LEXKHOJ RESEARCH JOURNAL OF LAW & SOCIO-ECONOMIC ISSUES

ISSN: 2456-4524

VOLUME I ISSUE IV

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AN ANALOGICAL STUDY TO DETERMINE THE PARAMETERS OF ABUSE OF DOMINANT POSITION IN INDIAN JURISDICTION

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Abstract

The objective of competition law regime in any state is the promotion of competition and ensuring fair-play in the market. With greater competition in the market, enterprises face the challenge to protect their market share. While this applies to the majority of the players in the market; for those enjoying market power it is not so difficult. The perk of being dominant in the market for any enterprise is the control it enjoys over the market. It is this control over the market that can prove detrimental to the business of the competitors and mar consumer interest. Preventing abuse of dominant position is therefore, one of the major concerns of competition law in any jurisdiction.

When patrolling abuse of dominant position by an enterprise, the first task with competition regulators is to determine their dominance in the relevant market. Various economic factors are taken into account to evaluate whether an undertaking is in a dominant position. The paper analyses the parameters adopted to determine abuse of dominant position in India. In addition, it will examine the approach towards the issue in foreign jurisdictions, especially the US and the EU and compare them with that in India.

Keywords: Dominance, Relevant Market, Abuse of Dominant Position.

INTRODUCTION

The objective of competition law regime in any state is the promotion of competition and ensuring fair-play in the market. With greater competition in the market, enterprises face the challenge to protect their market share. While this applies to the majority of the players in the market; for those enjoying market power it is not so difficult. The perk of being dominant in the market for any enterprise is the control it enjoys over the market. It is this control over the market that can prove detrimental to the business of the competitors and mar consumer interest. Preventing abuse of dominant position is therefore, one of the major concerns of competition law in any jurisdiction.

Across jurisdictions, the concept of abuse of dominance is present in the statues but the provisions are not as such. While Australia has a concept of "misuse of market power"; "monopoly" or "attempt to monopolize" is present in the United States (US) texts. Both of these concepts envisage similar situations, but their meaning is not exactly similar to "abuse of dominance" used in European Union (EU) and India. Although, all these conceptions essentially "pertain to the exploitation by a single firm or group of firms of their market power or use of improper means for attaining market power".[1]

The present work is an attempt to study the provisions on the subject of abuse of dominance in India. Throughout the paper, parallels are drawn with provisions in the EU and the US. The paper first introduces the readers, in Chapter II, the concept of Relevant Market that is a pre requisite in any case of abuse of dominance. Chapter III contains the definition of "Dominance" and includes the various factors that are taken into account to establish "dominance of an enterprise in the relevant market". Chapter IV focuses on the various activities that are termed as abuse and the parameters to deal with the same.

Before we move to the chapters that follow, it is to be kept in mind that in most jurisdictions, being in a dominant position is not a violation of the competition law. It is the abuse of such dominance that the law tries to curb. This is because an improper conduct by an enterprise in a dominant position in the market would be detrimental to the business interests of the fellow players in the market as well as be against consumer welfare. There is a general prohibition on the "abuse of dominance" by enterprises in the EU and Indian competition laws. In the

[1] Van Sicen, Saly : Background Note in OECD (1995) ―Abuse of Dominance and Monopolization‖, http://www.oecd.org/dataoecd/024/611/2371239409.pdf

European Union, "Any abuse by one or more undertakings of a dominant position within the internal market or a substantial part of it shall be prohibited as incompatible with the internal market in so far as it may affect trade between Member States".[2] While in India, "No Enterprise shall abuse its dominant position".[3]

In determining whether an enterprise has abused its dominant position or not, there are essentially three stages. The first stage is to define the relevant market. The second is to determine whether the enterprise/firm/undertaking in question is in a dominant position/ has a considerable degree of market power/ has monopoly power in that relevant market. The third stage is to determine whether the said undertaking has engaged in conducts specifically prohibited by the statute or those amounting to abuse of dominant position/monopoly or attempt to monopolize under the applicable law.

RELEVANT MARKET

Defining the relevant market is the very first step while determining if a firm or enterprise or undertaking has abused its dominant position or not. It is only when the relevant market has been defined that dominance has its significance for competition. Relevant market means "the market that may be determined by the Commission with reference to the relevant product market or the relevant geographic market or with reference to both the markets".[4] The Act lays down several factors of which any one or all shall be taken into account by the Commission while defining the relevant market. There are two dimensions to the concept of relevant market the "relevant product market" and the "relevant geographical market".

