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Abuse of Dominant Position in the light of the Reliance Jio Case

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Abstract

The concept of abuse of dominant position, as outlined under Section 4 of the Competition Act, 2002, is a cornerstone of Indian competition law aimed at curbing practices that adversely affect market competition and consumer welfare. A firm is said to abuse its dominant position when it exercises its market power that distorts fair competition, such as through predatory pricing, limiting market access, or imposing unfair conditions. The landmark case involving Reliance Jio Infocomm Limited (RJIL) brought this issue into sharp focus, particularly with allegations concerning predatory pricing and disruptive market strategies during its entry phase in 2016. Jio's introduction of free voice calls and extremely low data tariffs triggered complaints by incumbent telecom operators alleging abuse of dominance. However, the Competition Commission of India (CCI) ruled that Jio was not in a dominant position at the time of its promotional offers. Thus, the question of abuse did not arise. The decision underlined the distinction between aggressive competition and anti-competitive behaviour, emphasising the need for a dominant position before alleged abuse. The case serves as a critical precedent in understanding how competition law accommodates market disruption and innovation while maintaining safeguards against unfair practices. It also showcases the CCI's approach to analysing market dynamics, relevant market definitions, and assessing dominance in a fast-evolving sector like telecommunications. This paper delves into the legal provisions, judicial reasoning, and economic implications of the Reliance Jio case, offering a nuanced perspective on how Indian competition law balances innovation and regulation. The analysis further reflects on the importance of distinguishing between healthy competitive strategies and those that harm market equilibrium, reinforcing the relevance of the Competition Act in promoting a level playing field in India’s liberalised economy.

Introduction

The world has gradually become increasingly interconnected, resulting in businesses functioning within a highly integrated global economy influenced by political, ethnic, and legal factors. Competition law and international trade law contribute to fostering consistency in this

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context. Although competition laws are primarily national, markets extend beyond national borders. Competition law plays a crucial role in impacting a country's foreign trade by offering a framework for regulating its activities in international commerce. The globalisation of competition law unfolded in the 20th century, creating national and regional competition frameworks worldwide, establishing a global network for support and enforcement. Anticompetitive behaviours can have adverse economic effects across various jurisdictions, unconfined by territorial boundaries. As a result, even though competition law is fundamentally national, competition issues have become more international, leading to a regulatory gap. This has increased the demand for global collaboration in regulating competition and associated matters. Competition law tackles market inefficiencies caused by restrictive business practices. The historical origins of modern competition law are typically linked to the passage of the Sherman Act in the United States in 1890. This legislation was introduced as a reaction to the dominance and exploitative methods of large trusts that formed after the Industrial Revolution, where a small elite gained control over competitors, often by acquiring their assets, and oversaw their operations. Promoting economic development is a primary justification for competition law, rooted in the acknowledged advantages of competitive markets.[3]

In a competitive marketplace, sellers actively strive to attract and retain customers while navigating the presence of similar offerings, all intending to increase their earnings. Conversely, buyers typically seek goods or services of acceptable quality at the most economical price, whereas sellers aim to maximise their revenue by selling at the highest possible price. To gain customer loyalty, sellers employ a variety of strategies.[4] Abusing a dominant market position encompasses various situations where unfair tactics are used to maintain market power through monopolistic exploitation. Competition laws are founded on the economic principle that competition is beneficial in a free market. Under the current Indian Competition Law framework, a dominant position is not inherently illegal; a dominant firm's actions negatively impact competition and consumer well-being. By adopting an approach that considers both the form and the effects of actions taken by a dominant firm, the efficiency and precision of competition law enforcement are enhanced.[5]

[3] Siddhant Radhu & Pratik Tare, 'Abuse of Dominance: A Comparative Study of India, the United States & the United Kingdom,' (2019) 7 PAJ <https://penacclaims.com/wp-content/uploads/2020/01/Siddhant-Radhu.pdf> Accessed on 2 May 2025

[4] Manoj Purohit, 'All About Predatory Pricing in the light of the Reliance Jio case' (iPleaders, 8 May 2023) <https://blog.ipleaders.in/all-about-predatory-pricing-in-light-of-the-reliance-jio-case/> Accessed 3 May 2025

[5] M Malathi, 'Abuse of Dominant Position in light of the Competition Law in India' (2020) 40(59) SIPN <https://tpnsindia.org/index.php/sipn/article/download/6799/6544/> Accessed 6 May 2025

A 'dominant position' denotes holding a preeminent status over others, predicated upon specific criteria. The mere occupation of a favourable status does not automatically imply detrimental consequences unless such power is misappropriated. Consequently, possessing a dominant position is not inherently regarded as adverse. However, exploiting such a position arising from this supremacy is deemed unacceptable. The exploitation of a dominant position obstructs fair competition among enterprises, exploits consumers, and engenders barriers for other firms aspiring to engage in equitable competition with the dominant entity. The Act does not categorise dominance itself as anti-competitive; rather, it is the abuse of such dominance that is scrutinised. Therefore, the emphasis of competition policy should be directed towards the abuse of dominance, rather than the existence of dominance itself. The exploitation of dominance, which prevents, restricts, or distorts competition, merits censure under Competition Law. Nonetheless, the existence of dominance inherently carries the potential for misuse. The exploitation of a dominant position encompasses:

- Imposing inequitable conditions or prices
- Engaging in predatory pricing strategies
- Restricting production, market access, or technological innovation
- Establishing specific barriers to entry
- Applying disparate conditions to analogous transactions
- Denying access to the market
- Exploiting dominance in one market to secure a competitive edge in another.[6]

Across the world, prominent legal systems regard abusing a dominant market position as a serious infringement of competition laws and impose sanctions on those found culpable. It is essential to understand that merely holding a dominant position is not unlawful in these jurisdictions; exploiting that dominance is considered anticompetitive. Identifying the relevant market is a vital first step in all these legal systems, although the specific assessment methods may differ.

The European Commission, through various decisions, has set forth criteria for defining the relevant market in cases involving alleged dominance abuse. For example, the Hoffman La Roche v. Commission of the European Communities case highlighted the need to specify the

[6] Kajal Dhiman, 'Abuse of Dominant Position under Competition Act, 2002' (Manupatra, 20 June 2022) <https://articles.manupatra.com/article-details/ABUSE-OF-DOMINANT-POSITION-UNDER-> Accessed 7 May 2025

relevant market from geographical and product-based perspectives. The court stressed that an accurate definition of the relevant market, as stated in Article 102 of the Treaty on the Functioning of the European Union,[7] is a crucial prerequisite for assessing any allegations of anticompetitive behaviour. This is because confirming the existence of a dominant position in a particular market is necessary before determining any abuse of that position, which in turn necessitates prior market definition.

Similarly, evaluating alleged dominance abuse in the United States begins with examining the relevant market. American courts have consistently emphasised the necessity of first delineating these markets, considering both product and geographic factors—landmark cases such as Walker Process Equipment Inc. v. Food, Machinery and Chemical Corp.[8] Image Technical Services Inc. v. Eastman Kodak Co.[9] Green Country Food Market, Inc. v. Bottling Group,[10] LLC and Bottling Group Holdings, Inc., United States v. E.I. du Pont de Nemours & Co.[11] and Brown Shoe Co. v. United States exemplify this focus.

Australia has its unique considerations in this regard. Section 4(e) of the Australian Trade Practices Act, 1974[12] defines a market as "*a market in Australia and, when used in connection with any goods or services, includes a market for those goods or services and other goods or services that are substitutable for or otherwise competitive with the first-mentioned goods or services.*" Australian courts begin their evaluation of 'misuse of market power' by determining the relevant market's product and geographical limits.

India also adopts a specific approach to identifying abuse of dominance. Section 4 of the Competition Act[13] prohibits any company or group of companies from misusing their dominant position. The Act establishes a three-step process for this determination: first, defining the relevant market; second, evaluating whether the company holds a dominant position within that market; and third, demonstrating whether there has been an exploitation of that dominant position.[14] The Competition Act of 2002 in India aims to prevent the abuse of a dominant market position by distinguishing between companies that achieve market power through fair

