

Abuse of Dominance: A Case Based Analysis

This article examines the Indian law on abuse of dominant position under Section 4 of the Competition Act, 2002 through a structured, effects-based framework and three landmark matters—DLF (real estate), MCX v. NSE (platform zero-pricing), and Airtel–Jio (telecom predation)—to distill how relevant market, dominance, and abusive conduct are actually established in practice. It first clarifies foundational terms—relevant market (product and geographic), dominant position, and the statutory abuse heads under Section 4(2)—and then applies a three-step method: market definition, dominance appraisal under Section 19(4), and conduct assessment under clauses (a)–(e) with attention to the “meet-the-competition” carve-out for price/condition discrimination. The article concludes with practitioner-oriented takeaways on sequencing, evidence, and remedies, emphasizing precise market delineation, rigorous dominance testing, and an effects-focused conduct review to calibrate cease-and-desist, contract-purging, or monetary penalties appropriately.



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INTRODUCTION

Can a company¹ be too powerful? Competition law answers this question with nuance: dominance earned through excellence is lawful, but the moment that power becomes a tool for exploitation or exclusion, the law intervenes, this is the essence of the abuse of dominance doctrine. Section 4 of the Competition Act, 2002 crystallizes a fundamental principle of Indian competition law: dominance achieved through competitive merit is not merely permissible, it is the natural reward for superior efficiency, innovation, and business acumen. What the law prohibits is not the position of strength itself, but its abuse. An enterprise may legitimately dominate its market by outperforming rivals; it crosses into illegality only when it leverages that dominance to foreclose competition, exploit consumers, or erect artificial barriers that protect its position not through continued excellence but through strategic manipulation of market dynamics. This distinction

¹ India's Competition Act covers every “enterprise” engaged in economic or commercial activity, not just companies registered under the Companies Act. It applies broadly to firms, individuals, associations, and even government entities when they are engaged in trade or business in a defined relevant market, for clarity and brevity in this article, the term “Company” will be used as a shorthand for “enterprise” in this broad legal sense. Whenever you read “Company,” please understand it to include any entity undertaking economic activity in a defined relevant market, unless expressly stated otherwise.

between dominance earned and dominance abused forms the conceptual cornerstone of India's approach to market power regulation.

SOURCES

Primary law includes the Competition Act, 2002 (Section 2(r)/(s)/(t)), Section 4 with its Explanation, and Section 19(4) and published orders of the CCI and appellate for Core cases are DLF (Case No. 19/2010), MCX v. NSE (Case No. 13/2009), and Bharti Airtel v. Reliance Jio (Case No. 03/2017), along with summaries from official repositories where needed. Purposive sampling identifies three early, sector-diverse matters that collectively address exploitative terms, platform zero-pricing and leveraging, and predation allegations screened out at the dominance gate.

CORE CONCEPTS: SECTION 4

For clarity in the case analysis, first outline a few core terms that shape every Section 4 assessment under India's Competition Act.

- (a) “Relevant market²” is the simple boundary where competition is checked: it covers which products truly compete and in which area they compete. To draw this boundary, look at two parts: the relevant product market (what buyers see as close substitutes) and the relevant geographic market (the area where competitive conditions are broadly similar). Often, both are combined into one description, such as “carbonated soft drinks in Mumbai” or “app based ride hailing in Bengaluru”. A quick product test is this: if the price of one cola rises a little and many buyers switch to another cola, those colas are in the same product market because people treat them as substitutes. For geography, include areas where prices, costs, rules, and customer choices are similar, so a price rise is constrained by nearby rivals under the same conditions. Using these two steps keeps the analysis practical and helps assess dominance and abuse under Section 4 accurately.

² Sub-section (r) of Section 2 of Competition Act, 2002

- (b) “Relevant product market” means the set of products or services that buyers see as close substitutes because of their features, prices, and intended use, which is how Section 2(t) of India’s Competition Act frames it in practice. In simple terms, if customers would readily switch from Product A to Product B when A’s price rises a bit or its features become less attractive, A and B belong to the same product market.
- (c) “Dominance position³” means a position of strength in a defined relevant market that lets a Company either act largely independently of competitive pressure or influence competitors, consumers, or market conditions in its favor. Put simply, it is the ability to set terms, prices, or strategies with limited constraint from rivals because of market power. For example, if one ride hailing app in Bengaluru is so widely used that drivers and riders depend on it and rivals can’t meaningfully constrain its terms, it may be dominant in “app based ride hailing in Bengaluru,” though dominance alone isn’t illegal.