As per Blacks Law Dictionary (7th Ed.), "the product market is that part of the relevant market that applies to a firm's particular product by identifying all reasonable substitutes for the product and by determining whether these substitutes limit the firm's ability to affect prices". It means-

[2] *Article 102 (ex Article 82 of the EC Treaty)* of the *Treaty on the Functioning of the European Union*

[3] *Section 4 (1)* of the *Indian Competition Act*

[4] Section 2 (r) of the Competition Act, 2002

"a market comprising all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use."[5]

The relevant geographical market is a market incorporating that domain in which the situations for the source of items and organizations are unmistakably similar and can be perceived from the conditions winning in the region regions. It means, "a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighboring areas."[6]

The Courts of most jurisdictions analyzed have watched the essentialness of describing the "relevant market" (both geographical and product) as the underlying stage in choosing the "abuse of dominance"/ "abuse of market power"/ monopoly or try to store. In India, the statute itself communicates that for choosing the relevant market, the relevant product market or the relevant geographic market, or both are to be considered.

The European Court of Justice (ECJ) has in various decisions such as Hoffman La Roche v. Commission of the European Communities[7] (1979), NV Nederlandsche Banden Industries Michelin v. Commission of the European Communities, Oscar Bronner GMBH[8] (1998) observed that "it is essential to define the relevant market and it must be defined both from the geographical and the product points of view."

The importance of defining the relevant market in the initial stages has also been laid down by the American courts, referring to both the product and geographic aspects. In cases such as Walker Process Equipments Inc. v. Food, Machinery & Chemical Corp.[9], it was observed that "without a definition of the relevant market, there is no way to measure the defendants' ability to lessen or destroy competition." In Image Technical Services Inc. v. Eastman Kodak

[5] Section 2 (t) of the Competition Act, 2002

[6] Section 2 (s) of the Competition Act, 2002

[7] Para 34, Available at http://europa.eu.int/smart.ape/cgiei/sga_doc?smart.api!!celex.plus!prod!!CELEXnum.doc&lg==en&numdoc=61976J0H345085

[8] http://www.worldlii.org/eu/cases/EUECJ/1999/C779.html

[9] *328 US 127*

Co. US Court of Appeals (9 Circuit)[10], the court observed that "The relevant market is the field in which meaningful competition is said to exist. Generally, the relevant market is defined in terms of product and geography." The Supreme Court enunciated the standard for describing the relevant product market in US v. E.I. du Point de Nemoures & Co.[11] "A relevant product market consists of products that have reasonable interchangeability for the purposes for which they are produced Ä price, use and qualities considered."

The Indian Competition Act, 2002, as mentioned earlier, expressly provides in Section 19(5) that "the Competition Commission shall have due regard to the relevant product market and the relevant geographical market in determining whether a market constitutes a relevant market for the purposes of the Act." The definition of relevant market provided by Section 2(r) of the Act also states that "the relevant market means the market that may be determined by the Commission with reference to the relevant product market or the relevant geographical market or with reference to both."

"Relevant product market" and "relevant geographic market" have been specifically defined in the Indian Competition Act. Section 2 (t) defines the relevant product market as –

"a market comprising all those products or services which are regarded as interchangeable or substitutable by the customer, by reason of the characteristics of the product or service, the prices and the intended use."

Section 2 (s) defines the relevant geographic market as –

"a market comprising the area in which the conditions of competition for supply of goods or provision of services are sufficiently homogeneous and can be distinguished from the conditions prevailing in neighborhood areas."

DOMINANT POSITION

While the laws of numerous countries prohibit or declare illegal the abuse of dominant position/monopoly or attempt to monopolize/ the misuse of market power or provide for a prohibition of certain conduct by undertakings in a dominant position/ having a substantial degree of market power, the manner in which "dominant position", 'monopoly' or

[10] http://lw.bna.com/lw/19970916/9615293.htm

[11] 350 U.S. at 440

'substantial degree of market power' is defined is different in different countries. 'The concept of dominance is broader than economic power over price. It is not the same as economic monopoly, although a monopoly would clearly be dominant'.[12] The general significance of dominant position or market power followed in jurisdictions, for instance, the European Commission and India consider the limit of a firm or dare to bear on openly of its opponents and the nonappearance of competition or prerequisite from the conduct of contenders.

