Competition. Some enterprises abuse this Fair Play of Competition which hence leads to imperfect Competition. The CCI¹ operates as a regulator to make sure that Indian Markets are favourably operating in a Competitive environment. In order to proceed in further cause of research we need to deal with factors relating to the Dominant Position, So Relevant market plays an important role in the Abuse of Dominant Position.

Relevant Markets

In competition law setting, dominance identifies with its Power and impact of an Enterprise in relevant market or on its competitors. The Definition of Relevant Market is being mentioned in Section 2(r) of Competition Act, 2002 but as this concept is purely originated from economics hence it is bound to be progressive depending on different situation of each case. Its delineation is vital to the successful authorization of Competition laws in India which means the space inside which he/she needs to adjudicate on competition cases. 'Relevant Market' alludes those Commerce where its contest has been controlled and to the geographic region included, characterized to incorporate all sensibly substitutable items or administrations, and every single close to the Competitors, to which customers could turn in the close to term if the limitation or misuse raised costs by any not insignificant amount.²

According to Section 2(r) of Competition Act, 2002, A market which is to be determined by the CCI with reference to the *Relevant Product market* or the *Relevant geographical Market* or with reference with both the markets could be called as a Relevant Market. It is considered to have two major parts Relevant Product Market and Relevant Geographical Market.

As per Section 2(t) it is being specified that "relevant product market means a market

¹ Competition Commission of India

² <https://www.oecd.org/daf/competition/prosecutionandlawenforcement/27123114.pdf> Page 12

comprising all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use”, which means that the relevant product market incorporates all such substitutes that the consumer would change to, if the cost of the product relevant to the investigation were to increase. Relevant product market could be determined by any of the following factors:

- Physical qualities of the goods;
- Price of goods
- Customer inclinations
- Specific producers of products
- Classification of mechanical products.

As per Section 2(s) it is being Specified that “relevant geographic market means a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighbouring areas” which means that the Geographical Market is defined by the Purchaser ‘s view of the Sustainability and Inter-changeability of particular products made or Sold at various locations . Basically we could say that the Concept of Relevant Geographical Market is the region where items are accessible at the approximately same cost of given transport Costs. The relevant geographic market could be determined by the Competition Authority by any of the following factors:

- Regulatory trade barriers
- Local detail necessities
- National procurement policies;
- Need for secure or customary supplies

2.2. ABUSE OF DOMINANT POSITION

As Per Explanation(a) of Section 4³ of Competition Act ,2002 , It has been stated that if any enterprise specifically in a relevant market ,in India enjoys any Position of strength enabling to operate independently in respective markets and affecting other competitors or consumers in its favour can be termed as an Enterprise in Dominant Position. It is hence an ability of the enterprises to behave or to Act independently according to the Market forces which determines the dominant Positions Respectively. If the Relevant Markets are defined then only the Dominance gets signified .

Section 19(4) of the Competition Act provides that a number of other factors play a role in determining the influence of a Dominant Position. These include:

- Market Share
- Size & importance of competitors
- Economic Power of enterprise including Commercial advantage
- Vertical integration of the enterprise
- Counter veiling buying power
- Market Structure
- Social Obligation & Social Cost

³ Section 4 of Competition Act ,2002: Abuse of Dominant Position

Dominant Position is not considered to be bad but its Abuse of Dominant Position is. Abuse of Dominant Position is one of the most challenging and Legitimate practices in the market situations. The Provisions related to The Abuse of Dominant Position includes several common elements. At first, defining the Relevant Market realized in the Abuse, Next the Determination of the existence of Dominant Position by the Firm ,Thirdly , the identification of specific practices harmful to Competition and assessing the overall effects in the relevant Market .

The Council has Specified certain ways to assess the Abuse of Dominant Position of an Enterprise in a relevant Market which are As follows:

- **Identification of the Relevant Market**

Specifying a Relevant Product Market and Geographical Market is an essential aspect in developing most of the Competitive environments. In most of the Abuse cases the Definition of the Relevant Market is based on the the Functional Characteristics of a Product and the Consumers Behaviour . These may incorporate actual attributes of the product, uses to which the product is suited, and proof about purchasers' eagerness to change starting with one product then onto the next as relative costs change. Different components, for example, exchanging expenses and equal value developments that show substitutability, likewise might be relevant. Also, characterizing the relevant geographic market is probably going to be founded on factors, for example, transportation expenses and perishes ability, that limit the simplicity with which products can be moved over significant distances.