[7] 382 U.S. 172 (86 S.Ct. 347, 15 L.Ed.2d 247)
[8] 504 U.S. 451 (1992)
[9] 371 F.3d 1275
[10] 351 U.S. 377 (1956)
[11] June 25, 1962. 370 U.S. 294
[12] The Australian Trade Practices Act, 1974, § 4(e)
[13] The Competition Act, 2002, § 4
[14] Dr. Souvik Chatterji, 'Lessons from Selected Jurisdictions on Abuse of Dominance' (2017) 2 ICLR <http://www.iclr.in/assets/pdf/ICLR%20Issue%202%20(Souvik%20Chatterji).pdf> Accessed 8 May 2025

competition and those that use it to suppress competition and take advantage of consumers. The Act addresses actions such as unfair pricing and discriminatory practices that put competitors at a disadvantage and restrict consumer options. The Competition Commission of India (CCI) was created to implement the Act and promote a competitive marketplace that benefits consumers and overall industry development. However, distinguishing between legitimate market power and its misuse can be challenging. Important terms like "enterprise" and "group" are explained to clarify the Act's coverage. An "enterprise" refers to any organisation engaged in producing, distributing, or managing goods and services, whereas a "group" includes several enterprises that possess considerable voting rights or managerial control over one another. Section 4 of the Act forbids the exploitation of a dominant market position, detailing practices like limiting market access, charging unfair prices, and creating obstacles for competitors. Dominance is evaluated using two main perspectives: structural (market share) and behavioural (the ability to operate independently of rivals). The behavioural perspective is viewed as more thorough and prioritised when assessing market power. Before this Act, market share was the primary determinant of dominance; however, the SVS Raghavan Committee stressed the importance of examining a company's effect on competition. Similarly, by EU law, Section 18 of the UK's Competition Act 1998 forbids the abuse of a dominant market position, emphasising practices such as discriminatory terms, restrictive policies, and unfair pricing. The Enterprise Act of 2002 further enhances competition in the UK by tackling issues like merger control and market investigations. The Competition and Markets Authority (CMA) is tasked with enforcing competition laws in the UK. While the competition regulations in the UK and India have similarities, the UK Act is more closely aligned with EU law, particularly regarding market dominance, though some jurisdictional differences remain.[15]

The Indian telecommunications industry has experienced significant competitive pressures in the last ten years. The entry of Reliance Jio and the subsequent merger of Vodafone and Idea exemplify the intense rivalry within the sector, compelling market participants to consistently improve their offerings and seek advantages over their competitors. Over the past decade, the telecom landscape in India has undergone a dramatic transformation. The introduction of

[15] K Vishnu Bharadwaj, ‘A Comparative Analysis of Abuse of Dominant Position between India & UK’ (2025) 7(1) IJFMR <https://www.ijfmr.com/papers/2025/1/34950.pdf> Accessed 9 May 2025

Reliance Jio to the market in 2016, followed by the Vodafone-Idea merger in 2018, has intensified the already fierce competition in this industry.[16]

Abuse of Dominance: Position under Different Jurisdictions

In the United States

Section 2 of the United States Code, commonly called Section 2 of the Sherman Act,[17] forbids individuals or entities from monopolising, attempting to monopolise, or conspiring with others to monopolise any interstate or international trade or commerce segment. This provision defines three separate offences: monopolisation, attempted monopolisation, and conspiracy to monopolise.

It is crucial to recognise that Section 2 of the Sherman Act targets explicitly the actions of individual companies or the unilateral actions of firms that hold monopoly power or are likely to attain such power. This sets it apart from infractions under Section 1 of the Sherman Act or Section 7 of the Clayton Act,[18] which focuses on anticompetitive behaviour stemming from the cooperation of two or more firms. Companies with monopoly power can reduce production and raise prices, potentially causing harm to consumers. The development of U.S. antitrust law showcases a significant shift in its foundational principles, evolving from the Harvard School's more interventionist viewpoint, which emphasised the protection of small and medium-sized businesses, to the Chicago School's less interventionist, economics-centred perspective that focuses on market accessibility and economic efficiency. This movement toward a more economics-oriented analysis is a prevalent trend across various antitrust legal frameworks, recognising that the actions of a single firm can at times create efficiencies and ultimately serve consumer interests.

In the United States, monopoly power is generally understood as the ability to dictate prices and prevent competition. These two elements are closely linked and often considered together by the U.S. Supreme Court. While the European Union's law on abuse of dominance provides detailed guidance on defining the relevant market and setting enforcement priorities under Article 102 of the Treaty on the Functioning of the European Union (TFEU)[19] for exclusionary

[16] Swati Sonal, 'A Study on Influence of Competition Law on Telecom Sector in India' (2022) 4(6) IJAEM <https://ijaem.net/issue_dcp/A%20Study%20on%20Influence%20of%20Competition%20Law%20on%20Telecom%20Sector%20in%20India.pdf> Accessed 11 May 2025
[17] The Sherman Act, 1890, § 2
[18] The Clayton Act, 1914, § 7
[19] Treaty on the Functioning of the European Union, 1957, Art.102

conduct by dominant companies, U.S. law lacks such explicit guidelines. Instead, the interpretation of monopolisation under U.S. law is derived from a body of decisions made by the U.S. Supreme Court and various circuit courts. Nevertheless, examining these rulings suggests that the approach to handling monopolisation cases in the U.S. shares considerable similarities with the EU's prohibition of abusing a dominant position. However, specific underlying philosophical differences exist, which will be discussed later. In the U.S., direct proof of monopoly power requires demonstrating an enterprise's control over prices and/or successfully excluding competition from the relevant market. However, given the difficulty of obtaining such direct evidence, monopoly power is more commonly inferred through indirect or circumstantial evidence. This inference is based on assessing the defendant's capacity to control prices or exclude competition, which can be determined by examining the defendant's market share within the relevant market and the presence of barriers that hinder new entrants.

In the *Walker Process* case,[20] The U.S. Supreme Court underscored the importance of defining the relevant market, stating that "*without a definition of that market, there is no way to measure the defendant's ability to lessen or destroy competition*." Therefore, assessing a claim of monopolisation or attempted monopolisation necessitates determining whether the defendant possesses or is likely to attain monopoly power. The American Bar Association[21] acknowledges that "defining the relevant market for purposes of Sherman Act Section 2 presents the same issues as determining the appropriate market for other antitrust purposes, including Sherman Act Section 1[22] and Clayton Act Section 7."

Thus, evaluating the relevant market is a pivotal aspect of Section 2 analysis in the U.S. and can significantly alter the outcome of a case. For instance, in *Alcoa's Case*, the District Court initially calculated Alcoa's market share to be approximately 33%; however, following a redefinition of the relevant market, the Circuit Court determined the share to be over 90%. Similarly, in the *Dentsply Case*, the Third Circuit ruled that the appropriate market for artificial teeth encompassed dental dealers and laboratories. In contrast, the district court's definition only included dental laboratories.

Although specific guidelines for assessing abuse of dominance or defining the relevant market are lacking in U.S. law, the Department of Justice (DOJ) and the Federal Trade Commission

[20] Walker Process Equipment Inc. v. Food Machinery & Chemical Corp. 382 US 172 (1965)
[21] Jonathan IGleklen (ed.), ABA Section of Antitrust Law, Antitrust Law Developments, American Bar Association (7th ed., 2012) at p.229
[22] The Sherman Act, 1890, § 1

(FTC) recognize that "the market-definition requirement brings discipline and structure to the monopoly power inquiry, thereby reducing the risks and costs of error." The Horizontal Merger Guidelines provide a dedicated section on market definition, based on the Hypothetical Monopolist test and the SSNIP (Small but Significant and Non-transitory Increase in Price) test. However, in monopolisation cases, careful consideration is required, and the tests outlined in the merger guidelines may not be directly applicable, as merger analysis is forward-looking (ex-ante). In contrast, monopolisation analysis is retrospective (ex-post). Nevertheless, the Merger Guidelines serve as a valuable resource for understanding the U.S. approach. To illustrate the relevant market concept, let's consider an example from the Guidelines.

Market definition includes both the product and geographic dimensions. Determining the relevant product market focuses on identifying reasonably interchangeable products, where consumers would switch based on price, use, and quality – a concept commonly known as 'demand substitution'. Supply-side substitutability occurs when producers can easily shift their production from one market to another. In defining the geographic market, the focus is on all the physical areas to which consumers would readily turn for their supply if prices increased or if there were other market constraints, such as a shortage. Therefore, it can be observed that the U.S. approach to determining the relevant market shares has significant similarities with that of the European Union.

In the United States, numerous lower courts view market share as the initial indicator in evaluating monopoly power, while others concurrently consider market share and barriers to entry. Although a significant market share is a relevant factor in determining a firm's monopoly power, it is generally not regarded as sufficient without barriers to entry or other evidence demonstrating the defendant's ability to control prices or exclude competitors. An examination of U.S. case law suggests that a market share exceeding 70% has often been considered prima facie evidence sufficient to establish monopoly power. Conversely, cases involving a market share below approximately 50% typically do not support a finding of monopoly. Situations where market share falls between 50% and 70% have presented considerable analytical challenges in the U.S., often necessitating the consideration of additional evidence. While market share usually needs to be coupled with other factors to establish a firm's monopoly power, the market share must also be sustained, indicating its enduring ability to maintain its position relative to competitors.

In some instances, rather than engaging in extensive relevant market definition, market power has been established through direct evidence, such as demonstrating consistently high profits. However, this approach can pose difficulties in determining monopoly power, particularly in analysing price-cost margins. Several key factors are considered in the U.S. to ascertain monopoly power:

(a) Barriers to Entry: These are costs or conditions discouraging new companies from entering the market, even if an existing monopolist increases prices. Such barriers include legal licensing requirements, intellectual property rights, control due to a natural monopoly, etc.

(b) Market Structure and Performance: Courts also assess other market structure characteristics to determine if a firm possesses monopoly power. These include the relative size and strength of competitors, economies of scale and scope, the likely future development of the industry, the responsiveness of consumer demand to price changes (elasticity), the similarity of products offered (homogeneity), declining market demand, and potential future competition.