The Indian Competition Act contains a definition of dominant position that takes into account whether the concerned enterprise is in such a position of economic strength that it can operate independently of competitive forces or can affect the relevant market in its favors. However, before going into that it will be beneficial to examine the position under the old law, which is The Monopolies and Restrictive Trade Practices (MRTP) Act, 1969. The provisions of this Act were targeted at "dominant undertakings" and as a result firms were being hit merely due to their size. The term "dominant undertaking" was defined under Section 2(d) which is as follows:

(d) "dominant undertaking" means

(i) an undertaking which by itself or along with inter-connected undertaking produces, supplies, distributes or otherwise controls not less than one-fourth of the total goods that are produced, supplied or distributed in India or any substantial part thereof, or;
(ii) an undertaking which provides or otherwise controls not less than one-fourth of any services that are rendered in India or any other substantial part thereof.

The SVS Raghavan Committee set up by the Government set down in superbly clear terms that regardless of the way that dominance is an essential condition for setting up encroachment of obtainment as for abuse of dominant position: it is by no means, a satisfactory condition. Subsequently the board prescribed that "dominance" and "dominant undertaking" may be suitably portrayed in the competition law in terms of "the position of strength enjoyed by an undertaking which enables it to operate independently of competitive

[12] OECD (2006): ―Competition law and Policy in the European Union‖, http://www.oecd.ord/data.oecd/7/411/35909008641.pdf

pressure in the relevant market and also to appreciably affect the relevant market, competitors and consumers by its actions"[13]

Following the recommendations of the Raghavan Committee, Competition Act, 2002 was enacted which includes Section 4, prohibiting the abuse of dominant position by enterprises. Explanation (a) to Section 4 of the Indian Competition Act defines dominant position as-

"dominant position means a position of strength, enjoyed by an enterprise, in the relevant market in India, which enables it to-

(i) operate independently of competitive forces prevailing in the relevant market or,

(ii) affect its competitors or consumers or the relevant market in its favor.

It is intriguing to note that dominant position is not described on the reason of any arithmetical parameters or a particular offer of the market like the case in the MRTP Act. 1969. On the other hand, dominance of an endeavor is to be judged by its vitality to work uninhibitedly of centered forces or to impact its opponents or buyers to bolster its. In this way, an endeavor with an offer of say under 25% of the market could be made plans to be the "dominant" in case it satisfies the above criteria: on the other hand, a try with higher market offer may not be considered as "dominant" in case it doesn't meet the criteria indicated in the Act. The Act also sets out different variables which the Commission needs to think about in making sense of if an endeavor welcomes a dominant position or not, such as market share, size and resources of the enterprise, size and importance of competitors, economic power of the enterprises, vertical integration of the enterprises, Entry barriers, etc. which would involve a fair amount of economic analysis.

There is no specific definition of "dominant position" in the EC Treaty. However, the ECJ has in certain judgements defined "dominant position". For instance, In United Brands Co. & United Brands Continental B.V. v. The Commission of European Communities[14], and Hoffman La Roche v. Commission[15], it was perceived that Dominant position under Article 86 of the EC Treaty as-

[13] Report of the High Level Committee on Comp. Law and Policy, 2000 at 4.44

[14] *(1978) 1 CMLR 429*

[15] [1979] E.C.R.-461

"a position of economic strength enjoyed by an undertaking which enables it to prevent effective competition being maintained on the relevant market by affording it the power to behave to an appreciable extent independently of its competitors, its customers and ultimately of the consumers."

Certain authors have seen two elements in this definition, namely (i) the power to behave independently of competitors, customers and consumers; and (ii) the ability to prevent effective competition being maintained on the relevant market.[16] However, as Neven, Nutall and Seabright have rightly observed, it seems that on the legal ground, these elements are simply one and the same thing.[17] This is confirmed by the rulings of the Community Courts which have never drawn any distinction between these elements.

As mentioned earlier, under the antitrust law of the United States, the term corresponding to "dominant position" is "monopoly". "Monopoly Power" is defined as the power of the concerned entity to control prices or to restrict or exclude competition. In United States v. E.L. du Pont de Neumours and Co[18], it was observed that, "Our cases determine that a party has monopoly power if it has, over "any part of the trade or commerce among the several States." a power of controlling prices or unreasonably restricting competition". In Jefferson Parish Hospital Distt No. 2 v. Hyde[19], citing inter alia United States Steel Corp. v. Fortner Enterprises, 492 U.S. 601, (1978), it was observed that "market power is the ability to raise prices above those that would be charged in a competitive market."