- **Identification of Dominant Position**

The next step after the identification of Relevant Market is evaluating the existence of Dominant Position ,which depends in specifically on two main factors: The Market Share of the Dominant Firm and the Extend of the Entry barriers . The Greater the market Share of an Alleged Dominant Enterprise, the more explicitly it exercises the markets. The Size of Other Firms in the Market also affects the ability to exercise market power. However there are two cases in determining the Dominance At first Defining the Relevant Markets , assessing the barriers to entry is to be taken into Consideration , along with the Barriers that are ineffective for prices raising higher than the levels can be relevant in assessing voluntary practices . Secondly , investigating the Conduct in the cases of most Significant Barriers ,Such Entry deterring Conducts includes Predatory Pricings etc .. Under section 19(4)(h), entry barriers could be regulatory barriers, financial risk, high capital cost entry, marketing entry barriers, technical entry barriers, economies of scale, high cost of substitutable goods or service.

- **Identifying and Investigating the Abuses**

The abuses can be determined under two types Exploitive Abuses and Exclusionary Abuses.In Exploitative Abuses, a firm takes Advantage of its market power by charging high prices to its customers , Discriminating the Customers , Paying low prices to the Suppliers and many similar practices , While in the Case of Exclusionary Abuses , a Firm Attempts to suppress competition by refusing to deal with other competitors ,Charging predatory prices and many more .

2.2.1 Abuses in unfair and Discriminatory Conditions

According to Section 4(a)(i) which specifically tells that there should not be any abuse in dominant Position if there are directly or indirectly imposes any unfair and Discriminatory conditions of Purchase or sale of goods or Services .So by the virtue of one enterprise 's position

of strength it may impose unfair and discriminatory conditions of Sale of Goods is hence classified as Abuse under the Act .The Competition Act does not defines the term unfair and Discriminatory , thus has been left for interpretation of Hon'ble Supreme Court and COMPAT⁴ commission based on the facts and Circumstances of certain cases .

In the Case of **DLF Limited** ⁵

The Commission found that the conditions of the Apartment Buyers Agreement is generally in the violation of Section 4(2)(a)(i) that explains the dominance in relation with the conditions imposing unfair and Discriminatory .The Main point in this case was to determine the dominant Player abusing its Dominant Position by the way of unfair conditions in the Agreement with the customers and hence bind them with one Sided Contractual obligation .

The informant was Belaire owners Associations and the president was one of the allottees in the Complex .Information related to this case was filed against Section 19(1)(a) of the Competition Act ,2002 alleging that by abusing the Dominant Position it was found to imposed highly Arbitrary , unfair and Unreasonable Conditions on the Appointment of Allotees which was found to cause adverse effect on the rights of Allotees . CCI started the investigation for identifying Relevant Market and it came up with Relevant Geographical Market . As Per Para 12.90, in further investigation CCI examined that Various Clauses of the APA⁶ of DLF and found that it was Unfair and Discriminatory . The Commission directed DLF ltd and its group to:Cease and desist from formulating and imposing unfair conditions & Modify unfair conditions imposed on its buyers within 3 months of the date of receipt of order .

The Commission considered to impose penalty of 7% of average of turnover for Three preceding financial years and imposes penalty under Section 27 (b) of the act with a Penalty rounding 630 Crores.

In the Case of **Pragati Maidan** ⁷

This Case was found to be against the ITPO dealing with the Abuse of the dominant Position in the specific relevant Market for the events of exhibition in Delhi.The Commission held that by stipulating Time Gap Restrictions for its events as compared to the Third Party , The ITPO imposed unfair and Discriminatory conditions violating Section 4(2)(a)(i) of the Competition Act, also violating the provisions of Section 4(2)(c) of the Act ,it has used it Dominant Position in the Relevant market most importantly unfair and Discriminatory .The Commission imposed a penalty at the rate of 2% of ots Average turnover for the Preceeding three years which was nearly 6.75 Crores .The COMPAT held that both the DG and the Commission grave illegality by not considering the Economic rationability by the parties ,Relying the Landmark judgment of *Oscar Bronner GmbH Vs Mediaprint* ⁸ held that no person be compelled permanently or temporarily and can produce objective justification for refusals .

