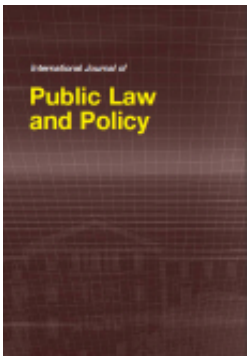

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A study on the collective dominance concept and its application in the Indian radio-taxi market

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Abstract: The radio-taxi market is a market where customers through internet facilities can book a taxi to reach their desirable destiny within a reasonable price charged by the aggregator. By using the internet platform, the aggregator enterprises have engaged several taxi owners and drivers and the enterprises are providing these e-taxi services to the consumers. The competition commission, dealt with information alleging anti-competitive-agreement and abuse of dominance when Meru Cabs, one of the radio-taxi service providers, filed information against Uber and OLA too. Commission was of the view that Uber did not do any unfair practice but competition appellate tribunal, the appellate body made an opposite view contrasting to commission. The paper tries to analyse the abuse of collective dominance created by OLA and Uber in the radio-taxi market in India. The paper also highlights the international scenario and laws related to collective dominance in the European market.

Keywords: radio taxi; competition; relevant market; collective dominance; abuse of dominance; anti-competitive agreement; economy; appreciable adverse effect; transport; appellate authority.

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1 Introduction

Meru's case is significant to understand in the 'radio taxi service' market of India. There are three cases came before the Competition Commission of India (CCI). One of them was filed by 'Meru Cab' against 'Uber'[1] and another case was filed against 'Ola'[2]. 'Fast Track Cab'[3] also filed the same allegation against OLA. CCI clubbed the cases for the same allegation. By filing these cases the informants wanted to prove OLA under case. Nos. 74/2015[4], 06/2015[5], and Uber under Case No. 96/2015[6] made 'predatory pricing'[7]. Both are rejected by the commission saying that OLA or Uber was not dominant. In the Uber case, the 'Supreme Court of India' (SCI) ratified the 'Competition Appellate Tribunal' order, which was opposite to competition commission's given order.[8] In the OLA case, the same allegation was raised but CCI rejected it by saying OLA was not the only enterprise that was facilitating radio taxi services in the taxi industry but also Uber existed and close competition used to continue between them. Informants alleged in Case No. 74/2015 and 06/2015 that Ola and Uber jointly abuse the dominant power but CCI rejected it by saying Competition Act only determines the dominance done by a single enterprise or group. The concept of collective dominance is not mentioned in the act. This paper will find out whether any lacuna existed or not behind the decision in both cases. If it will be found, what suggestions will be required, this paper would like to depict it too.

2 Definition of collective dominance

'Collective dominance' simply means dominance done collectively or jointly. Any abusive practices done by any enterprise having a dominant position will be void according to Competition Act, 2002 in India.[9] Competition Amendment Act, 2007 incorporated the 'group' concept after 'no enterprise' into the determination process of abuse of dominance.[10] When two or more enterprises directly or indirectly are in a position to control the management or equity of another enterprise is called a 'group'.[11] Therefore, the Indian competition regime does not determine collective dominance.

Whereas, According to Article 82 of 'The European Community Treaty (EC Treaty)' later amended as Article 102 of 'The Treaty on the Functioning of the European Union (TEFU)' prohibits 'Collective or Joint Dominance'. Any misuse of a dominating position by one or more enterprises inside the common market, or a sizable section of it, is forbidden as being incompatible with the common market if it affects trade between the Member States, according to the law.[12] A situation known as 'collective domination' occurs when two or more independent businesses that are connected by economic ties work together to maintain a competitive edge over rivals in the market.[13] When two or more businesses join together and share a significant portion of the market, heated competition ensues.[14] The Competition Amendment Bill of 2012 suggested for incorporation of the notion of joint dominance but due to Competition Law Review Committee's argument it was rejected.

3 Factors of dominance in India

Unfair or discriminatory impositions on goods and services, such as predatory pricing, limiting or restricting the output of a product or service, entry barriers, indulges to deny market access, the conclusion of contracts irrationally or by using dominance if one enterprise enters another market have all been codified by Indian legislatures. The competition law of India allows dominance but its abuses are considered void. Supporting this view an example can be drawn having 20% market share with an enterprise may be dominant in respect of other enterprises having other 80% market share whereas having 60% market share with an enterprise may not be dominant upon remaining enterprises which have other 40% market share because of fair conditions followed. To prove abuse of dominance in which relevant market the enterprise or group is dominant that is required to be identified first.