Abuse of dominant position is established through a clear, three-step test under India’s Competition Act: define the relevant market, assess whether the enterprise is dominant in that market, and then prove that its specific conduct fits one or more abuse heads listed in Section 4(2), subject to limited defences.

LANDMARK CASES

Belaire Owners’ Association v. DLF Ltd.

The earliest landmark abuse-of-dominance ruling under the Competition Act is *Belaire Owners’ Association v. DLF Ltd.*⁴, holding DLF dominant in Gurgaon’s high-end residential market and finding abuse for imposing unfair, one sided terms, followed by a detailed supplementary order on 3 January 2013 to purge abusive clauses and a penalty of Rs 630 crore later upheld by the Appellate tribunal. The Supreme Court subsequently directed DLF to deposit Rs 630 crore as a condition to entertain its appeal, underscoring the case’s significance in shaping early Section 4 jurisprudence.

The *Belaire Owners’ Association* alleged that DLF abused dominance in the market for developer/builder services for highend residential apartments in Gurgaon by imposing one sided, non negotiable Apartment Buyers Agreements on homebuyers. The Association pointed to unilateral increases in floors/units, alterations to layouts/specifications without consent, and delays in possession while buyers faced stringent penalties and limited exit rights. It argued these clauses were unfair and discriminatory under Section 4(2)(a)(i), enabled by buyers’ dependence and DLF’s market strength in the defined citysegment market. The informant sought cease and desist orders, modification of abusive clauses, and appropriate penalties to restore parity between buyers and the developer.



DLF contended that the relevant market was broader than “high-end residential in Gurgaon,” citing competition from multiple developers across the NCR and arguing it was not dominant in any narrowly defined segment. It maintained that buyers consented to the Apartment Buyers Agreements, that changes to plans were contractually permitted and aligned with regulatory approvals, and that delays were covered by force majeure or justified circumstances. DLF further argued that private contractual disputes should not be equated with competition violations absent exclusionary effects, and that the proposed sanctions were disproportionate. On this basis, DLF sought dismissal of the abuse allegations and setting aside of any structural or monetary remedies.

The Commission defined the market as developer/builder services for high-end residential apartments in Gurgaon and found DLF dominant based on Section 19(4) factors including scale, brand strength, consumer dependence, and barriers to timely entry/expansion. It held that the cumulative effect of unilateral plan revisions, asymmetric delay and remedy clauses, broad forfeiture provisions, and restrictive buyer rights constituted unfair and discriminatory conditions under Section 4(2)(a)(i). The CCI ordered cease and desist, directed clause level modifications in a supplementary order, and imposed a monetary penalty calibrated to turnover, establishing an early benchmark for abuse in real estate markets. These directions aimed to purge abusive terms and deter future imposition of non negotiable, unfair clauses on dependent homebuyers.

On appeal, the Competition Appellate Tribunal (COMPAT) upheld the CCI’s findings and the Rs. 630 crore penalty, affirming the relevant market, dominance assessment, and the conclusion that the Apartment Buyers Agreement contained unfair, discriminatory conditions under Section 4(2)(a)(i). The Tribunal emphasized that the standard form, one sided clauses reflected imbalance and supported the CCI’s corrective and deterrent remedies. The Supreme Court directed DLF to deposit Rs, 630 crore as a condition to entertain its challenge, underscoring the gravity of the violations and consolidating the case’s status as a foundational Section 4 precedent. This appellate trajectory reinforced that city segment market definition, buyer dependence, and contract imbalance can ground an abuse finding in realestate contexts.

³ “Dominant position” is explicitly defined in the Explanation to Section 4

⁴ Case No. 19 of 2010 with the main CCI order dated 12 August 2011.

MCX Stock Exchange Ltd v. National Stock Exchange of India Ltd

An early landmark on abuse of dominance in platform markets is MCX Stock Exchange Ltd v. NSE⁵, held NSE dominant in exchange services for currency derivatives (CD segment) and found abuse arising from sustained zero pricing and related practices, imposing a penalty of Rs 55.50 crore alongside cease and desist directions to restore competitive conditions, with the Appellate tribunal subsequently upholding the findings and sanction in 2014.