⁴ Competition Appellate Tribunal

⁵ <https://www.cci.gov.in/sites/default/files/DLFMainOrder110811.pdf> Last Visited : 23/06/2021

⁶ Apartment Buyers Agreement

⁷ https://www.cci.gov.in/sites/default/files/742012_0.pdf Last visited : 23/06/2021

⁸ 1988 ECR I-7791

In the Case of **Coal India Ltd**⁹

The Commission Passed an order against the Coal India Ltd ,subsidiary finding it to the abuse of Dominant Position by imposing the unfair and Discriminatory Conditions and Similarly indulging in unfair or Discriminatory Conduct in the matter of supply of non –coking Coal to power producers by the unequal Fuel Supply Agreements imposed purchasers of Coal who do not have options to approach Coal India For Supply of Coal . The Case was Filed against the violation of Section 19(1)(a) of the Competition act by the Maharashtra State Power Generation Company against the Mahanandi Coalfield Ltd and Coal India Ltd .Starting the investigation it was found that it was in the Relevant Geographical Market. Further looking in the Violation of Section 4 it was seen by the Commission that such terms and Conditions Relating to the Sampling Processes is unfair and Discriminatory and is thus violating Section 4(2)(a)(i) of the Competition Act ,2002 .

On the issue of excessive pricing , it was found that no evidences to prove CIL has charged the Excessive pricing on informants , hence the allegation stands negated.Hence the Commission imposed to cease and Desist from indulging in the conduct relating to the contravention of the Provisions and was Directed to incorporate suitable notification in the Fuel supply Agreements . A Penalty at the Rate of 3% of the average turnover of the last preceeding three years was imposed on the Coal India which was approximately 177305 crores.The Matter was further heard under Appeal before the COMPAT. The CCI observed that there is a Need for introducing the Number of players so as to reduce the Dominance of any player and facilitate Competition.Coal sector under Independent Regulatory would held if there are enough players in specific Market .

The Above Cases clearly examines the Abuse in Unfair and Discriminatory Conditions of Dominating Enterprise . Its identification is completely dependable on the the interpretation of the Commission Order respectively .

2.2.2 Abuses in Unfair and Discriminatory Pricing

Company's freedom to price its goods can't be tested and that freedom has been perceived as a fundamental component of working together; anyway in what circumstances the pricing becomes uncalled for and biased is the issue which should be controlled by the competition offices. The Competition Act perceives the previously mentioned special case in its clarification. Investigation of whether a dominant endeavor's pricing rehearses are harmful ordinarily requires thought of its expenses. Presently, an abuse may happen when the price charges and the expenses caused is over the top, it needs cost justifications, and when it is charged underneath cost.

As per OECD¹⁰ to prevent an enterprise from abusing its position and charging excessive process , the Anti trust enforces should be more concerned with the reasons that leads to high process and along with the Profits than the Prices themselves. The Price difference charged is considered to be a “Right Price”. A biased procedure can likewise include charging similar price to customers despite the fact that there are various expenses of providing them. By the help of Segregating Prices, a firm may procure higher profits than when it's anything but a solitary price to all buyers. Some extra profits may

⁹ Maharashtra State power generation Company Limited vs Mahanadi Coalfields Ltd. & Coal Indian Ltd Case 03, 11 & 59 of 2012 Decided on 9.12.2013
<https://www.cci.gov.in/sites/default/files/03%2C%2011%20%26%2059%20of%202012.pdf> Last Visited on 24.06.2021

¹⁰ <http://www.oecd.org/daf/competition/abuse/49604207.pdf> Last Visited on 24.06.2021

come from expanded deals; hence price separation can increment a company's all out creation.

