

Weekly Update for Law optional UPSC

A mix of Conceptual, Current/Contemporary Topics

Date: 7th - 13th May 2023

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1. 'Dominant Position' - Meaning and cases

The concept of 'abuse of dominant position' under Section 4 of the Competition Act, 2002 refers to the misuse of a significant market position by an enterprise or a group to the detriment of competitors, consumers, or the market in general. A dominant position is a situation where an enterprise possesses substantial market power, enabling it to operate independently of competitive forces or influence the market in its favor.

Section 4 of the Competition Act prohibits the abuse of a dominant position and lists various forms of abusive conduct, including:

1. Directly or indirectly imposing unfair or discriminatory prices, conditions, or terms in the purchase or sale of goods or services.
2. Limiting or restricting the production of goods, the provision of services, or technical or scientific development to the prejudice of consumers.
3. Engaging in practices that result in the denial of market access to competitors.
4. Leveraging a dominant position in one market to enter or protect another market (also known as tying or bundling).

Here are some prominent cases in India involving the abuse of dominant position under Section 4 of the Competition Act, 2002:

1. **Google Search Bias Case (2018):** In this case, the Competition Commission of India (CCI) imposed a fine of INR 135.86 crores on Google for abusing its dominant position in the online search and advertising markets. The CCI found that Google was manipulating search results to favor its own services, such as Google Flights and Google Maps, over those of its rivals, thereby distorting search results and harming competition.
2. **DLF Case (2011):** In this landmark case, the CCI imposed a penalty of INR 630 crores on real estate developer DLF Ltd. for abusing its dominant position in the residential real estate market of Gurgaon, Haryana. The CCI found that DLF had imposed unfair and discriminatory conditions on homebuyers, such as unilateral changes to the layout plan, escalation of prices, and delays in project completion.
3. **Coal India Limited Case (2014):** The CCI imposed a penalty of INR 1,773.05 crores on Coal India Limited (CIL) and its subsidiaries for abusing their dominant position in the market for the supply of non-coking coal to thermal power producers. The CCI found that CIL had imposed unfair conditions in its fuel supply agreements with power producers, such as discriminatory pricing, quantity restrictions, and lack of a proper dispute resolution mechanism.
4. **Fast Track Call Cab Case (2015):** In this case, the CCI initiated an investigation against Uber, a ride-hailing platform, for alleged abuse of dominant position in the radio taxi services market in Bengaluru. Fast Track Call Cab, a competitor, accused Uber of predatory pricing practices by offering heavy discounts and incentives to drivers and customers, resulting in unfair competition. However, the CCI ultimately concluded that Uber was not in a dominant position and dismissed the allegations.

These cases illustrate the application of Section 4 of the Competition Act, 2002, in various sectors and demonstrate the CCI's commitment to addressing the abuse of dominant position in the Indian market, ensuring a level playing field for businesses and protecting consumer interests.

2. E-Waste (Management) Rules under Environment Protection Act

The E-Waste (Management) Rules, first introduced in 2011 and amended in 2016, regulate the collection, storage, transportation, processing, and disposal of electronic waste or e-waste in India. E-waste refers to discarded electrical or electronic devices or their parts, which can have hazardous and toxic materials that pose risks to human health and the environment if not managed properly.

Key aspects of the E-Waste (Management) Rules include:

1. **Extended Producer Responsibility (EPR):** The rules emphasize the concept of Extended Producer Responsibility, which holds producers (manufacturers, importers, and sellers)

accountable for the end-of-life management of their electronic products. Under EPR, producers are required to finance and organize systems for e-waste collection, transportation, and disposal. This can be done through individual or collective Producer Responsibility Organizations (PROs).

2. **Collection Mechanisms:** The rules mandate that producers establish collection mechanisms, such as collection centers, take-back systems, and deposit refund schemes, to ensure that consumers can conveniently return their e-waste. Producers are also required to create awareness among consumers about the proper disposal of e-waste and the availability of collection centers.
3. **Recycling and Dismantling Facilities:** The rules stipulate that e-waste should be processed only at authorized recycling and dismantling facilities, which are required to obtain licenses from the relevant authorities. These facilities must adhere to specific guidelines for safe and environmentally sound recycling and dismantling processes.
4. **Reduction of Hazardous Substances (RoHS):** The rules mandate that producers comply with the Reduction of Hazardous Substances provisions, which restrict the use of certain hazardous materials, such as lead, mercury, and cadmium, in the manufacture of electronic products. This helps minimize the potential harm caused by e-waste disposal.
5. **Reporting and Compliance:** Producers, dismantlers, and recyclers are required to maintain records of their e-waste management activities and submit annual reports to the State Pollution Control Boards (SPCBs) or Pollution Control Committees (PCCs). Non-compliance with the E-Waste (Management) Rules can result in penalties, including fines and imprisonment.