The legal test for a 'monopolisation' claim includes:

(1) monopoly power and
(2) the intentional acquisition or maintenance of that power, as opposed to growth or development resulting from a superior product, business acumen, or historical accident.

While the first element is discussed earlier, the U.S. Supreme Court explained the second element in *Verizon's Case*:

"*The mere possession of monopoly power, and the concomitant charging of monopoly prices, is not only unlawful; it is an important element of the free-market system. The opportunity to charge monopoly prices- at least for a short period- attracts "business acumen" in the first place; it induces risk-taking that produces innovation and economic growth. To safeguard the incentive to innovate, the possession of monopoly power will not be found unlawful unless an element of anticompetitive conduct accompanies it.*[23]"

The "conduct" mentioned is exclusionary, which U.S. courts interpret as behaviour that harms the competitive process and consumers, rather than just competitors. U.S. law approaches this issue cautiously to avoid condemning aggressive business practices that may only subtly differ

[23] Verizon Communications Inc. v. Law Offices of Curtis V. Trinko, LLP, 540 U.S. 398, 407 (2004).

from anticompetitive conduct. The company's intent is relevant in determining such conduct, as seen in predatory pricing cases.

In U.S. law, an 'Attempted Monopolisation' offence under Section 2 of the Sherman Act is a precursor to actual monopolisation and requires satisfying the following criteria.[24]:

- anticompetitive conduct,
- a specific intent to monopolise, and
- a dangerous probability of achieving monopoly power.

The requirement of 'intent' is more precisely defined in attempted monopolisation cases. A mere desire to increase market share or attract customers away from a competitor is insufficient; a demonstrated intent must be to destroy competition or establish a monopoly. This intent can be proven through direct evidence or inferred from circumstantial evidence. Coupled with 'specific intent' is the necessity of showing a dangerous probability of success, evaluated based on the case's specific circumstances. A relatively high market share and significant barriers to entry increase this probability, and in such instances, U.S. courts have upheld claims of attempted monopolisation.

The elements of this offence include:

i. the existence of a combination or conspiracy,
ii. an overt act in furtherance of the conspiracy, and
iii. a specific intent to monopolise.

The analysis of the conspiracy or combination in this offence follows the same principles that govern conspiracies in restraint of trade cases under Section 1 of the Sherman Act. However, it is essential to distinguish this from the 'Shared Monopoly' or 'joint monopolisation,' where a group of firms that collectively possess monopoly power could be found liable for joint monopolisation. U.S. courts have rejected this concept.[25]

Exclusionary or anticompetitive conduct is necessary to establish claims of both monopolisation and attempted monopolisation. Such conduct can manifest in various forms, including refusal to deal, vertical agreements, sham litigation, bundled and royalty rebates, predatory pricing, tying arrangements, market allocation, and other unfair or malicious

[24] Spectrum Sports, Inc. v. McQuillan 113 S.Ct. 884, 890-91 (1993)
[25] United States v. Yellow Cab Co., 332 U.S. 218 (1947), Paladin Associates, Inc. v. Montana Power Co., 328 F.3d 1145 (9th Cir. 2003)

business tactics. Unlike the EU, the U.S. does not maintain a fixed list of anticompetitive behaviours; these are identified through court decisions. Some of these practices are discussed below:

- Vertical Restraints: While vertical restraints are generally examined under Section 1 of the Sherman Act, which addresses anti-competitive agreements or agreements in restraint of trade, they can also be considered under Section 2 violations. This occurs in cases involving refusal to deal with "disloyal" customers or suppliers, exclusive dealing, tying, bundled pricing, and most favoured customer clauses.
- In the *United Shoe Machinery Case*, the court determined that the defendant violated Section 2 by offering shoe manufacturing equipment exclusively through 10-year leases. This practice discouraged customers from switching to the defendant's competitors. The court reasoned that these long-term leases impeded competitor access to customers more effectively than outright sales. Customers who purchased machinery could resell it and switch to another supplier, but those bound by long-term leases had no practical way to change suppliers during the lease term. The leases also included penalties for early termination, further discouraging customers from switching.[26]
- While monopolisation cases in the U.S. are addressed under Section 2 of the Sherman Act, Section 5 of the FTC Act, which is administrative, is also used in abuse of dominance cases. This enforcement is based on "unfair methods of competition," a concept that some authors compare to "unfairness" in Article 102 of the EU treaty. To provide a more precise understanding, the various categories of exclusionary and exploitative abuses in the U.S. and the EU are discussed and compared separately below.

In the United Kingdom

The United Kingdom has enacted several legislations to safeguard consumer interests, including the Consumer Credit Act 1974, the Unfair Contract Terms Act 1977, the Unfair Terms in Consumer Contract Regulations 1999, and the Unfair Contract Terms Bill. These laws collectively fulfil the requirements set forth by European Union Directives on Consumer Protection. While violations of consumer rights often arise from negligent actions or contractual issues, evolving legal and international perspectives have broadened the scope of

[26] United States v. United Shoe Machinery Corp., 391 U.S. 244 (1968)

liability to include criminal offences. According to Article 2 of the Unfair Commercial Practices Directive of 2005, as the European Court of Justice interpreted, a typical consumer is reasonably well-informed, attentive, and circumspect, considering social, cultural, and linguistic contexts.

Within the United Kingdom, two parallel legal frameworks operate. If a British company holds a dominant position solely within the UK market, Section 18 of the Competition Act 1998 (CA 1998) provisions, as amended by the Enterprise Act 2002, are applicable. Conversely, if a UK company possesses a dominant position in a market that extends to other EU member states, the provisions of Article 102 of the Treaty on the Functioning of the European Union (formerly Article 82 of the EU Treaty) come into play. Since EU law has been integrated into UK law, the fundamental requirements for establishing a violation are generally consistent.

The regulations concerning the abuse of a dominant position apply to "undertakings," a term broadly defined to encompass any entity engaged in economic activities, irrespective of its legal structure or funding methods, consistent with EU legislation. Consequently, public sector bodies involved in financial activities are subject to these rules.

However, certain exemptions exist from the Chapter II Prohibition against the abuse of dominance. These include:

- Undertakings entrusted with providing economic services of general economic interest, but only to the extent that the prohibition would impede their ability to perform these services.
- Mergers that are subject to EU or UK merger control regulations.
- Conduct undertaken to comply with a legal obligation.
- Conduct that the Secretary of State has explicitly excluded from Chapter II of the Prohibition to avoid conflicts with the UK's international obligations or for public policy reasons.

In practice, the Secretary of State has rarely exercised the authority to exclude conduct from the rules on abuse of dominance. One notable instance was in 2007, when an exemption was granted on national security grounds related to complex weaponry; however, this exemption was revoked in 2011.

Case Laws

Albion Water Limited v Dwr Cymru Cyfyngedig:

In the Albion Water case, where Shepherd and Wedderburn represented Albion, Dwr Cymru was found to have misused its dominant market position by imposing an anticompetitive and excessively high price on Albion for the use of its water pipe infrastructure. This resulted in two primary harms:

1) a decrease in the profitability of Albion's water supply to its customers, and

2) the loss of a potentially lucrative supply agreement.

The Competition Appeal Tribunal (CAT) determined that Albion needed to demonstrate both the existence of a loss and a causal link between Dwr Cymru's actions and that loss.

Regarding causation, the CAT reasoned that "it was entirely foreseeable that, by offering an abusive access price and thereby preventing Albion from pursuing its business under a common carriage arrangement, Albion would be hampered in developing its business." To quantify the loss incurred due to the inflated price, the CAT compared Albion's actual earnings during the period the anticompetitive price was in effect with the amount it would have reasonably earned in the absence of such pricing, selecting an average value from a range of plausible figures.

When assessing the loss related to the lost supply contract, the CAT considered the relevant profit margin Albion would have realised under that agreement. While acknowledging the uncertainty surrounding whether Albion would have definitively secured the contract, the tribunal concluded that it was highly probable. To account for this uncertainty and be consistent with prior legal precedents, the CAT reduced the awarded damages by one-third.[27]

Travel Group Plc (in Liquidation) v Cardiff City Transport Services Ltd:

In this instance, the Office of Fair Trading (now the Competition and Markets Authority) concluded that Cardiff City Transport (CCT), a bus operator, had abused its dominant position by engaging in predatory behaviour directed at a new market entrant, 2 Travel. The CAT awarded damages to 2 Travel for lost profits incurred between the start of the infringement and the date 2 Travel entered liquidation. However, the tribunal rejected 2 Travel's other claims, which included losses related to a capital asset, a lost commercial opportunity, and liquidation costs. The CAT reasoned that the liquidation was likely to have occurred regardless of CCT's

[27] [2013] CAT 6

actions, thus establishing no causal link between the infringing conduct and these other losses sustained by 2 Travel.