Similarly in the Case of **MCX Stock Exchange Ltd. Vs National Stock Exchange of India Ltd and Others**¹¹

It was held in this case that an information was filed under Section 19(1)(a) of the Competition Act, 2002 by the MCX stock exchange against the NSE relating the Anti –Competitive behaviour and abuse of dominant position dealing with Firstly ,eliminating the competition from the Cd Segment , Secondly ,Discouraging the potential entrants from entering into the relevant market and thirdly Achieving For closure of all the competition in the Market for Stock Exchange Services and was seen that the informant has suffered a combined loss of 100 crores. As per the Order for investigation under Section 26(1) of the Competition Act ,2002 . In The Investigation the DG considered the Equity Segment , Equity F&O Segment , Debt Segment , CD segment at a relevant Product Market .Determining the particular market share it was seen that the Combined market share of NSE for equity , F&O ,WDM and Cd Segment it was seen to Rise to 92.5 % in 2008-2009 and compared to 5.01% in 1993 in the above statistics NSE was found to Abuse its position and was considered to be a Dominant Player. The DG examined the alleged abusive behaviour of the opposite parties in respect of four measures of NSE as Transaction fee waiver; Admission fee and deposit level waivers; Data feed fee waiver; and Exclusionary denial of “integrated market watch” facility. The Commission came to the opinion that NSE has a position of strength and, therefore, enjoys dominant position in the relevant market in context of Section 4 read with section 19(4) of the Act. The Commission imposed penalty on the grounds of :Novelty, Uncertainty of Application of Law ,Lack of intention , absence of foreclosure , expanding Market ,principle of Proportionately and many more . It was prayed that no penalties and remedies should be imposed on NSE under Section 27 &28 except the Cease and desist order to the finding if it is against Section 4(2)(a)(ii). It was further seen that the fines should only be imposed where the defendant has either intentionally or negligently infringed the competition rules . It was finally imposed by the CCI a penalty of 5% of the average turnover of three preceding years approximately Rs 1110 Crores .

2.2.3 Abuses relating to Putting Limitation or Restrictions

This class of abuse, which is an exclusionary abuse, might be polished with a target to make counterfeit lack in the market so dominant venture may raise costs of products or administration, or even now and again it might confine the specialized or logical advancement to the bias of customers. This Particular abuse relates to two implications :

- Production of merchandise or any arrangement of administrations or market.
- Technical advancement of merchandise to the bias of the Customers.

In the Case of **Kapoor Glass Vs Schott glass India Pvt ltd**¹²

Schott glass was the only producer of Amber Glass and no converter can get glass unless it is brought to Schott glass . 30 – 40% of the Vials and Ampouls amber Glass was used and because of the demand of Amber glass the converters had to buy it from Schott Glass .This was considered to be Tir-in Agreement which was against Section 3(4) of the competition Act

¹¹ https://www.cci.gov.in/sites/default/files/MCXMainOrder240611_0.pdf Case no. 13/2009 Last Visited on 24.06.2021

¹² <https://www.cci.gov.in/sites/default/files/Case22of2010OrderMemberR.pdf> Case no .22 of 2010, Order Dated : 29 march 2013, Last Visited : 24/06/2021

. So for the purpose of Joint Ventures there was Anti –Competitive and was finishing the competition in Downstream Activity , Here the joint ventures arose an agreement for Anti – Competitive Practices . The Commission held that there was a violation of Section 4 of Competition Act and Accordingly there was also contravention of Section 3(4) (a),(b),(d) and (e) . Finally the Commission imposed a larger penalty which be levied at the rate of 7% of the average turnover of the last three preceding years and the OP was advised not to indulge in refusal to deal and should supply material to the informant .

2.2.4 Abuses Related to Denial of Market Access

In the Case of **Arshiya Rail Infrastructure Lts vs Ministry of Railways**¹³ the Doctrine of Essential facility was invoked .This was the Doctrine by which The competition agencies allowed admittance to an essential facility of a contender on sensible terms if that facility couldn't be imitated . The Competition Act doesn't characterize the term 'essential facility', notwithstanding, the equivalent has been characterized in the South African Competition Law as "a foundation or asset that can't sensibly be copied, and without admittance to which contenders can't sensibly give merchandise or administrations to their clients. Particularly in this case a PSu was denying to access to terminals owing private container train operator. The informant that such essential facility was for freight services .by denying such contentions essential Facility was invokes with certain circumstances and if such competition is denied and possibility of providing access on reasonable teems and Finally it was seen that they were not Essential Facility

As per the Competition policy mentioned by MCA it is mentioned that The Third-Party Access to Essential Facility¹⁴ requires dominant framework and intellectual property right proprietors to give access to third gatherings their essential foundation and stages) on concurred sensible and non-discriminatory agreements lined up with rivalry standards.