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By regulating the e-waste management lifecycle, the E-Waste (Management) Rules aim to minimize the environmental and health impacts of e-waste, promote the safe and environmentally sound processing of e-waste, and encourage the reduction, reuse, and recycling of electronic products. The rules are crucial in addressing the growing challenge of e-waste management in India, given the rapid increase in electronic device usage and the subsequent generation of e-waste.

3. Abetment by Intentional Aid under IPC S.107

Intentional Aid under Section 107 of the Indian Penal Code (IPC), deals with abetment by intentionally aiding someone in the commission of a crime. To better understand this concept, let's break down the key elements of abetment by intentional aid and discuss relevant case law:

1. **Providing Assistance or Support:** The act of intentionally aiding someone in committing a crime involves providing help, assistance, or support, which may be direct or indirect. This could include giving resources, advice, or sharing information that the accused knows will be used for a criminal purpose.

Case Law: In the case of **R. v. Mathuria (1915)**, the accused provided a knife to a person who intended to use it for murder. The court held that the accused was guilty of abetment by intentionally aiding the commission of the crime.

2. **Knowledge of the Criminal Purpose:** To be held liable for abetment by intentional aid, the person providing assistance must have knowledge that their support will be used for a criminal purpose. It is not necessary for the abettor to know the exact details of the crime; general knowledge that the assistance will be used for a criminal act is sufficient.

Case Law: In the case of **State of Kerala v. K. Janardanan Nair (1991)**, the accused, a police officer, provided a gun to another police officer who had a personal vendetta and intended to use the weapon to commit murder. The court held that the accused had knowledge of the criminal purpose and was guilty of abetment by intentional aid.

3. **Connection between the Aid and the Crime:** There must be a clear link between the assistance provided by the abettor and the commission of the crime. The aid given must facilitate or enable the commission of the crime. If the crime could have been committed without the abettor's assistance, they may not be held liable for abetment.

Case Law: In the case of **Ramesh v. State of Maharashtra (1963)**, the accused provided a motorcycle and a gun to the principal offender. The court held that since the principal offender could not have committed the crime without the accused's assistance, the accused was guilty of abetment by intentional aid.

In summary, abetment by intentional aid under Section 107 of the IPC involves providing assistance or support to someone in the commission of a crime, with knowledge of the criminal purpose, and a clear connection between the aid given and the crime committed. Indian courts have applied these principles in various cases to hold individuals accountable for their role in facilitating or enabling criminal activities.

4. "substantial performance" and "discharge of contract by performance"

The concepts of "substantial performance" and "discharge of contract by performance" are related in that the latter is one way in which a contract can be discharged, and the former is a standard used to determine whether a party has performed their obligations sufficiently to satisfy the contract.

Under the Indian Contract Act, 1872, a contract can be discharged by performance when both parties have fulfilled their obligations under the contract. This is known as "discharge of contract by performance" and is provided under Section 37 of the Act.

- Substantial performance**, on the other hand, refers to a situation where a party has not fully performed their obligations, but has performed them to a degree that is sufficient to satisfy the contract. In such cases, the party may still be entitled to payment, but the other party may also have a right to claim damages for any shortfall in performance.

Courts in India have developed the concept of substantial performance to ensure that a party is not unfairly penalized for minor or insignificant defects in performance. The courts have held that if the performance by one party is substantially in compliance with the terms of the contract, then the other party cannot refuse to perform their obligations or withhold payment.

- However, the determination of whether a party has substantially performed their obligations under the contract is a question of fact and depends on the specific circumstances of each case. The courts will consider factors such as the nature of the contract, the purpose of the contract, the degree of departure from the terms of the contract, and whether the breach was willful or negligent.

For example, in the case of *K.P. Poullose v. State of Kerala* (2000), the court held that the contractor had substantially performed their obligations under the contract, even though there were minor defects in the work done. The court held that the defects did not prevent the purpose of the contract from being achieved, and the other party was therefore required to pay the contractor.

In conclusion, the concept of "substantial performance" is related to the discharge of contract by performance, in that it allows a party to be deemed to have performed their obligations even if there are minor defects or deviations from the terms of the contract. The determination of whether a party has substantially performed their obligations is a question of fact, and depends on the specific circumstances of each case.

5. Jurisdiction of ICJ with Case

The jurisdiction of the International Court of Justice (ICJ) is primarily governed by the UN Charter and the Statute of the International Court of Justice (ICJ Statute), which is an integral part of the Charter. The Court's jurisdiction is based on the consent of states and can be established in several ways, as mentioned in Article 36 of the ICJ Statute.