This case established significant principles regarding exemplary damages. The CAT found that the defendant had acted "in knowing disregard of an appreciated and unacceptable risk that the Chapter II would probably have been violated or would have clearly or deliberately closed his mind to this risk." The CAT emphasised that the purpose of exemplary damages is to "punish and deter." While such awards are uncommon, 2 Travel was granted £60,000, nearly double the compensation for lost profits.[28]

In India

The current legal framework in India concerning market dominance is outlined in the Competition Act, 2002, which addresses this issue comprehensively. However, before examining the current statute, it is useful to consider the approach under the previous legislation, the Monopolies and Restrictive Trade Practices (MRTP) Act, 1969. The provisions of this earlier Act focused on ‘dominant undertakings,’ leading to firms being penalised based on their scale of operations. The term ‘dominant undertaking’ was defined in Section 2(d) as follows: ‘dominant undertaking’ means:

- an undertaking which, either independently or in conjunction with interconnected undertakings, produces, supplies, distributes, or otherwise controls no less than one-fourth of the total goods produced, supplied, or distributed in India or any significant part thereof; or
- an undertaking which provides or otherwise controls no less than one-fourth of any services rendered in India or any significant part thereof.[29]

The SVS Raghavan Committee, established by the Government, clearly articulated that while holding a dominant position is a prerequisite for establishing a violation related to the abuse of dominance, it is insufficient to prove such a violation. Consequently, the committee proposed that "dominance" and "dominant undertaking" should be appropriately defined in competition law as “*the position of strength enjoyed by an undertaking which enables it to operate independently of competitive pressure in the relevant market and also to appreciably affect the relevant market, competitors, and consumers by its actions.*”

[28] [2012] CAT 19
[29] The Monopolies and Restrictive Trade Practices Act, 1969, § 2(d) (Repealed)

The Competition Act 2002 characterises a dominant position (or "dominance") as a position of strength held by a business within the relevant market in India, empowering it to:

- a function autonomously, without being significantly constrained by the prevailing competitive pressures within that market; or
- an influence on its competitors, consumers, or the relevant market in a way that benefits the dominant enterprise.

The crucial determinant of an enterprise's dominant position lies in its capacity to act or behave independently of market forces. In a perfectly competitive market, no single enterprise controls the market, particularly in setting product prices. However, perfect market conditions are more of an economic theoretical concept than a real-world occurrence. Recognising this, the Act outlines several factors to consider when assessing whether an enterprise holds a dominant position.

Dominance gains significance in the context of competition only after the relevant market has been clearly defined. The relevant market is "*the market that the Commission may determine concerning the relevant product, geographic market, or both markets.*" The Act specifies a range of factors, any one or all of which the Commission must consider when defining the relevant market.[30]

The relevant product market is defined based on the principle of substitutability. It represents the narrowest set of products (encompassing both goods and services) that consumers would readily switch between in response to a small but significant and lasting increase in price (SSNIP). For instance, the overall car market might be segmented into distinct 'relevant product markets' for small cars, mid-size cars, and luxury cars, as these categories are not readily interchangeable based on a minor price fluctuation.[31]

The relevant geographic market is "*the area in which the conditions of competition for the supply 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.*[32]"

Historically, dominance has often been defined by the market share held by the enterprise or group of enterprises. Nevertheless, various other elements contribute to determining the level

[30] The Competition Act, 2002, § 2(r)
[31] The Competition Act, 2002, § 2 (t)
[32] The Competition Act, 2002, § 2(s)

of influence an enterprise or a group of enterprises wields within the market. These elements include:

- Market share
- The enterprise's size and available resources
- The size and significance of competitors
- The enterprise's economic strength
- Vertical integration
- The extent to which consumers rely on the enterprise
- The level of barriers to entry and exit within the market
- Countervailing buyer power
- Market structure and the overall size of the market
- The origin of the dominant position, such as whether it was granted by law
- The dominant enterprise's social costs and obligations, as well as its contribution to economic development.

Furthermore, the Commission can consider any other factor it deems pertinent when determining dominance.[33]

While holding a dominant position is not inherently harmful, its misuse is. Abuse occurs when an enterprise or a group leverages its dominant position within the relevant market to exclude others or exploit the situation.

The Act provides a comprehensive list of practices considered an abuse of a dominant position and therefore prohibited. These practices are only classified as abuse when carried out by an enterprise that holds a dominant position within the relevant market in India.

Whether an abuse of dominance has occurred is based on specific actions undertaken by a dominant enterprise, which are forbidden by law. Any instance of abuse, as defined in the Act, by a dominant firm is prohibited.

[33] The Competition Act, 2002, § 19(4)

Section 4 (2) of the Act[34] identifies explicitly the following practices by a dominant enterprise or group of enterprises as abuses:

(i) Directly or indirectly enforcing unfair or discriminatory conditions in the buying or selling goods or services.

(ii) Directly or indirectly imposing unfair or discriminatory prices in buying or selling (including predatory pricing) goods or services.

(iii) Limiting or restricting the production of goods, the provision of services, or the scope of the market.

(iv) Limiting or restricting technical or scientific progress related to goods or services to the detriment of consumers.

(v) Denying market access in any form.

(vi) Making the finalisation of contracts contingent upon the other parties accepting supplementary obligations that, by their nature or according to established commercial practices, are unrelated to the core subject of those contracts.

(vii) Utilising its dominant position in one relevant market to enter or protect another.

According to the Act, "predatory price" refers to "*the sale of goods or provision of services, at a price below the cost, as may be determined by regulations, of production of goods or provision of services, to reduce competition or eliminate competitors.*[35]"

Predatory pricing is an exclusionary tactic that can only be employed by enterprises holding a dominant position within the relevant market.

The key elements considered in determining predatory behaviour are:

- Establishing that the enterprise holds a dominant position in the relevant market.
- The dominant enterprise is pricing the relevant product below cost in the relevant market. [For this purpose, 'Cost' is defined according to the Competition Commission of India (Determination of Cost of Production) Regulations, 2009, as notified by the Commission.]
- The intention to lessen competition or eliminate competitors, traditionally referred to as the predatory intent test.

[34] The Competition Act, 2002, § 4(2)
[35] The Competition Act, 2002, § 4

Obstacles that prevent new businesses from entering the relevant market significantly impede the natural flow of competition. When a dominant enterprise within the relevant market controls essential infrastructure or a facility that is crucial for market access and cannot be easily replicated at a reasonable cost in the short term, nor substituted with other products or services, the enterprise may be required, absent valid justification, to share it with competitors at a fair price. This principle is known as the essential facility doctrine (EFD). The application of the EFD generally requires the fulfilment of the following conditions:

- The facility must be controlled by a dominant firm within the relevant market.
- Competing enterprises or individuals must lack a viable alternative to reproduce the facility.
- Access to the facility must be necessary for effective competition within the relevant market.
- Providing access to the facility must be practically feasible.

Given that these conditions are met and under established competition law principles applicable to the specific situation, the Commission may, under the provisions of Section 4 (2) (c) of the Act[36] (concerning the denial of market access by a dominant enterprise), issue a remedial order mandating that the dominant enterprise share an essential facility with its competitors in downstream markets.

Drawing upon the authority granted by Section 19 of the Act,[37] the Commission is empowered to investigate any alleged violation of Section 4 (1) of the Act,[38] which prohibits the abuse of a dominant position. Section 19 (4) provides a comprehensive list of factors the Commission must consider when investigating any claim of abuse of dominance. These factors include the enterprise's market share, size and resources, the size and significance of its competitors, consumers' dependence on the enterprise, barriers to market entry, and the social obligations and costs within the relevant geographic and product market.

Upon determining a preliminary case of abuse of dominance, the Commission will instruct the Director General to investigate and submit a report. The Commission possesses the powers of a Civil Court under the Code of Civil Procedure concerning matters such as summoning and

[36] The Competition Act, 2002, § 4(2)(c)
[37] The Competition Act, 2002, § 19
[38] The Competition Act, 2002, § 4(1)

enforcing the attendance of individuals and examining them under oath, demanding the discovery and production of documents, and receiving evidence through affidavits. For conducting investigations, the Director General is vested with the powers of a civil court and the authority to conduct 'search and seizure'.

Following an inquiry, the Commission is authorised under Section 27 of the Act[39] to issue one or more of the subsequent orders, among others:

1. Instruct the involved parties to cease from the agreement and to refrain from re-entering into such an agreement.
2. Direct the relevant enterprise to make modifications to the agreement.
3. Instruct the involved enterprises to adhere to any other orders issued by the Commission and to comply with its directives, including the payment of costs, if applicable.
4. Issue any other orders or directions that the Commission deems appropriate.
5. Impose a penalty as it sees fit, which can amount to up to 10% of the average turnover for the preceding three financial years for each individual or enterprise party to bid-rigging or collusive bidding.
6. Section 28 grants the Commission the authority to order the division of an enterprise holding a dominant position to prevent the abuse of that position.[40]

Abuse of Dominant Position in the Digital Market

The digital economy has experienced exponential growth in recent years, transforming the landscape of commerce, communication, and consumer behaviour. With this transformation, competition law and policy have increasingly shifted focus toward regulating practices in online markets, including e-commerce platforms, search engines, social media networks, and app-based service providers. The issue of abuse of dominance has become especially pertinent in this evolving environment, where digital platforms often possess extensive market power.