2.2.5 Abuses Related to Tying and Bundling

In the event of the issue of refusal to supply, the CFI alluded to the four pronged test to check if the refusal to permit can add up to a maltreatment. Planned in the IMS Health judgment, this test characterizes four conditions, which, whenever met, may prompt gather that the refusal to permit adds up to maltreatment. The EU Microsoft Case put bigger impact in the Abuse of Dominant Position where the court in relation with some conditions like the indispensable copyright service, emergence of new product , not objectively justified refusal and not excluding all competition from refusal ; and came to a conclusion that bundling like **WMP**¹⁵ was abusing the dominant position preventing the competitionbetween Microsoft ‘s WMP and real Player , it was held that independently the demand for tied product is enough and included two as different products .The Microsoft further held that the significant demand for unbundled version of tying product . Thus windows was a single product and not separate

¹³ <https://www.cci.gov.in/sites/default/files/642010T.pdf> Case Number: 64/2010 & 12/2011

Last Visited : 24/06/2021

¹⁴ http://www.mca.gov.in/Ministry/pdf/Revised_Draft_National_Competition_Policy_2011_17nov2011.pdf

Last Visited :24/06/2021

¹⁵ Windows Media Player

products . The CFI found that the Commission’s position was supported in **Tetra Pak Case**¹⁶ rejecting the Microsoft ‘s position amounting to contend that complementary products cannot be separate products .

3. Important and Recent Case Laws

Some of the important Case laws so as to impact on the research of Abuse of Dominant Position are as follows:

3.1 In the Case of **Surinder Singh Barmi vs The Board of Control for Cricket in India**¹⁷

It was informed by the informant that the IPL should not be organized , Sanctioned , recognized or supported during the Rights period and another professional Domestic India T20 competition being competitive to the league and was found to be contravening Section 4(2)(c) of the Act .The COMPAT held that the issue of Abuse of Dominance is legally unsustainable and is liable to be set aside , It was Submitted by the party that : BCCI is not an Enterprise , Along with the relevant market was considered to be Relevant Product market as Cricket and other sporting events being non –sustainable is based on TAM rating . There was an Abuse of Dominant that the impugned Clause in IPL media right Agreement and the Rules 28(b) and 28(d)of BCCI Rules as Abusive and amounting to contravene the provisions of Section 4 of competition act . It is convincing that all Sports Associations are to be viewed as an enterprise to the extent that their innovative direct is concerned. It proceeded to express that the circumstance where the controller is likewise the financial recipient is unquestionably a rivalry concern. CCI saw that BCCI's dominance was a clear factor in ICL's disappointment consequently prompting Abuse of its Dominant position and was asked to stop denying market Access to other Potential competitors and making of Anti-competitive Agreements in future and as abusing the dominant position in violation of Section 4(2) of the Act was imposed a penalty of @ 6% in the average turnover of the financial year of 2007-2008 ,2009-2009 and 2009-2010 which was approximately amounting to Rs 52.24 crores .

3.2 In the Case of **Re: Consim Info Private Limited v. Google Inc., USA and Google India Private Limited**¹⁸

Here in this case the informant filed a Case alleging Google enjoying a Dominant position and was conducting business in a Discriminatory Manner, by causing algorithms and harming the advertisers and the Customers CCI concluded that Google had abused its dominant position and was accused within Section 26(1) of the Competition Act and was directed to carry out Investigation . In the Investigation it was found that the Show Cause notice that to why as per Section 43 competition Act should not be taken against Google. The Commission concluded that google Failed to Comply with the Direction and should be held in Fact engaged in dilatory tactics to procrastinate the investigation and further imposed a fine of 10 million to be disposed within 60 days .

¹⁶ Tetra Pak International SA v Commission

<http://lup.lub.lu.se/luur/download?func=downloadFile&recordId=1335665&fileId=1646325> Last visited:24/06/2021

¹⁷ <https://www.cci.gov.in/sites/default/files/61%20of%202010.pdf> Case no 61/2010

Last Accessed : 24/06/2021

¹⁸ <https://www.mondaq.com/india/antitrust-eu-competition-/307018/google39s-failure-to-show-cause-to-cci-costs-rs-10-million> Case no 07/2012

3.3 In the Case of XYZ vs Google India Pvt Ltd¹⁹

It was alleged by the informant that there is an abuse of Dominant Position by the Google in the Relevant Geographical Market including the merits as : Regarding the mode of Payment of apps and in app Purchases; Pre installation and Prominence of Google Play on Phones ;Search Manipulation and Bias by Google in favour of Google Play; prominently placing Play Store and Google Play ; manipulating Searching Ad on the Play Store. It was impose by the Commission that Google Does not have right to Cros –examine the informant or challenge Locus of the informant . Finally it was seen that the expression of opinion on the merits of the case and the investigation is to be done without being swayed in any manner whatsoever by the observation.