MCX SX alleged that NSE announced and repeatedly *extended a zero transaction fee policy in the CD segment, waived membership/admission, annual subscription, and other charges in that segment, and provided market data feeds without charge, forcing MCX SX (then operating only in CD) to match “free” pricing and suffer sustained losses that impeded efficient entry and scaleup.* The informant further alleged leveraging—i.e., cross subsidizing losses in CD with profits from equity, F&O and other segments where NSE enjoyed significant strength—and raised denial of access concerns linked to integrated market watch/APIs through related entities, arguing the overall strategy foreclosed competition in CD.

NSE argued that zero pricing was a *pro competitive, promotional scheme benefiting traders and improving liquidity, that any losses were part of legitimate competition on the merits, and that rivals and potential entrants remained viable, undermining claims of foreclosure or consumer harm.* It disputed the characterization of costs and predation, contended that market definition should not be narrowly confined to the CD segment, and maintained there was no leveraging or denial of access warranting intervention under Section 4.

The Commission delineated the relevant market as exchange services for trading in currency derivatives and found NSE dominant given powerful network effects, liquidity advantages, brand strength, and barriers to timely entry and expansion in this platform market. On merits, the majority held that sustained zero pricing and selective waivers amounted to unfair pricing under Section 4(2)(a)(ii) and that cross segment resource use constituted leveraging in contravention of Section 4(2)(e), warranting cease and desist measures and a penalty of Rs 55.50 crore to deter exclusionary conduct and restore fair competitive conditions.

On appeal, the Competition Appellate Tribunal upheld the CCI’s findings, confirming the CD segment based market definition, the dominance assessment, and the conclusion that NSE’s zero fee strategy and related conduct were exclusionary within the meaning of Section 4, while affirming the Rs 55.50 crore penalty. The decision established early principles for assessing

platform dominance, zero pricing, network effects, and leveraging across segments, shaping India’s effects-focused approach to abuse in two-sided and liquidity-driven markets.

Airtel/industry complainants v. Reliance Jio Infocomm Ltd

A Section 4 complaint alleging predatory pricing by a telecom operator⁶ is assessed in three gates: define the relevant market, establish whether the operator is dominant, and only then test alleged conduct such as below-cost pricing with exclusionary intent or effect, with remedies under Section 27 if abuse is proved.

The informant would delineate a relevant market for wireless/mobile telecom services experienced by end consumers, typically on a circle-wise geographic basis where competitive conditions are similar, and argue that the accused operator enjoys dominance under Section 4’s Explanation read with Section 19(4). The core allegation would be that sustained *“free” or deep discounted plans amounted to unfair or predatory pricing* under Section 4(2)(a)(ii) by being below cost “as determined by regulations”

with a view to reduce competition or eliminate competitors, impairing rivals’ ability to expand efficiently. Additional heads might include denial of market access under Section 4(2)(c) or leveraging across service lines under Section 4(2)(e), depending on evidence of cross-market effects and foreclosure of the competitive process.

The respondent would first contest market definition and dominance, emphasizing multioperator rivalry, consumer switching, and counter-

vailing buyer power, which preclude a finding of the ability to act independently of competitive forces in the defined market. On conduct, the operator would argue plans were promotional, time-bound, and competition-enhancing, that pricing was not below the relevant cost benchmark with exclusionary intent, and that the “meet the competition” carve-out under Section 4(2)(a) protects responsive pricing to rival offers. The defence would stress the Act’s effects-based lens: *short term low prices benefiting consumers are not abusive absent credible evidence of foreclosure or harm to the competitive process* in the properly defined market.

The Commission would first draw the relevant product and geographic market under Section 2(r)/(s)/(t), then apply Section 19(4) factors—market share, resources, entry barriers, consumer dependence, vertical integration, and buyer power to decide dominance as a gating requirement. If dominance is not established, the matter ends without reaching predatory pricing or other conduct heads; if dominance is found, the CCI evaluates whether pricing was below cost with exclusionary aim and effect under Section 4(2)(a)(ii), and whether any defences or

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⁵ Case No. 13 of 2009, where the CCI by order dated 24 June 2011.

