# INTERNATIONAL JOURNAL FOR CORPORATE AND COMPETITION LAW [IJCCL]

2024 || ISSN. 3049-3560 (Online) || Volume 1 Issue 1

# MARKET DEFINITION, MEASURING MARKET POWER, AND ABUSE OF DOMINANCE

Shruti Patel[1]

## INTRODUCTION:

### What is Market?

The definition of "market" is derived from the Competition Act, 2002, and it refers to the relevant product and geographic market.

Section 2(r),(s), and (t) of the Competition Act 2002 defines the relevant market, relevant geographical market, and relevant product market.

Section 2(r): “Relevant market” means the market which may be determined by the commission with reference to the relevant product market or relevant geographic market or with reference to both markets.

Section 2(s): “Relevant geographic market” means the market comprising the area in which the conditions of competition For the supply of goods or provision of services or demands of goods or services Are distinctly homogeneous and can be distinguished From the conditions prevailing in the neighboring areas.

Section 2(t): “Relevant product” market means a market comprising all those products or services that are regarded as interchangeable or substitutable by the consumer, by the characteristics of products or services, their price, and intended use.

In simple words, the term "market" refers to a specific economic environment in which buyers and sellers engage in the exchange of goods or services. It represents the area or scope where competition occurs between different firms operating within that market.

Defining the relevant market is a crucial step in competition law analysis because it helps

[1] The author is a student of law.

determine the market power of a particular firm or group of firms. Market power refers to the ability of a firm to independently influence the terms of competition, such as prices, output levels, or quality, without being constrained by competitive forces.

**Measuring Market Power:**

Measuring market power is an essential aspect of competition law. Market power refers to the ability of a firm or a group of firms to exercise significant control over market conditions, including pricing, output levels, and competition. It is crucial to assess market power to identify and address potential anticompetitive behavior that may harm consumer welfare and economic efficiency.

There are several methods and indicators commonly used to measure market power in competition law. Here are some of the key approaches:

Market share analysis: Market share is a widely used indicator of market power. It measures the proportion of total sales or output a firm or group of firms controls in a particular market. High market share often indicates a greater ability to influence market conditions. However, market share alone is not sufficient to determine market power conclusively.

Concentration ratios: Concentration ratios measure the combined market share of the largest firms in a market. They provide an indication of the level of concentration and potential market power. Common concentration ratios include the four-firm concentration ratio (sum of the market shares of the four largest firms) and the Herfindahl-Hirschman Index (HHI), which considers the sum of squared market shares for all firms in the market. Higher concentration ratios and HHI values suggest a higher likelihood of market power.

Entry barriers: Assessing the presence of entry barriers is crucial in determining market power. Entry barriers can restrict new firms from entering the market, protecting incumbent firms' market power. Examples of entry barriers include economies of scale, high capital requirements, regulatory restrictions, intellectual property rights, and access to distribution networks. Higher barriers to entry may indicate greater market power.

Price-cost margins: Price-cost margins assess the difference between a firm's price and its marginal cost. A significant positive margin suggests market power since firms can charge prices above their costs without facing competitive pressure. Comparing price-cost margins across firms or over time can provide insights into changes in market power.

Market dynamics and competitive behavior: Assessing market behavior and dynamics is crucial to understanding market power. Factors such as pricing behavior, market conduct, barriers to entry, innovation levels, and firm behavior in response to competitive forces are all considered to evaluate market power. For example, predatory pricing or exclusionary practices can indicate the exercise of market power.

**Abuse of dominance:**

Abuse of dominance is a concept in competition law that refers to the behavior of a dominant company in a market that is deemed to be unfair, anticompetitive, or harmful to competition. The term "dominance" typically refers to a position of economic power held by a company, allowing it to behave independently of competitive pressures and potentially harm other market participants, consumers, or the overall competitive process.

Competition laws, such as the Sherman Act in the United States or the European Union's Treaty on the Functioning of the European Union (TFEU), prohibit abuse of dominance to maintain a competitive market environment. Although the specific provisions and enforcement mechanisms may differ across jurisdictions, the general principles surrounding abuse of dominance are similar.

**Common forms of abuse of dominance include:**

1. Predatory pricing: A dominant company sets its prices below cost with the intention of driving competitors out of the market, then raises prices once it has gained a monopoly position.
2. Excessive pricing: A dominant company charges unreasonably high prices for its products or services, exploiting its market power and harming consumers.
3. Refusal to deal: A dominant company refuses to supply goods or services to competitors, customers, or suppliers, without any valid business justification.

4. Exclusive dealing: A dominant company imposes exclusive agreements on customers or suppliers, preventing them from doing business with competitors.
5. Tying and bundling: A dominant company requires customers to purchase one product or service (the tying product) in order to obtain another product or service (the tied product), thereby foreclosing competition in the tied product market.
6. Discriminatory practices: A dominant company applies different terms, conditions, or pricing to similar transactions or counterparties, putting competitors at a disadvantage.

Section 4 of the Competition Act, 2002 in India addresses the concept of abuse of dominant position. Here is an overview of Section 4:

Section 4(1): This subsection states that no enterprise shall abuse its dominant position in a relevant market.

Section 4(2): This subsection provides a non-exhaustive list of practices that may constitute abuse of dominant position. The practices mentioned include:

a. Imposing unfair or discriminatory conditions in the purchase or sale of goods or services.
b. Charging excessive prices.
c. Restricting production, supply, or technical development to the detriment of consumers.
d. Denying access to the market or limiting access in some way.
e. Using a dominant position in one market to enter into or protect another relevant market.

Section 4(3): This subsection explains that any agreement that causes or is likely to cause an appreciable adverse effect on competition within India shall be considered void.

Section 4(4): This subsection empowers the Competition Commission of India (CCI) to determine whether an enterprise holds a dominant position in a relevant market.

Section 4(5): This subsection explains the factors that the CCI may consider while determining the dominant position of an enterprise, including market share, size and resources, entry barriers, countervailing buying power, market structure, and dependence of consumers on the enterprise.

Section 4(6): This subsection clarifies that the CCI shall not consider the size of an enterprise alone as the sole determinant of its dominant position.

Section 4(7): This subsection empowers the CCI to inquire into any alleged contravention of the provisions of this section.

## CONCLUSION:

Overall, the focus of competition law is to promote and maintain fair and competitive markets by addressing abusive practices and preventing dominant companies from exploiting their market power to the detriment of competition and consumers. Effective enforcement and accurate measurement of market power are essential for upholding competition principles and ensuring a level playing field in the marketplace.