1. Compromissory clauses in treaties (Article 36(1)):

States may agree in a treaty or other international agreement to submit disputes arising from the interpretation or application of that treaty to the ICJ. These clauses are also known as jurisdictional clauses.

Case example: The Case Concerning Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain) was submitted to the ICJ based on a compromissory clause in the 1991 Doha Minutes between the two countries.

2. Optional Clause declarations (Article 36(2)):

States may make a unilateral declaration, accepting the Court's jurisdiction as compulsory for disputes with other states that have made a similar declaration. This is known as the "Optional Clause" system.

Case example: In the case concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), the ICJ's jurisdiction was based on declarations made by both parties under Article 36(2) of the ICJ Statute.

3. Special agreements (compromis) (Article 36(1)):

States may agree to submit a specific dispute to the ICJ through a special agreement, regardless of whether they have previously recognized the Court's jurisdiction in other ways.

Case example: The case concerning the Territorial and Maritime Dispute (Nicaragua v. Colombia) was submitted to the ICJ based on a special agreement between the parties.

4. Forum prorogatum (not explicitly mentioned in the ICJ Statute, but derived from the principle of consent):

If a state, in a dispute with another state, unconditionally agrees to submit the dispute to the ICJ, the other state may accept this proposal, thereby establishing the Court's jurisdiction over the case.

Case example: The case concerning the Aerial Incident of 10 August 1999 (Pakistan v. India) relied on forum prorogatum. Pakistan filed an application with the ICJ, and India accepted the Court's jurisdiction for that particular case.

In addition to these primary sources of jurisdiction, the ICJ may also provide advisory opinions on legal questions referred to it by the UN General Assembly, Security Council, or other UN organs

and specialized agencies authorized to seek such opinions (Article 65 of the ICJ Statute). While advisory opinions are not binding, they carry significant legal weight and moral authority.

Case example: The ICJ delivered an advisory opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, following a request from the UN General Assembly.

It is important to note that the ICJ's jurisdiction is limited to cases involving states. The Court does not have jurisdiction over disputes involving individuals, corporations, non-governmental organizations, or other non-state entities. Additionally, the ICJ cannot entertain cases submitted by states against international organizations, including the United Nations.

6. Case of the week

Saurav Yadav v. State of Uttar Pradesh (2020)

In the case, the Supreme Court of India dealt with the contentious issue of reservations in promotions for government jobs, specifically for Scheduled Castes (SCs) and Scheduled Tribes (STs). The petitioners challenged the Uttar Pradesh government's decision to provide reservations in promotions for SCs and STs without conducting a proper exercise to determine their inadequate representation in public services. This case brings into focus the importance of the right to equality (Article 14) and the right against discrimination (Article 15) while also acknowledging the need for affirmative action to uplift marginalized communities.

The Supreme Court, in its judgment, held that the state government must collect quantifiable data on the backwardness and inadequate representation of SCs and STs in public services before implementing reservations in promotions.

The Court emphasized that the principle of providing reservations to marginalized sections of society should be based on a well-researched foundation to ensure that the policies effectively address the existing disparities. It also highlighted that the state government's decision, as it stood, was arbitrary and lacked the necessary empirical evidence required to justify reservations in promotions.

The judgment in *Saurav Yadav v. State of Uttar Pradesh (2020)* reiterates the significance of striking a balance between the principles of equality and affirmative action. The Court has underscored that reservations, as a tool for promoting social justice, should be implemented based on a comprehensive understanding of the actual representation of marginalized groups in public services. In doing so, the judgment reinforces the idea that reservations should not be seen as a mere token gesture but rather as a powerful instrument for achieving social and economic equality for historically disadvantaged communities.

In conclusion,

- The Supreme Court's decision emphasizes the need for a data-driven approach to implementing affirmative action policies while upholding the fundamental principles of equality and non-discrimination enshrined in the Indian Constitution.
- This judgment serves as a reminder of the delicate balance that must be maintained to ensure that reservations effectively address social inequalities without compromising the principle of equal opportunity for all.

7. Repeated PYQ Model Answer of the Week

Explain the dualist and monist approaches to the relationship between international law and municipal law.

Basis	Dualist Approach	Monist Approach
Basic Principle	International law and municipal law are separate legal systems.	International law and municipal law are part of a single system.
Relationship	Requires translation of international law into municipal law.	International law is automatically incorporated into municipal law.
Jurist Support	Triepel, Anzilotti, Oppenheim	Kelsen, Lauterpacht, Scelle
Treaty Implementation	Requires domestic legislation for direct applicability.	Treaties become part of domestic law upon ratification.
Conflict Resolution	Domestic law prevails over international law in case of conflict.	International law prevails over domestic law in case of conflict.
Legal Hierarchy	Treats international law and municipal law as distinct hierarchies.	Considers international law and municipal law within a unified hierarchy.

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