⁶ (Case No. 03 of 2017).

efficiencies neutralize the charge. Confirmed abuse can attract cease and desist directions, modification of terms, and monetary penalties calibrated under Section 27, *while no abuse outcomes close the case postinquiry.*

On appeal, the tribunal would review market definition, dominance appraisal, and the effects analysis for predation and foreclosure, often retaining the Act's sequence and the high bar for proving below cost pricing "with a view to" exclude rivals. The broader significance in telecom is the centrality of the dominance gate and cost plus intent/effect test for predatory pricing, ensuring vigorous price competition remains lawful while exclusionary strategies by a dominant operator are deterred.

ANALYSIS

At its core, the abuse of dominance test under Section 4 involves a multi-stage inquiry. First, the relevant market must be accurately defined. Second, the alleged dominant entity's position within that market must be established. Finally, the alleged conduct must be assessed against specific criteria to determine if it constitutes an abuse. The key manifestations of abuse, as typically examined, include:

- (a) **Imposition of Unfair/Discriminatory Conditions or Price (Section 4(2)(a)):** This is broad, covering everything from one-sided contractual terms to exclusionary pricing strategies like predatory pricing.
- (b) **Restriction of Production/Development (Section 4(2)(b)):** Limiting supply or stifling innovation to the detriment of consumers.
- (c) **Denial of Market Access (Section 4(2)(c)):** Preventing competitors from entering or operating effectively in a market.
- (d) **Tying Obligations (Section 4(2)(d)):** Forcing customers to purchase an unwanted product/service to acquire a desired one.
- (e) **Leveraging Dominance (Section 4(2)(e)):** Using market power in one relevant market to enter or protect another.

These criteria serve as the analytical lens through which the CCI scrutinizes the conduct of dominant firms. The landmark cases of *DLF*, *NSE*, and the analytical framework in telecom predation cases collectively paint a vivid picture of the CCI's robust and continuously evolving approach to enforcing Section 4 of the Competition Act, 2002. From meticulously addressing the imposition of one-sided contractual terms in real estate, protecting vulnerable consumers, to tackling the complex dynamics of predatory pricing and leveraging in the technology-driven platform and telecom markets, Indian competition law has laid down crucial and sophisticated precedents.

The consistent emphasis on:

1. **Careful Relevant Market Definition:** The precise delineation of the market is frequently the make-or-break first step in an abuse of dominance inquiry.
2. **Rigorous Dominance Assessment:** The CCI does not assume dominance but systematically evaluates it using a comprehensive set of factors, recognizing that market power is dynamic and context-specific.
3. **Effects-Based Analysis of Conduct:** The focus is not merely on the intent but crucially on the actual or likely anti-competitive *effects* of the alleged abusive conduct on the market and consumer welfare.
4. **Significant Penalties and Corrective Measures:** The imposition of substantial monetary penalties, alongside cease-and-desist and behavioral remedies (like contract modifications), signals the gravity with which the CCI views such violations and its commitment to deterring future abuses.

These landmark cases—from the contractual inequities found in *DLF Ltd.*, to the strategic zero-pricing and leveraging in *NSE*, and the rigorous "dominance gate" framework applied in the telecom sector—collectively demonstrate the robust and evolving approach of the Competition Commission of India in enforcing Section 4 of the Competition Act. Indian competition law has established crucial precedents by meticulously defining relevant markets, rigorously assessing dominance, and applying an effects-based analysis to alleged conduct. The imposition of significant penalties and the direction of corrective measures underscore India's firm commitment to fostering a fair and competitive economic environment. The "dominance gate" remains a critical hurdle, ensuring that only genuinely powerful entities engaging in anti-competitive practices are penalized, while legitimate, pro-consumer competition is encouraged.

CONCLUSION

Ultimately, the enforcement of Section 4 does more than just regulate market behavior; it actively shapes the very ethos of how businesses operate and interact within the economy.

This sentiment perfectly encapsulates the broader impact of rulings like *DLF* and *NSE*. Beyond specific directives and monetary penalties, these judgments cultivate a culture where even dominant players are held accountable, innovation is not stifled by predatory tactics, and consumers are protected from exploitation. By consistently upholding the principles of Section 4, India's competition jurisprudence strives to embed a competitive culture into its markets, fostering long-term fairness, efficiency, and sustainable economic growth for all.