4 Competition Law and Intellectual Property Rights

India is considered as Avery fertile ground for the discussion on IPR vs Competition²⁰. The Commission has the jurisdiction to deal with the particular cases involving IPR was held by the Bombay High court²¹ . In the Case of *FICCI Multiplex Association of India Vs UPDF*²² It was clearly being held by the UPDF²³ that once a legally binding agreement had been entered into between the patries, it could be challenged under the Competition Law ,also pointing out the Article 19(1)(g)²⁴ of the Constitution and further cannot be dealt under the Competiton law . But , Commission activity of UPDF in not releasing films through the informant in this case is violating Section 3(3) of the competition act ,2002.

Under Section 27 of the Competition Act ,2002 the CCI has the authority to penalize any IPR holder who abuses their dominant Position and further under Section 4 of the act the Commission is authorized to penalize the holders to penalize parties to an anti –competitive Agreement .

As per the Latest amendment of Competition Act bill 2020, Section 4A ws inserted which gives protection of any right related to any infringement or to impose reasonable conditions which may be confer the Copyright Act ,1957 ; The Patent Act ,1970 ;The trade and Merchandise Mark Act ,1958 ; The geographical indication of goods act ,1999; The Design Act ,2000; Semiconductor and Industrial design Act ,2000; and any other which protects the Intellectual Property rights .

¹⁹ <https://www.cci.gov.in/sites/default/files/07-of-2020.pdf> Case No . 07/2020

Last Accessed on 24/06/2021

²⁰ <http://nopr.niscair.res.in/bitstream/123456789/16395/1/JIPR%2018%282%29%20111-122.pdf>

Last Visited :24/06/2021

²¹ Aamir Khan Production Pvt Ltd Vs Union of India 2010(112) R 3778

²² Case no .1/2009 Order Dated :25 may 2011

²³ United Producers/ Distributors Forum

²⁴ Article 19(1)(g) : Right to practice any profession

5 Predatory Pricing

As per the Competition Law 2002, Predatory Pricing generally defines as “ *The Sale of Goods at a price which is below the Cost as may be determined by the regulations ,of Production of the goods or provisions of services at a Price which is below the cost as may be determined by regulations of production of goods or the provision of services with a view to reduce competition or to eliminate its competitors*”.

The demonstration of Dominant position may stop new participants since of the Predatory Prices as well as on the grounds that the predation turns into a barrier to enter.

There are two Phases of predatory Pricing :

- **Sacrifice Phase** : As in this Particular phase an enterprise suffers from heavy loss due to the predatory pricing which keeps the objective to wipe of the competitors from the Market .
- **Recoupment Phase** : After the losses in the sacrifice phase an enterprise makes up for the losses by the loss cause in the sacrifice phase .As predatory pricing cannot be practiced by every enterprises , So there are some fulfilment for predatory pricings which are : A Dominant Position having position of Strength , position enjoyed in relevant market and power to operate independently in the relevant market ; Entry and Re-entry barriers ; Excess capacity ; Strong Financial reserves and back up to indulge in predatory pricings .

The major issues to tackle under predatory pricing are:-

- Pricing below the cost;
- Intention to eliminate a competitor; and
- The feasibility of recouping the losses

6. Conclusion

The Indian competition act in draws the International developments and along with the jurisprudence settled from the facts specified in the facts of the case . Then accordingly determine the Relevant Market ,Dominance of the enterprise , Abuse of particular position and finally some of the abuses like predatory pricings .The Commission has not yet got a full fledged interpretation related to Abuse of Dominance ,but in future it will be possible that the appellate tribunal gets developed with such power, thereafter in the supreme courts the Appeals gets taken over and the matters to get settled faster in India .The Economic development is protected by protecting the consumers and ensure the freedom of enterprises from the Dominant position, there is not Straight forward formulato determine the Dominace . The Commision need to give more importance to make make modern competition laws in determining the Abuse of Dominance .