Dominance in a digital context refers to a platform’s ability to operate without significant competitive constraints, often due to large user bases, proprietary algorithms, or control over

[39] The Competition Act, 2002, § 27
[40] The Competition Act, 2002, § 28

critical data. When such dominance is exploited unfairly, it can lead to anticompetitive practices that hinder market entry for new players, limit consumer choice, and stifle innovation.

One key concern is the concentration of market power in the hands of a few major platforms. These entities often gain substantial control over access to consumers and suppliers alike. For example, in the realm of e-commerce, platforms that dominate product listings and digital advertising may skew search results to favour their own products or services. This not only compromises consumer neutrality but also creates barriers for smaller businesses seeking visibility in the digital marketplace.

Furthermore, data privacy and security are central issues in the digital dominance debate. Leading platforms routinely collect vast amounts of personal and behavioural data, which enhances their market intelligence and user targeting capabilities. However, such data accumulation raises concerns regarding the extent of user consent, potential misuse of personal information, and the implications of data breaches. Consumers often have limited knowledge of how their data is processed or shared, which can lead to exploitative practices.

The case of Shri Shamsher Kataria v. Honda Siel Cars India Ltd. serves as an illustrative precedent in traditional competition law. The Competition Commission of India (CCI) held that exclusive agreements between original equipment manufacturers and overseas suppliers restricted the latter from selling spare parts in the open market, thereby excluding independent service providers, and limiting competition, an exclusionary practice prohibited under the Competition Act.[41]

In the digital realm, consumer choice is another casualty of dominant behaviour. Platforms can manipulate algorithms to prioritise their own offerings, subtly directing user behaviour and reducing market diversity. Additionally, third-party sellers often face platform-imposed fees or changing commission structures that disproportionately affect their profitability, particularly when those fees are designed to benefit the host platform's proprietary products.

Another pressing concern is content moderation and digital censorship. Dominant social media platforms must decide which content is permissible under their policies. While moderation may aim to curb misinformation or hate speech, it also opens the door to arbitrary censorship, potentially affecting freedom of expression and public access to diverse viewpoints.

[41] Case No. 03/2011

Lock-in effects exacerbate the dominance problem. As users invest time, data, and relationships into a platform, the costs of switching increase. This leads to network effects, where the value of a platform grows with each additional user, making it exceedingly difficult for alternatives to gain traction, even if they offer better services or stronger ethical standards.

Allegations of anticompetitive acquisitions have also been made; wherein dominant firms pre-emptively acquire emerging competitors to neutralise future threats. In this way, innovation is stifled, and market evolution is hindered. The All-India Online Vendors Association v. Flipkart case highlighted the difficulty in proving dominance; the Supreme Court held that Flipkart did not hold a dominant position in the relevant market for online retail services in India, and hence, no question of abuse could arise.

The issue of algorithmic transparency further complicates regulatory oversight. Algorithms govern what products, services, or content are promoted to users. If these algorithms are opaque or biased, they can distort competition and manipulate consumer perceptions without scrutiny or accountability.

Another legal milestone is Mohit Manglani v. Flipkart, where the CCI addressed whether exclusive online availability created a distinct market. The Commission concluded that simply selling through online or offline channels does not necessarily form a separate relevant market unless consumer preferences or substitutability differ substantially.[42]

Similarly, in Ashish Ahuja v. Snapdeal, the CCI observed that differences in discount models or user experiences between online platforms did not imply distinct relevant markets. Consumers could choose based on their preferences, indicating that digital and physical platforms may still compete within the same market framework.[43]

Beyond the market definitions and legal tests, regulatory enforcement faces structural challenges. The borderless nature of the internet, coupled with rapid technological advancement and complex corporate structures, complicates national regulatory efforts. However, governments and competition regulators are responding with antitrust investigations, data protection frameworks, and market conduct rules aimed at ensuring fair competition and consumer protection in the digital age.[44]

[42] Case No. 80 of 2014
[43] Case No. 17 of 2014
[44] Yamuna S, Hema, Geetha S, & Shanmathi V, 'Study on Abuse of Dominant Position by Digital Market' (2023) 11(9) IJCRT <https://ijcrt.org/papers/IJCRT2309193.pdf> Accessed 11 May 2025

Case Study of Reliance Jio v. Bharti Airtel

Bharti Airtel, a major player in the Indian telecommunications market, initiated legal action against Reliance Industries and its telecom subsidiary, Reliance Jio Infocomm Limited, alleging violations of India's competition laws. The core of Airtel's allegation centred on the claim that Reliance Industries and Reliance Jio were engaging in anti-competitive practices by colluding and sharing information to provide enhanced services to their customers, thereby contravening provisions outlined in Sections 3[45] and 4 of the Competition Act, 2002. A key element of Airtel's allegation was that Reliance Jio Infocomm Limited was exploiting a dominant market position to engage in predatory pricing strategies aimed at its subscriber base. Reliance Industries (RIL), a diversified conglomerate, ventured into the telecom sector by establishing Reliance Jio Infocomm as a new subsidiary. On September 1, Reliance Jio commenced operations, introducing Voice over LTE (VoLTE) services to its customers. However, this aggressive market entry and the strategies employed by Jio were labelled as predatory by its competitors, most notably Bharti Airtel. Following these allegations, Bharti Airtel formally lodged a complaint with the Competition Commission of India (CCI), urging the regulatory body to investigate its claims. Bharti Airtel contended that Reliance Industries was providing substantial financial backing and support to Reliance Jio Infocomm, particularly during its initial phase of operations. This financial support, Airtel argued, enabled Reliance Jio Infocomm to sustain significant losses in its early months, during which it offered free services to attract a large subscriber base. Airtel asserted that this financial cushioning by Reliance Industries constituted an abuse of dominant position. In assessing whether an enterprise holds a dominant position, the Competition Commission of India considers a multitude of factors beyond just market share. These factors include the size and resources of the enterprise, the economic power of the enterprise, the size and importance of competitors, the dependence of consumers on the enterprise, and the source of the dominant position. This implies that even if Jio possessed a significant market share, the CCI's determination of dominance would necessitate a comprehensive evaluation of these additional factors. Ultimately, the Competition Commission of India ruled on Airtel’s complaint, rejecting the allegations and concluding that Reliance Jio's pricing strategies represented a legitimate form of competitive pricing, rather than an abuse of dominance. The Competition Commission of India (CCI) initiated proceedings after receiving information pursuant to Section 19(1)(a) of

[45] The Competition Act, 2002, § 3

the Act which empowers the Commission to inquire into alleged violations of competition law based on information received from any person, consumer, or association.[46] Acting in accordance with its statutory mandate, the CCI passed an order under Section 26(2) of the Act, which allows the Commission to dismiss a case if it finds no prima facie evidence of contravention. In this case, the information was furnished by Bharti Airtel, one of India's leading telecom service providers.[47] The allegation pertained to the existence of an anti-competitive agreement as well as abuse of dominant position, specifically through the practice of predatory pricing, which could potentially harm fair competition in the telecommunications sector. The Commission carefully reviewed the submissions made by the informant during its regular meeting held on February 23 2017. In addition to reviewing the documentary evidence, the CCI also convened a preliminary conference involving the parties concerned—namely, Opposite Parties 1 and 2 (OP1 and OP2). During this conference, both sides were given the opportunity to present and discuss the documents submitted by the informant, enabling the Commission to assess the merits of the allegations before deciding whether a detailed investigation was warranted.

Bharti Airtel's complaint against Reliance Industries Limited and Reliance Jio Infocom Limited centred on three key contentions, each alleging a violation of the Competition Act of 2002. These contentions are detailed as follows:

1. Predatory Pricing Allegations: Bharti Airtel asserted that Reliance Jio Infocom Limited's pricing strategy amounted to predatory pricing, which is a direct contravention of Section 4(2)(a)(ii) of the Competition Act, 2002.[48] This section of the Act prohibits the abuse of dominant position, and predatory pricing is considered one such abuse. Predatory pricing typically involves setting prices for goods or services below their cost of production with the intention of driving out competitors and establishing a monopoly.

2. Leveraging Financial Strength: Bharti Airtel further contended that Reliance Industries Limited had violated Section 4(2)(e) of the Competition Act, 2002.[49] This section prohibits an enterprise from using its dominant position in one relevant market to enter, or protect, another relevant market. Airtel's allegation was that Reliance Industries

[46] The Competition Act, 2002, § 19(1)(a)
[47] The Competition Act, 2002, § 26(2)
[48] The Competition Act, 2002, § 4(2)(a)(ii)
[49] The Competition Act, 2002, § 4(2)(e)

Limited leveraged its substantial financial strength in other markets to facilitate Reliance Jio Infocom Limited's entry and expansion in the telecommunications market. Specifically, Airtel highlighted that Reliance Jio Infocom Limited offered 4G LTE telecommunication services across 20 telecommunication service areas, effectively covering the entire Indian market.