The relevant market means relevant product market, relevant geography market, or both markets.[15] A relevant geographic market is one in which the conditions of competition related to the demand and supply of goods and services are distinctly homogeneous and distinguishable from those in neighbouring areas.[16] The meaning of homogeneous is nowhere written in Competition Act. However, Law Lexicon describes it as 'identical descriptions'. It implies that the market conditions related to the supply of goods and services in a certain geographic area must be consistent.[17] The Competition Act, 2002 sets some criteria for determining a relevant geographic market in Section 19(6).[18] A relevant product market, as defined by Section 2(t) of the Competition Act of 2002, consists of any goods or services that consumers may view as interchangeable or substitutable because of the nature of the good or service, the cost, or the intended use.[19] The Competition Act of 2002, Section 19(5), lists several criteria for determining whether or not a business is dominant.

4 Definition of 'radio-taxi market'

Radio-taxi market is a market where one internet platform is used to hire taxi owners, and drivers from one side, and every internet platform also provides transportation service to the consumers from the other side. Eventually, it is considered a double-sided market.

Here, for more than three- or four-decades yellow taxis were used for the daily taxi transporting system. Passengers were ready to pay the charge that had been imposed from the mechanical meter. In course of time, the electronic meter was introduced to reduce the malpractices done with the meter. But greedy hopes never die. The practice was not stopped and it was being continued. So, the internet-based taxi transporting system was introduced where one internet platform task is like an aggregator or intermediary. If we look at us, we will understand how we have shifted us from yellow taxi service to radio taxi service because of the charges what they amount is very reasonable and the service they provide to daily passengers through taxi has never been found before only by using the internet platform. This is one type of service from which a large number of people residing in India avail taxi service to reach their desirable destiny. The radio-taxi market is a two-sided service given market. One aspect of radio taxi is passenger communication, while another is transportation services for drivers and automobile owners. Markets that provide e-services have ushered in a revolutionary shift in the classic market notion that dates back to antiquity.[20] Where buyers have to come physically or by an agent to purchase his service or product and seller also have to meet with buyers physically or by an agent. Commonly this system was followed from the ancient age. However, due to revolutionary changes in computing and e-service, the twenty-first world has seriously started shifting to the new concept that evolved after significant change because of this internet and computing-based market system. Tom Godwin, an economist, once remarked "the economy of the 21st century demonstrates that Uber one of the world's largest taxi companies does not own vehicles; most popular media owner Facebook does not make content; one of the world's most valuable retailers Alibaba has no inventory; Airbnb most popular accommodation provider has no real estate. Something interesting is happening gradually."

5 Competition regulators' observation in Ola and Uber case

'Meru Travel Solution Private Ltd.' challenged the order of "The CCI where Uber, the alleged party, got a clean chit from CCI. The quasi-judicial body (CCI) found no guilty on the part of Uber, against whom the informant borrowed the charge of 'predatory pricing'." 'Meru' allegation was; as 'Uber', one of the international big entrants, by using the internet platform, provides transport service to the consumers, is imposing predatory pricing, the other rival enterprise Meru suffered a huge loss due to that. Not only that as Uber had more market power being an international entrant, it started providing incentives to the drivers and high profitable discounts to the taxi owners associated with them. Under Section 19(1) Meru filed information before CCI. The Director-General (DG) was advised to begin an inquiry.[21] DG report revealed that it could not be said that in the radio-taxi market only Uber had been providing this particular service rather so many rivalries also existed in this market. Among them, the informant was one. DG report also stated Ola, which was a strong rivalry, had also close competition with Uber. So, Uber could not be considered dominant in the relevant market. Here the relevant product market was considered as radio-taxi market and the relevant geographic market was considered Delhi. The informant produced one research report namely the *TechSci* report where it was found that Uber had suddenly gained its market share within a short period and that might be suspicious. The commission stated that the TechSci study was unreliable since the Uber group was not interviewed during the data gathering process.