In American Tobacco Co. v. United State[20], it was observed that-

"the authorities support the view that the material consideration in determining whether a monopoly exists is not that prices are raised and competition is actually excluded but that power exists to raise prices or to exclude competition".

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[16] M. Bishop and S. Walker, ―*The Economics of EC Competition Law*‖, 3rd Ed. Sweet and Maxvell, London, 2001 at para. 5.06

[17] R. Neven, P. Nutall and D. Seabright, ―*Merger in Daylight – The Economics and Politics of European Merger Control*‖, CEPR, 1994 at pg.18.

[18] *351 US 377 (1956)*

[19] *466 US 2 (1984)*

[20] *328 U.S. 781 (1946)*

FACTORS FOR DETERMINATION OF DOMINANCE

In the Antitrust arena, an enterprise is said to have a dominant position in the market when it enjoys a certain amount of control in the said market. Across jurisdictions, there are different criteria for observing if an enterprise enjoys a dominant position or not. To a layman, market share would be a synonym to dominant position. But in Antitrust Law it is not the case. Although, market share is an important aspect of deciding on the issue of dominance but there are various other factors such as the size and resources of the enterprises, size of the competitors etc. that come into play to come to a final decision.

A number of factors are taken into account to determine whether a particular undertaking or group of undertakings is in a dominant position in the relevant market. "The factors to be taken into account are market share of the undertaking or enterprise, barriers to entry, size of competitors and financial power of the enterprise. In some jurisdictions, the competition legislations themselves specify the factors to be taken into account but in others case laws may have to be looked into to identify the factors." The Indian Competition Act expressly lays down the factors that are to be taken into account to determine dominant position.

Under Section 19 (4) that "the Commission may have regard to certain factors for determining whether an enterprise is in a dominant position including market share of the enterprise, size and resources of the enterprise; size and importance of competitors; economic power of the enterprise including commercial advantages over competitors, vertical integration of the enterprises or sale or service network of such enterprise; dependence of consumers on such enterprise, monopoly or dominant position whether acquired as a result of any statute or by virtue of being a government company or public sector undertaking or otherwise; entry barriers including barriers such as regulatory barriers, financial risk, high capital cost of entry, marketing entry barriers, technical entry barriers, economies of scale, high cost of substitutable goods or service for consumers; countervailing buying power; market structure and size of market; social obligations and social costs; relative advantage by way of the contribution to the economic development by the enterprise enjoying a dominant position having or likely to have an appreciable adverse effect on competition; or any other factor which the commission may consider relevant for the inquiry."

Under the competition laws of the EU, also, it has been accepted that market share is one of the significant pointers of dominant position. The DG Competition discussion paper on "the Application of Art. 82 to Exclusionary Abuses" records that market shares offer valuable first signs of the market structure and of the relative significance of the several undertakings vigorous on the market[21].

An OECD Paper on competition law and policy in the EU[22], records that "dominance depends upon factors other than market share, such as the number and relative size of other firms and the conditions of entry. A finding of dominance is more plausible if segment is troublesome or there are the same firms of proportional size or with capacity to counter the pioneers' systems." Moreover, the DG Competition discussion paper on "the Application of Art. 82 to Exclusionary Abuses" observes that when the relevant market has been portrayed, it can be researched if on the market the as far as anyone knows dominant undertaking can act to a measurable degree self-governing of its adversaries, customers and in the end of its purchasers, that is, "whether it holds liberal market power. In conducting this analysis, it is relevant to consider in particular, the market position of the competitors, barriers to expansion and entry, and the market position of the buyers."[23]

Once the relevant market(s) has been defined, the status of the enterprise is assessed according to several criteria. An almost universally applied criterion is that of "market share", although the details of extent are certainly different. The utilization to which the basis is put might vary, differently making, e.g., safe harbors, a refutable assumption of dominance or a refutable assumption of non-dominance. Likewise, the elucidation of specific estimations of market offer varies.

The accompanying observers recommend the varieties in understanding of estimations of market shares that exist among jurisdictions. Whish says that "the Commission of the EU has taken the view that a dominant position can generally be taken to exist when a firm has a market share of 40-45 per cent, and cannot be ruled out in the range 20-40 per cent." On the other hand, Hovenkamp says that "courts in the United States consistently find market shares of 80-90 per cent and higher to be sufficient to conclude that the defendant is a monopolist. They also consistently find market shares of less than 50 per cent to be insufficient. A

[21] http://europa.eu.int/comm/competition!/antitrust/others/disc.paper/03/34/34577213.pdf
[22] http://www.oecd.org/data.oecd/3/214/2496837266.pdf

[23] http://europa.eu.int/comm/competition/antitrust/others/discpaper.pdf

majority of courts are reluctant to find sufficient monopoly power when the market share is less than 70 per cent." Other American commentators say that “a market share of over 70 per cent is regularly sufficient to support a refutable construing of monopoly and that a market share of fewer than 40 for every penny for all intents and purposes hinders a finding of monopoly.”