3. Anti-Competitive Agreement: Finally, Bharti Airtel alleged that Reliance Industries Limited and Reliance Jio Infocom Limited had entered into an anti-competitive agreement, thereby contravening Section 3(1) of the Competition Act, 2002.[50] This section prohibits agreements that cause an appreciable adverse effect on competition within India. Airtel's claim was that Reliance Jio Infocom Limited had access to virtually unlimited funds and resources from Reliance Industries Limited, which had an adverse effect on other telecom competitors in the industry. This easy access to funding, according to Airtel, allowed Jio to engage in practices that harmed competition.[51]

In adjudicating the dispute between Reliance Industries Limited and Reliance Jio Infocomm Limited, the Competition Commission of India (CCI) primarily relied upon Sections 3 and 4 of the Competition Act, 2002, which govern anti-competitive agreements and the abuse of dominant market position, respectively. These provisions are central to India's competition law regime and are frequently invoked in cases where market dynamics are distorted by monopolistic behaviour or collusive practices.

Section 3 of the Act prohibits enterprises from entering into agreements that may cause an appreciable adverse effect on competition within India. This includes agreements between companies that attempt to fix prices, limit production or supply, or share markets. Section 4, on the other hand, addresses the misuse of a firm's dominant position, which refers to a situation where an entity enjoys such a high degree of market power that it can operate independently of competitive forces or can influence competitors and consumers to its own advantage.

The concept of a "dominant position" under Indian competition law signifies a firm's ability to act independently of market constraints. In simpler terms, a company is considered dominant

[50] The Competition Act, 2002, § 3(1)
[51] Tejaswa Mishra & Punyashree S Biswal, 'Case Analysis of Bharti Airtel Ltd. v. Reliance Industries Ltd. & Reliance Jio Infocom Ltd.' (2022) 2(5) IJIRL <https://ijirl.com/wp-content/uploads/2022/09/CASE-ANALYSIS-OF-BHARTI-AIRTEL-LTD-V-RELIANCE-INDUSTRIES-LTD-AND-RELIANCE-JIO-INFOCOM-LTD.pdf> Accessed 11 May 2025

when it has the capacity to influence the market in such a way that it can dictate terms to consumers or exclude competitors. However, dominance per se is not illegal—what the law prohibits is the abuse of this position. Such abuse can manifest in various forms, including but not limited to unfair pricing, predatory pricing, discriminatory conditions, or limiting the production or technical development of goods or services to the prejudice of consumers or competitors.

A dominant firm may, for instance, engage in predatory pricing, which involves setting prices so low—often below the cost of production—that it becomes unsustainable for competitors to survive in the market. Once these competitors are forced to exit, the dominant firm can raise prices or manipulate market conditions without resistance. To qualify as predatory, the firm must (i) hold a dominant position, (ii) price its goods or services below cost, and (iii) have the intent to eliminate competitors and establish monopoly control for future profits.

This form of pricing strategy was central to the case in question. Reliance Jio was alleged to have introduced aggressively low tariffs and offers that potentially fell below cost, raising concerns that such conduct was not merely competitive but strategically anti-competitive with the goal of eliminating rivals like Bharti Airtel.

To better understand the implications of such behavior, reference can be made to the European Commission's decision in the case of France Telecom SA v. European Commission, which involved its subsidiary Wanadoo Interactive.[52] In this case, Wanadoo was found to have engaged in predatory pricing by offering ADSL (Asymmetric Digital Subscriber Line) internet services at a price point below variable costs to French residential customers. The European Commission concluded that Wanadoo had devised a long-term plan to dominate the high-speed internet access market, and that its pricing strategy was designed to stifle competition. During the investigation, it was observed that some of Wanadoo's competitors either exited the market or were unable to compete effectively.

The Commission regarded expenditures such as advertising, promotional campaigns, and introductory offers as variable costs, given their direct link to the objective of acquiring new customers and driving sales. It was determined that Wanadoo's failure to cover even these variable costs evidenced a clear case of predatory intent.

[52] (2009) C-202/07

The relevance of this European case lies in its close resemblance to the allegations against Reliance Jio. Like Wanadoo, Jio was accused of deploying ultra-low pricing strategies that other telecom operators could not match without incurring significant financial loss. This raised red flags about market foreclosure and the long-term implications for consumer welfare, especially if such pricing were to result in reduced competition and eventual price hikes once rivals were pushed out.

The underlying objective of competition law is to prevent the concentration of economic power in the hands of a few, as this can distort the competitive landscape. The judiciary and regulatory bodies aim to ensure a level playing field where all participants, regardless of size, can compete fairly. When a firm leverages its dominance to curtail competition rather than improve efficiency or innovate, it undermines both market integrity and consumer interest.

In sum, the CCI's scrutiny of Reliance's practices under Sections 3 and 4 was grounded in the broader goal of preserving competitive market structures, preventing abuse, and safeguarding long-term consumer welfare in rapidly evolving sectors such as telecommunications.

In the case under consideration, Bharti Airtel Limited, acting as the informant, raised serious concerns regarding the competitive conduct of Reliance Industries Limited (RIL) and its subsidiary, Reliance Jio Infocomm Limited (RJIL). Bharti Airtel alleged that the two entities engaged in practices amounting to predatory pricing, in direct violation of Section 4(2)(a)(ii) of the Competition Act, 2002, which deals with the abuse of dominant position through imposing unfair prices, including predatory pricing, in the market.

According to Bharti Airtel, RJIL was able to offer its services at significantly low or even zero prices due to unrestricted access to the substantial financial and infrastructural resources of RIL. This, the informant contended, gave RJIL an unfair advantage over existing competitors and led to a distortion of the level playing field in the telecommunications sector. The informant further claimed that an anti-competitive agreement existed between RIL and RJIL, which violated the provisions of Section 3(1) of the Act, which prohibits agreements that are likely to cause an appreciable adverse effect on competition in India.

Additionally, Bharti Airtel contended that Reliance Industries Limited had leveraged its dominant position in unrelated sectors such as petrochemicals and retail to enter and disrupt the telecommunications market. This cross-subsidization, they argued, violated Section 4(2)(e) of the Competition Act, which prohibits the use of dominance in one relevant market to enter or protect a position in another. The concern was centered around the fact that RJIL was able

to launch nationwide 4G LTE services across 20 telecom service areas, an ambitious move allegedly supported by RIL's financial muscle, thereby creating undue barriers for other competitors.

Upon review of the allegations and the evidence submitted, the Competition Commission of India (CCI) carefully analysed whether the claims established a prima facie case of abuse of dominance or the existence of an anti-competitive agreement. The Commission found inherent contradictions in Bharti Airtel's arguments concerning predatory pricing. It noted that the informant failed to convincingly demonstrate how RJIL's pricing strategy was the result of unilateral conduct that constituted an abuse of dominance or how it was the outcome of a concerted, anti-competitive agreement between RIL and RJIL.

The Commission acknowledged that providing telecom services at no cost, as was the case during RJIL's initial promotional offers, does not automatically amount to anti-competitive behavior under the Act. According to the CCI, such pricing only becomes objectionable if it is exclusively available to a dominant firm with the specific intent to eliminate competition. In this instance, the Commission clarified that no such evidence had been provided by the informant to substantiate this claim.

Bharti Airtel further alleged that the financial and strategic relationship between RIL and RJIL constituted an anti-competitive arrangement under Section 3(1), and that this allegedly enabled Jio to secure a dominant position in the telecom sector. However, the Commission rejected this claim, noting that Reliance Industries Limited was not actively engaged in the provision of telecom services. As such, its association with RJIL did not fall under the purview of anti-competitive conduct unless it could be shown that such involvement directly distorted market competition.

The Commission also raised an important point regarding the need for businesses to diversify and expand operations into new sectors. It emphasized that interpreting financial backing or support from a parent company as inherently anti-competitive would unduly constrain corporate growth and innovation. Moreover, CCI observed that the telecommunications market in India is characterized by the presence of multiple service providers, offering consumers a wide range of choices. As such, there was no indication of monopolization or consumer dependency on a single service provider, namely RJIL.

Consequently, the CCI concluded that Reliance Jio did not hold a dominant position in the relevant market during the period under examination. Since dominance is a prerequisite for

predatory pricing to be established, and given that Jio lacked such dominance, the Commission held that the allegations of predatory pricing could not be sustained. Therefore, no violation of Sections 3 or 4 of the Competition Act was found to have occurred.

Following the framing of preliminary issues, the Competition Commission of India (CCI) convened an initial conference involving both the informant, Bharti Airtel, and the opposing parties, Reliance Industries Limited (RIL) and Reliance Jio Infocomm Limited (RJIL), to assess the substance of the allegations presented. The Commission initiated its inquiry by interpreting the concept of the "relevant market", a necessary step in any competition law assessment. However, it adopted a narrow interpretation, concluding that the provision of wireless telecom services alone could define the relevant geographic and product market, and that RJIL's role within this framework needed to be evaluated independently.

Bharti Airtel's main contention was that Reliance Industries strategically leveraged its economic and infrastructural strength to facilitate Reliance Jio's entry into the telecom industry. The informant asserted that this entry was not organic but artificially enabled by pre-existing capital, infrastructure, and advantageous partnerships. This claim was substantiated by RJIL's spectrum sharing agreements with Reliance Communications (RCOM), controlled by Anil Ambani, and its substantial 4G infrastructure which reportedly included approximately 2.43 lakh base stations, accounting for around 18% of total industry installations and 66% of the total 4G LTE base stations at the time.