The commission had received another research report, 6W research, with a different outcome in another case. Perusing both reports CCI found a close competition had been continuing between Ola and Uber.

In appeal, Meru challenged the relevant geographic market that was considered by CCI. COMPAT made a similar view to the appellant stating that NCR should be included with Delhi to determine the relevant geographic market. COMPAT had also given serious value to the information that Meru lodged that the loss which Uber faced at the time of starting a business for providing incentives to the consumers needed to be re-investigated. The COMPAT also noted that cabs like Uber and Ola operate under tourist taxi permits, which are not restricted to operating within city boundaries. As a result, the COMPAT concluded that the case's relevant market must be the market for 'radio taxi service in Delhi NCR'.[22] COMPAT also observed that report furnished by TechSci revealed Uber had a dominant share in the market but 6W research the other report exposed Ola as having a dominant share in the market so the two reports should be given serious look in this investigation. High discounts to the passengers and incentives given to the taxi owners and drivers should also be given value according to the observation of COMPAT gave a significant success to the Meru Transport Solution Ltd., the appealing party. The Supreme Court upheld the order of COMPAT.[23]

A similar type of allegation was found when 'Fast Track Call Cab' filed information against Ola Vide Case No. 06/2015 and Meru Travels Private Ltd. filed an information against the same respondent. CCI due to the same allegation clubbed the two cases and have been satisfied with the *prima facie* of the case advised DG to start investigation. Here the relevant market was considered the market for radio taxi services in Bengaluru. In comparison to OP, which entered the market in early 2011, and had a market share of only 5–6% in 2012–2013, which increased to 61–62% in 2015–2016, the market shares of Meru, Mega Cabs, Easy Cabs, and Karnataka State Tourism Development Corporation (KSTDC) decreased from 2012–2013 to 2015–2016 in terms of the number of points-to-point trips. The fact is that when Uber launched its operations in August 2013, had a tiny market share of less than 1–2% in 2013–2014 but increased to 9–10% in 2014–2015 was also emphasised. However, the DG noted that while OP's market share increased only slightly from 2% to 3% in the first half of 2015–2016, Uber's share increased at a faster rate of about 20%–22%. So, in this market segment neither Ola nor Uber could be said dominant according to DG.[24] Agreed with DG, the CCI observed the same opinion. It was found from the DG report that a close contest had been continuing between Ola and Uber so no one is dominant in this market.

The other charge that the informant wanted to inform was that ANI Technologies Private Ltd. jointly dominates the market and abuses its dominance. The CCI straightly rejected it stating that Indian legislatures had no intent to include joint or more than one enterprise dominance the informant also attempted to prove joint dominance based on sub-clause (b) of Section 27 of the Act. It states that the commission may impose fines on those individuals or businesses that are party to such arrangements or engage in such misconduct, up to a maximum of 10% of the average annual revenue for the three financial years prior.[25] Commission stated on this allegation that informant had to go for determination section of abuse of dominance rather than penalty section. But the confusion that exists in statute related to provisions of definition and penalty has not been resolved till today.

6 The intention of legislatures

Legislatures and judiciary both have similar views related to the incorporation of the collective dominance concept. Both of them have not considered dominance may also have occurred between more than one enterprise. The Competition Act, 2002 became operative after the Competition Amendment Act, 2009. One Competition Amendment Bill 2012 was tabled proposing for incorporation of the 'jointly or singly' concept into Section 4(1) of Competition Act, 2002. Although it was not passed, it suggested a part that stated that no firm or group, individually or collectively, shall exploit its dominating position. The Competition Law Review Committee argued that Sections 3(3) ('Cartel') and 5(b) ('Group') of the Act are sufficient to deal with the idea of 'Collective or Joint' dominance. The cartel is described as a collection of businesses that have agreed to limit, control, or seek to control the production, distribution, sale, or price of goods or services through collective bargaining.[26]

'Agreement' refers to any formal or writing arrangement, understanding, or action taken in concert, which is intended to be enforced through legal actions.[27] Different firms belonging to the same group in terms of management control or equity are referred to as a 'group'.[28] In the '*Manappuram Jeweller Private Ltd.*' case[29], the allegation was that 'Kerala Gold & Silver Dealers Association (KGSDA)' made predatory pricing which affected the complainant very badly. From the DG report, it was found out of 650 jewellers existing in the Trissur market the association had 242 members constituting 37% jewellers but they were not individually dominant in the respective market. So according to the commission's view, the contention of collective dominance did not arise. In *Bharti Airtel v. Reliance Infocom Ltd.*[30], the commission had so much evidence to consider Reliance India Ltd. and Reliance Jio Infocom Ltd. came under the same group but commission delineated them as two different enterprises.