Other criteria that may be useful include the presence of barriers to extension by rival firms, other firms' market shares, the presence of big purchasers, access to capital in instances of apparent, degree of vertical integration, and the incidence of abuse. Regardless of having certain components in like manner - thoughtfulness regarding piece of the pie and to section hindrances - there seem, by all accounts, to be a few unmistakable ideas in this classification. "Dominant position" in the Canadian sense may or may not differ from a "dominant position" in a European Union sense. "Monopolisation" in the United States is not corresponding to European Union "dominant position," seeming at least to entail a much higher market share. Relating honest to goodness thoughts in various purviews evidently moreover move. The whole deal effect of judges actualizing two courses of action of competition laws (in EU Member countries) and offended gatherings and complainants referring to other purviews' statute may be blending towards one or more measures.

PARAMETERS TO DETERMINE ABUSE

The competition laws of many OECD countries contain a concept of single firm exploitation of market power or use of improper means of attaining or retaining market power. These concepts are variously called "abuse of dominant position" or "monopolization" or "misuse of market power," or some similar term. Competition laws may also contain a related concept, called "joint dominance" in some jurisdictions, which involves multiple firms but which is a distinct concept from firms acting pursuant to an "agreement." Typically, an analysis of an abuse of dominance involves two distinct parts, determining the status of the firm or firms and then evaluating the behavior.

Holding a dominant position, jointly dominant position, a monopoly or a position of substantial market power is generally not abusive or illegal. In any case, some behavior by such firms is. The importance of what is damaging, or if nothing else what is unlawful, should depend on upon the objective of the law. As noted above, if budgetary adequacy is the essential objective, then welfare-reducing exercises should be thought to be brutal. In case, then again, sensible trading is the essential target then, e.g., abusing a prevalent bargaining

position may be seen as damaging. Other possible objectives - pluralism, headway of little business, etc - would each surmise a plan of exercises that hamper their achievement and along these lines that would be unforgiving given that objective.

While it is luring to division conduct by dominant firms into two sorts, abuse and check with the engaged method (e.g. raising area deterrents), this may be beguiling. Maybe, the effect of a particular behavior depends on upon the earth in which it is involved with. For example, "esteem isolation" can be exploitative - of the buyers who pay the higher expense - and interfere with area - for the competitor who sees his new customers pulled in away with "uncommon offers" by the inhabitant. The effect of quality partition on welfare is the point at which all is said in done, questionable.

Therefore, if the objective of the opposition law is financial proficiency, then the law's treatment of worth division must be finely tuned or recognize significant goofs. Further, an affiliation's procedure regularly involves a stack of working together practices - e.g., most great resale esteem backing and tip top areas concurrences with vendors - so disengaging out a particular behavior from the pile of practices and separating it may realize finding a damaging effect where there is none or finding no pernicious effect where one exists. Finally, when a market can't be perfectly engaged and is not totally contestable, there is no reason in money related hypothesis for, with everything taken into account, assuming that area is best. Therefore, rules against entry-deterring conduct may not be beneficial.[24]

Without a doubt, it is hard to devise lawful standards for deciding anticompetitive behavior in vital situations. Some analysts respond by recommending that no conduct, even by dominant firms, be denied in the conviction that any favorable circumstances which are not identified with unrivaled aptitude and effectiveness will be immediately dissolved. Different reporters respond by recommending a progression of channels and that any lead that goes through the channels would be managed by straightforward yet in fact blunder inclined guidelines. At long last, different pundits respond by recommending "a detailed investigation of the purpose and effects of specific acts under the Rule of Reason."[25]

[24] Ordover and Saloner, p. 590

[25] Ordover and Saloner, pp. 579-580, quoting Comanor and Frech

CONCLUSION AND SUGGESTIONS

In the Competition laws of all the jurisdictions studied, the size of a firm or its dominant position as such is not prohibited. However, Abuse of dominance /misuse of market power/ monopoly or the attempt to monopolize are considered bad under all competition laws despite the differences in concepts enumerated in the law and manner of determination. Under the laws of most jurisdictions, the first step in determining whether there is an abuse of dominance, misuse of market power or "monopoly or an attempt to monopolize" is defining the relevant market. In defining the relevant market, both the relevant product market and the relevant geographic market have to be defined.