To reinforce its argument, Airtel cited the case of *MCX Stock Exchange v. National Stock Exchange*, where the Commission had established a dual-pronged test for predatory pricing: first, that the pricing strategy must be capable of driving out competitors; and second, that the dominant firm must be in a position to raise prices and recoup losses once competition is eliminated.[53]

From an industry analysis standpoint, it was observed that during its initial years, RJIL offered telecommunication and internet services entirely free of charge, covering both rural and urban areas. Despite incurring interconnect usage charges (IUC) of ₹0.14 per minute for off-network calls, Reliance Jio was able to absorb such losses, suggesting significant financial backing. These services were provided at no cost for six months, after which RJIL introduced paid plans priced at ₹309 and ₹399 for 84 GB of data with unlimited calling. This aggressive entry resulted

[53] 2011 SCC OnLine CCI 52

in an astonishing subscriber base of over 112 million by April 2017, clearly indicating that RJIL had rapidly gained a substantial market foothold.

Despite these indicators, the CCI dismissed Airtel's claim of anti-competitive conduct, asserting that the informant failed to adequately demonstrate how RJIL's actions constituted unilateral conduct or resulted from a collusive arrangement between Reliance Jio and its parent company, RIL. The Commission was of the opinion that merely offering free services does not amount to anti-competitive behaviour, especially if such services are not exclusively provided by a dominant entity with the intent to eliminate competitors.

Furthermore, the Commission noted that the Indian telecom sector was highly competitive, with several well-established players such as Vodafone, Idea, MTNL, and BSNL operating in the same market with similar technical and financial capabilities. It observed that consumers had ample choice among service providers and were not reliant on any single company. Hence, the Commission ruled that Reliance Jio did not hold a dominant position within the relevant market, making it ineligible to be scrutinized under the standards of Section 4(2)(a)(ii) for predatory pricing.

Airtel also contended that RIL and RJIL had entered into an anti-competitive agreement, allegedly violating Section 3(1) of the Competition Act. It argued that Reliance Jio's ability to offer prolonged free services stemmed directly from Reliance Industries' unrestricted financial support, thereby distorting market conditions to the detriment of other competitors. The Commission, however, rejected this claim, maintaining that RIL was not directly engaged in the provision of telecom services. It cautioned that interpreting financial backing from a parent company as inherently anti-competitive could hinder business diversification and market entry across sectors.

Despite the substantial market disruption caused by Jio's entry, the Commission continued to emphasize that a dominant position cannot be inferred merely from financial strength or market entry impact, particularly when the entrant lacks a demonstrable market share advantage or exclusivity. It reiterated that the mere ability to sustain losses does not amount to dominance unless it is wielded to suppress competition unfairly.

Comparative case law, such as *Fast Track Call Cab Pvt. Ltd. v. ANI Technologies Pvt. Ltd.*, was referenced to demonstrate a consistent pattern in CCI's reasoning. In that case, the Commission declined to recognize Ola's aggressive pricing strategy as predatory, ruling instead that such

pricing was typical of new entrants trying to establish a market presence.[54] It expressed concern that treating such market behavior as dominance might deter innovation and investment, thereby chilling healthy competition.

Nevertheless, critics have argued that the Commission, both in the Ola and Jio cases, overlooked significant factual indicators. Specifically, they contend that Jio's ability to sustain substantial losses, its unmatched reach in the 4G space, and swift customer acquisition were not given due weight in assessing whether it had de facto market dominance despite being a new entrant.

The Commission's decision has been a turning point in India's digital transformation, with Reliance Jio evolving into a USD 26 billion entity under the umbrella of Reliance Industries. However, this transformation has come at a considerable cost to other telecom operators. Reports indicate that since Jio's launch in 2016, Bharti Airtel suffered a 54% loss in that year alone, and several competitors exited the market. From nine private telecom players in 2016, only three major private operators—Jio, Airtel, and Vodafone—remain today.

In hindsight, while Jio's market entry contributed to making mobile data significantly more affordable across India, it also fundamentally altered the competitive structure of the telecom sector. By holding a narrow interpretation of "dominant position" and requiring formal dominance at the time of alleged predation, CCI arguably left space for large, financially powerful entities to structure their market entry in ways that may sidestep scrutiny, despite having the potential to reshape market dynamics and displace competitors.

Predatory pricing is a strategic practice wherein a firm, often a new entrant in a particular market, offers goods or services at extremely low or even zero prices. The goal of this pricing model is typically to capture a substantial share of the market rapidly by attracting consumers away from existing competitors. Once a significant portion of the market is secured and rival firms are driven out or severely weakened, the predatory firm can then raise prices to recoup its earlier losses. This tactic is particularly problematic from a competition law perspective when it is deployed by firms with substantial financial backing, enabling them to sustain low pricing over an extended period without compromising their long-term viability.

In this case, the Competition Commission of India (CCI) was tasked with evaluating whether Reliance Jio's offer of free voice calls and data services during its initial rollout amounted to

[54] 2017 SCC Online CCI 36

an abuse of dominance through predatory pricing, in violation of Section 4(2)(a)(ii) of the Competition Act, 2002. This provision explicitly prohibits any enterprise from imposing unfair or discriminatory pricing, including unfair purchase or selling prices, that adversely affects competition in the market.

Bharti Airtel, the informant in the case, argued that despite being a new entrant in the telecom sector, RJIL (Reliance Jio) had access to the vast financial and infrastructural resources of its parent company, Reliance Industries Limited (RIL). This financial leverage, Airtel claimed, enabled Jio to sustain zero-cost pricing strategies far longer than any other player in the industry could manage. As evidence, Airtel pointed to Jio's rapid acquisition of a 72.3 million user base within just four months of launching, which was facilitated by offering free voice and data services across India and using the extensive 2300 MHz 4G spectrum held by RIL. These factors, the informant argued, were not merely promotional but amounted to a calculated plan to disrupt the market and eventually monopolize it.

While CCI acknowledged the aggressive nature of Jio's pricing, it ultimately held that there was no demonstrable intent on the part of RJIL to engage in predation for the purpose of eliminating competitors. The Commission concluded that Jio's actions aligned more closely with a penetration pricing strategy, a legitimate commercial approach commonly used by new entrants to gain initial traction in a competitive market. It was emphasized that dominance is a precondition for a firm to be held liable for predatory pricing, and given that Jio was a new entrant at the time, it could not be considered dominant in the relevant market.

However, this interpretation has attracted substantial criticism. A compelling argument can be made that intent is not always evident in such pricing strategies, and the mere absence of explicit intent should not exonerate a firm whose conduct has the practical effect of eliminating competition. Moreover, while RJIL was new to telecom services, RIL itself was not new to consumer markets and already enjoyed substantial brand value, economic influence, and market goodwill. Critics argue that this enabled Jio to enter the market with an existing advantage not typically available to a new entrant. The ability to absorb prolonged financial losses—due to RIL's backing—demonstrates a form of structural dominance, even if not formally recognized by market share alone.

The Commission's reliance on economic indicators and the formal definition of dominance was seen as too narrow. Detractors argue that other indicators of dominance, such as the ability to sustain zero pricing over several months, aggressively acquire market share, and recover

losses by gradually increasing prices, should also be taken into account. It was later observed that RJIL began to incrementally increase prices once a significant consumer base had been secured. Over time, Jio emerged as the only profitable telecom operator, boasting a market share of 35%, further reinforcing concerns that predation had occurred, masked initially under the guise of market entry strategy.

Notably, the Telecom Regulatory Authority of India (TRAI) had ruled that Jio's entry did not meet the criteria for predatory pricing, reinforcing the CCI's conclusion. However, this decision too has been challenged, with critics asserting that the combination of RIL's financial muscle and Jio's strategic market conduct created a competitive imbalance that went unaddressed by regulators.

In conclusion, while the CCI chose to interpret Jio's conduct as legitimate market penetration, the underlying evidence—such as prolonged zero pricing, rapid and unprecedented market capture, and a subsequent pattern of price increases—suggests that the boundaries between penetration pricing and predatory pricing were blurred. By narrowly interpreting the requirement of market dominance and downplaying the broader economic influence of corporate groups, the Commission may have overlooked the cumulative competitive harm caused by such practices. The case underscores the need for a more holistic and forward-looking approach in assessing predatory conduct in sectors characterized by high capital investment, network effects, and long-term strategic planning.

The order issued by the Competition Commission of India (CCI) concerning alleged anti-competitive behavior in the telecommunications sector was set aside by the Bombay High Court. The High Court based its decision on the principle that the Telecom Regulatory Authority of India (TRAI), being the designated sectoral regulator for telecommunications, should be the first authority to examine issues falling within its specialized domain. The Court emphasized that the TRAI Act, 1997, governs technical and regulatory aspects of the telecom industry, and that the CCI's jurisdiction in this context would be secondary, i.e., it could only be invoked after TRAI had concluded its adjudication under the provisions of its enabling statute.

