Abuse of Dominant Position under Competition Act, 2002

In simple terms ‘dominant position’ means something in a superior position as compared to others based on some factors. This concept of dominance was, however, prevalent in the Indian society itself, where one “caste” was considered to be superior to others. However, staying in a better-off position doesn’t harm anyone, unless an individual is exploiting such power. Therefore having a dominant position cannot be considered bad per se. However, abusing such a position based on its superiority is considered inadequate.

Abuse of dominant position- Concept

Abuse is expressed to happen when an undertaking or a group of endeavors uses its prevailing situation in the significant market in an exclusionary or/and in an exploitative way. The Act gives a comprehensive list of practices that will comprise abuse of a dominant position and, in which circumstances these are disallowed. Such practices will establish misuse just when received by an endeavor getting a charge out of a prevailing situation in the pertinent market in India. Abuse of dominant position is decided as far as the predefined sorts of acts committed by a prevailing undertaking. Such acts are precluded under the law. Any abuse of dominant position indicated in the Act by a prevailing firm will stand denied.

As per explanation affixed to Section 4 dominant position implies the quality of an endeavor in the significant market in India which empowers the enterprise to work autonomously of serious powers winning in the market and to influence the customers or contenders or the market in support of it.

Factors to determine the dominant position

Dominance has been customarily characterized as far as the part of the market share of the enterprise or group of undertakings are concerned. In any case, various different elements assume a role in deciding the impact of an undertaking or a group of endeavors in the market. These include:

1. a market share.
2. the size and assets of the undertaking.
3. size and significance of contenders or competitors.
4. the financial intensity of the undertaking.
5. a vertical combination or integration.
6. a reliance on customers on the undertaking or undertaking.
7. degree of section and exit barriers in the market.
8. countervailing purchasing power.
9. market structure and size of the market.
10. a source of dominant position viz. regardless of whether acquired because of resolution or statute and so on.
11. social expenses and commitments and commitment of big business getting a charge out of the prevailing situation to financial improvement.

The Competition Commission of India is additionally approved to consider whatever other factors which it might think about applicability for the assurance of dominance.

Relevant Market

The first thing to be resolved in quite a while of supposed abuse of dominant position is the ‘relevant market’ in which the accused party has a predominant position. The reason served by depicting a relevant market is to characterize the degree inside which the situation of an endeavor is to be tried for strength and misuse thereof. The ‘relevant market’ is characterized as ‘product’ and ‘geography’, in other words, the applicable market recognizes the specific item/administration or class of items created or benefits rendered by an enterprise(s) in a given geographic territory.

Relevant Market Product

A market comprises all those products or services that are interchangeable or are substituted by the consumer. Factors determining the relevant product market are :

1. Physical characteristics or end-use of goods.
2. Price of goods or services.
3. Consumer preference
4. Exclusion of in-house producers.
5. Existence of specialized producers.
6. Classification of Industrial products.

Relevant Geographic Market

A market comprising the area in which the condition of competition for supply or demand of goods or services are distinctly homogeneous and can also be distinguished from conditions prevailing in the neighboring areas.

Factors determining the relevant geographic market:

1. Regulatory trade barriers.
2. Local specialization requirements.
3. National procurement policies.
4. Adequate distribution facilities.
5. Transport cost.
6. Language.
7. Consumer preference.
8. Need for secure or regular supplies or rapid after-sales service.

Identification of abusive use of dominant position [Section 4(2)]

There are five kinds of abusive use of dominant position-

1. Unfair or biased trade practices: According to this, abuse of dominant position happens when an undertaking or gathering legitimately or in an indirect way forces prejudicial conditions on the sale of goods or rendering of costs or cost in deal or acquisition of ruthless cost of products or administrations.
2. Limiting creation or specialized or scientific improvement: An abuse of dominant position occurs in the market where an endeavor or group legitimately or in an indirect way forces conditions that limit the creation of the merchandise or specialized or logical advancement bringing about the creation of the products or administrations.
3. Denial of access to showcase, barriers to entry and development: Any condition that makes forswearing access to the market in any way will comprise an abuse of the dominant position.
4. The imposition of beneficial commitments: when an undertaking makes the finish of agreements subject to an acknowledgment of advantageous commitments by different parties and those commitments are to such an extent that by their very nature or as per business use in that field, they have no association with the topic of the agreement.
5. Protection of different markets–when an enterprise utilizes its situation in a significant market to go into another market, at that point there is an abuse of dominant position.

Thus it can be stated that section - 4 of the Act indicates the accompanying practices by a dominant enterprise or group of endeavors as misuses are straightforwardly or in an indirect way of imposing out of line or oppressive condition in the sell or purchase of goods or administration; straightforwardly or in an indirect way of imposing an unjust or prejudicial cost in buy or deal (counting ruthless cost) of products or administration; constraining or confining the creation of products or arrangement of administrations or market; constraining or confining specialized or logical improvement identifying with merchandise or administrations to the partiality of buyers; denying market access in any way; making the finish of agreements subject to acknowledgment by different groups of beneficial commitments which, by their temperament or as per business use, have no association with the subject of such agreements; and using its dominant situation in one important market to enter into or ensure other applicable markets.

Types of Dominant Position

There are two types of domination:

Exploitative such as excessive pricing

Exploitative activities are those where the prevailing body abuses its strength by forcing biased or potentially low conditions on different firms or shoppers.

Exclusionary such as a denial of market access

Exclusionary activities are those in which the dominant body utilizes its strength to confine entry of competition into the relevant market.