The second step is determining whether the concerned undertaking/enterprise/firm is dominant or has monopoly power or a substantial degree of market power. Dominance or monopoly electricity or marketplace energy of endeavors is characterized in many jurisdictions on the idea of the endeavors potential to paintings freely of rivalry or to raise/control expenses. Numerous elements are to be mulled over to decide dominance/financial electricity/monopoly energy. Such standards might have been indicated within the statute itself, as an instance, in India or may need to be resolved from chose cases. Market percentage is by all money owed the most essential rule in all jurisdictions. "Obstacles to passage to the marketplace" is by means of all money owed every other paradigm taken into consideration in all jurisdictions.

Other criteria taken into consideration, for instance, administrative obstacles, size and structure of the marketplace, joins with other endeavors and so on and the significance related thusly criteria trade in various jurisdictions regardless of the truth that there is probably a few fundamental factors. It may be noted that total market power or the complete elimination of opportunity for competition is not necessary in order to attract the provisions regarding the abuse of dominance. What is required is a dominant position or a substantial degree of market power.

Abuse of dominance/ misuse of market power/ monopoly have not been defined by most competition legislations. European Union's and Indian law merely enumerate certain conducts which the dominant venture or undertaking having market electricity is not to interact in. The Antitrust statutes of the US don't enumerate any unique prohibited conducts.

Historically the monopolization offense in the United States, or the parallel offense of Abuse of Dominant Position in Article 82, has been one of the most difficult for the law to define. Regardless of the truth that our lawful conventions have an abundance of law that preparations with uncalled for, unjustifiable, or tortious practices via single corporations, subsequent to no of it changed into concerned with competition therefore, and almost none of it became simply involved with the basic signs of financial monopoly. In my own particular ordinary law custom there are quite a few desirable chronicled analogs for the restrictions compelled by using '1 of the Sherman Act on intrigue or other obstacles of alternate, but the important pre-Sherman Act points of reference regarding unmarried-company monopoly clearly alluded to syndications made by the kingdom and to the electricity that both the charter or a few higher sovereign, for example, the authorities may additionally impose.

Similarly, monopolistic behavior is particularly tough to watch and represent, for various reasons. Initially, even as maximum assentions among exceptional firms are promptly watched, the inward workings of most selections through dominant corporations are without a doubt no longer. 2nd, several multiform assertions look like suspicious, however now not the only-sided demonstrations of a dominant company. As an example, we're relatively suspicious of multi-firm fee placing, yet the monopolist appearing singularly can't paintings together without putting a value. We legitimately doubt multilateral understandings, particularly if level, that imply the regions of stores, dealerships, or other dissemination palms of an organization.

Interestingly, the monopolist should come to a decision a desire approximately in which to assemble its own shops or the way to set up its dissemination system. We doubt the manufacturer's endeavors to signify the resale expenses of its traders; however the monopolist essentially determines the value of absolutely possessed affiliate divisions. An assertion among several agencies proscribing the permitting in their licenses or other IP rights might also incite close research. But, every monopolist should determine a desire approximately whether and the amount to permit its very own IP rights instead of use them completely for internal production. The India law on the subject of abuse of dominance shares huge similarity with that of the European Union. While there are concepts that can be found present in the US statutes as well, it is the EU Law that is most close to the Indian legislation.

With respect to the hypothesis of the project, it can be said that clear legal parameters for determination of conduct of an entity in dominant position as abuse or otherwise are present under Indian jurisdiction. Although Section 4(2) of the Act provides for different types of conducts that shall be termed as abuse, in practicality it comes to the factual circumstances of the cases to consider whether the said conduct is an abuse or not. It can thus be said that the law on the subject is backed by judicial precedents and is evolving with different conducts that come to light.

One could go on with this list, but the point should be clear: many of the things that are suspicious when done by two or more firms acting in concert are essential parts of routine business for the dominant firm. Therefore it's miles just about in no way, shape or form adequate to watch that the monopolist has occupied with a specific practices, which incorporate setting a rate or discovering in which to develop retail shops. One also craves a magnificent arrangement of theory and assessment to see the circumstances underneath which those practices are anticompetitive, with the understanding that they potentially are anticompetitive in just a little share of cases.