When the matter reached the Supreme Court, the counsel representing both the CCI and Reliance Jio Infocomm Limited challenged the High Court's interpretation. They contended that the TRAI and CCI operate in distinct regulatory spheres, each with a clearly defined mandate. The arguments advanced pointed out that the subject matter before the CCI involved

an alleged cartel arrangement or anti-competitive agreement under Section 3(3)(b) of the Competition Act, 2002, wherein it was alleged that incumbent telecom operators had acted in concert to impede Jio's entry into the market. This issue, they argued, fell squarely within the CCI's purview.

Conversely, the proceedings before the TRAI concerned alleged violations related to the terms of telecom licenses, issues regarding interconnection obligations, and quality of service standards — all of which are technical and regulatory in nature. Given this divergence, the petitioners argued that there was no overlap, and both authorities could function concurrently within their respective domains. Thus, it was submitted that CCI should not be required to wait for TRAI's decision, and should be allowed to proceed with its investigation independently.

On the other hand, the respondent parties, supporting the Bombay High Court's decision, strongly argued that since TRAI is the specialized regulator with domain-specific knowledge and technical expertise in telecommunications, it alone should have the initial jurisdiction to address such matters. They asserted that the CCI lacks the technical competence to adjudicate issues relating to interconnection, spectrum allocation, and telecom licensing, and therefore should not intervene in disputes involving telecom regulatory frameworks. They also contended that permitting CCI to proceed would create jurisdictional confusion and regulatory uncertainty.

The Supreme Court, however, adopted a balanced approach, partially accepting and partially rejecting the contentions of both sides. It sought to harmonize the functioning of both regulatory authorities by interpreting the relevant provisions of the Competition Act and the TRAI Act in a complementary manner. The Court placed emphasis on Section 21 of the Competition Act, 2002, which envisions coordination and consultation between the CCI and other statutory regulators in matters of overlapping jurisdiction. It observed that this provision indicated the legislature's intent to avoid conflicting regulatory outcomes.

Accordingly, the Supreme Court ruled that TRAI must have the primary authority to adjudicate issues falling squarely within its technical domain—particularly those involving license conditions, interconnection disputes, and service quality obligations. However, once TRAI has rendered its findings, the CCI would be empowered to initiate an investigation under Section 26 of the Competition Act to evaluate whether the actions in question constituted anti-competitive conduct or abuse of dominance.

The Court clarified that this sequence of adjudication did not undermine or oust the CCI's jurisdiction. Rather, it postponed its activation to a later procedural stage. The Court's rationale was to avoid parallel or premature inquiries that could result in contradictory findings. It further noted that such an approach was consistent with Section 60 of the Competition Act, which asserts the Act's overriding effect over inconsistent provisions in other legislation, unless otherwise provided. However, it did not interpret this section to mean that the CCI's jurisdiction could override TRAI's in the first instance where specialized sectoral expertise was necessary.

Ultimately, the Court reaffirmed the autonomy and jurisdiction of both regulators, stating that while the CCI retains the authority to investigate anti-competitive conduct, it must defer to TRAI's regulatory process in cases that involve a primary telecom regulatory framework. This interpretation preserved the legislative intent behind both statutes and ensured that neither body undermines the other's core functions.

By issuing this judgment, the Supreme Court has attempted to synchronize the objectives of economic competition law with sectoral regulation. It explicitly rejected the view that CCI was entirely precluded from intervening in telecom sector disputes. Rather, it laid down a sequential framework, ensuring that TRAI first completes its analysis, after which CCI may assess any competition-related implications. The ruling thus promotes regulatory comity while safeguarding the integrity of both legal regimes.

This landmark judgment not only delineates the division of jurisdiction between TRAI and CCI but also establishes a procedural roadmap for dealing with multi-regulatory disputes, especially in sectors characterized by rapid technological innovation and overlapping legal frameworks.

The Supreme Court of India has consistently followed a well-settled legal approach when adjudicating disputes involving potential conflicts of jurisdiction between two statutory regulatory authorities. In such cases, it is the established trend for the Apex Court to adopt a principle of harmonious construction, aiming to uphold the spirit and objectives of both regulatory statutes without allowing one to override or diminish the scope of the other. Rather than asserting the dominance of one statute over another, the Court endeavors to strike a delicate balance between the jurisdictions of the regulatory bodies involved, ensuring that each authority is allowed to function within the domain specifically allocated to it by the legislature.

In this context, the Supreme Court's decision in the matter involving the Competition Commission of India (CCI) and the Telecom Regulatory Authority of India (TRAI) exemplifies this principle. Recognizing that the matter pertained to the telecommunications sector—a

domain primarily governed by the TRAI Act, 1997—the Court acknowledged that TRAI, as the sector-specific regulator, possesses the requisite technical expertise and statutory mandate to address disputes concerning licensing conditions, interconnection agreements, and quality of service obligations. Consequently, the Court conferred initial jurisdiction to TRAI, allowing it to examine and determine the technical and regulatory aspects of the dispute in the first instance.

However, in doing so, the Court was careful not to curtail the powers vested in the CCI under the Competition Act, 2002. It held that while TRAI should take the lead in resolving issues within its sectoral purview, if the findings and conclusions reached by TRAI reveal the existence of prima facie evidence of anti-competitive conduct, such as cartelization or abuse of market dominance by service providers, then the CCI is well within its rights to initiate an investigation. This subsequent inquiry would proceed in accordance with Section 26 and other relevant provisions of the Competition Act, enabling the CCI to address potential violations of competition law based on TRAI's factual findings.

This sequential regulatory approach ensures that both authorities—TRAI and CCI—operate without jurisdictional overlap while still allowing for comprehensive adjudication of both sector-specific regulatory compliance and economic competition issues. The Supreme Court's ruling thus reflects a balanced and pragmatic interpretation of the two statutes, wherein TRAI exercises its mandate first, and if necessary, the CCI is activated later to address broader issues of market fairness and competitive practices.

Moreover, this interpretation is also consistent with Section 60 of the Competition Act, which grants the statute an overriding effect in case of inconsistencies with other laws. However, rather than construing this provision as an absolute override, the Court interpreted it in a harmonious and non-conflicting manner, ensuring that the objectives of both the TRAI Act and the Competition Act are fulfilled without mutual exclusion.

In essence, the Supreme Court's approach in such matters underscores the importance of institutional cooperation, regulatory comity, and judicial restraint. By upholding the specialized role of TRAI while preserving the enforcement powers of the CCI, the Court fosters a legal environment where sectoral regulation and market competition enforcement can coexist, ensuring both technical integrity and economic fairness in complex regulatory landscapes.

Conclusion

The case of Bharti Airtel v. Reliance Industries Ltd. and Reliance Jio Infocomm Ltd. represents a watershed moment in the evolving landscape of Indian competition law, especially concerning the interpretation and application of Section 4 of the Competition Act, 2002. At its core, the dispute revolved around the fundamental question of whether a new entrant with substantial financial backing—such as Reliance Jio—can be held accountable for engaging in predatory pricing and abusing a dominant position, particularly when such pricing results in significant disruption to the market.

The Competition Commission of India (CCI), in its assessment, chose to adopt a cautious and formalistic approach, emphasizing the necessity of establishing actual market dominance as a prerequisite for any finding of abuse. By classifying Reliance Jio's conduct as legitimate market penetration rather than predation, the Commission reinforced the principle that aggressive pricing alone does not constitute anti-competitive conduct unless it is accompanied by market dominance and an intent to eliminate competition. This interpretation, while grounded in statutory requirements, arguably failed to fully appreciate the broader economic and strategic context—specifically, the extent to which structural dominance, cross-sectoral financial leverage, and sustained zero-pricing could distort competitive equilibrium in the long run.

The case also brought to light the jurisdictional interplay between the TRAI and the CCI. The Supreme Court's intervention clarified that while TRAI, as a sectoral regulator, has the initial authority to adjudicate on technical and licensing issues, the CCI retains jurisdiction to investigate anti-competitive agreements and abuse of dominance once TRAI concludes its proceedings. This harmonised approach safeguards both regulatory expertise and the integrity of competition enforcement, ensuring that the unique mandates of each body are preserved without jurisdictional encroachment.

From a policy standpoint, the case underscores the challenges of regulating competition in rapidly evolving sectors such as telecommunications and digital markets. It reveals the limitations of conventional legal thresholds—such as market share and formal dominance—in capturing the nuanced forms of market influence exerted by large corporate conglomerates. As digital platforms increasingly leverage economies of scale, cross-market integration, and user data, Indian competition law may need to evolve toward a more effects-based and dynamic analysis.

In conclusion, the Reliance Jio case is not merely a reflection of one telecom operator's market strategy; it is a case study in how innovation, financial strength, and aggressive competition intersect with regulatory frameworks. It highlights the necessity for Indian competition authorities to adopt a more holistic and forward-looking approach that goes beyond formalistic definitions and embraces the economic realities of modern market structures. As India's digital economy continues to expand, ensuring fair competition without stifling innovation will remain one of the central challenges for regulators, courts, and policymakers alike.