7 A study on revolutionary development of collective dominance concept in EU, Canada through case study

Article 82 of the European Communities Treaty determines more than one enterprise can abuse its dominance. Subsequently, it was repealed and becomes operative as the 'Treaty on the Functioning of the European Union (TFEU)'. TFEU also considers dominance done by more than one enterprise to be void. But like the Competition Act, 2002 of India European Union (EU) has not defined dominance in its entire treaty. This function has been left to the judiciary for their interpretation. The common law system is based on precedents. The definition has emerged from the *United Brand's case*[31] and later it is affirmed in the *Hoffman La Roche case*[32]. In both cases, the European Commission opined a similar view. It was noted that the dominant position is a monopoly enjoyed by an undertaking that allows it to prevent fair competition in relevant markets and allows it to act independently to its rivals and ultimately to its consumers.

The concept of collective dominance has been developed in Europe through the adjudication process. The idea of collective dominance, however, has established that it is illegal for one business to abuse its dominant position in alliance with another business, even if the business in question does not have a dominant position on its own. The General Court found that "the idea of an undertaking embraces any entity engaged in an

economic activity regardless of the legal structure of the entity and how it is financed" in *Hofner and Elser v. Macrotron GmbH*.[33]

The EU competition law only applies to economic enterprises; it does not extend to other types of legal entities. The justification is that interactions that are of significant relevance must be the primary focus of EU competition law. Additionally, it mandates that each economic entity have its policy, separate from other ventures.[34] Economic units are unitary organisations of people, things, and ideas that work together over time to further a particular economic goal and may be involved in the commission of an offense.[35] As a result, to meet the requirements, it can be necessary to combine the activities of many natural persons, legal persons, as well as entities devoid of legal identity. They are only then thought to be acting as a single competitive force in the market. A contract between a parent firm and a subsidiary is regarded as being enforceable. Furthermore, the ECJ explained that this conduct does not include a contract between two or more parties; rather, the parent business determines the subsidiary's policy.[36]

In the case *Michelin v. Commission*, the ECJ concluded that dominance is allowed but abuse of dominance is illegal. The Court went on to say that the company in a dominating position has a specific obligation to refrain from acting in a way that would harm competition within the union.[37] According to the ECJ's ruling in *United Brands v. Commission*[38], "the dominant position referred to in this article relates to a position of economic strength enjoyed by an undertaking that enables it to prevent effective competition from being maintained on the relevant market by giving it the power to behave to a significant extent independently of its competitors, customers, and ultimately of its consumers." The determination of dominance requires a two-step evaluation, according to the ECJ's ruling in the matter of *Continental Can v. Commission*[39]. First, the relevant market must be accurately defined for Art. 102 TFEU to be implemented. The second evaluation that will come following such a definition is whether the issue of business should be regarded as dominant in that market.[40]

According to the European Court of Justice (ECJ), in *AKZO v. Commission*[41] a market share of 50% could be regarded as very substantial. ECJ has elaborated on the concept in the case of Hoffmann-La Roche[42]. The court stated, "the concept of abuse is an objective concept relating to the behaviour of an enterprise in a dominant position that is such as to influence the structure of a market where, under the enterprise in question's presence, the degree of competition is weakened and which, through the use of methods other than those that condition normal competition in products or services based on the transactions of commercial operators, has the effect of reducing competition in the market for those products or services."[43] Because there is a 'prisoner's dilemma' in an oligopolistic market, collusion may still take place there even if no agreements are in place between the participants. Each party is aware of the possible financial gain that could result from decreasing their rates and so luring away clients from the competition. But now that everyone is aware of this, they also understand that cutting their rates would encourage other parties to use the same tactic. To maximise their earnings, the businesses will maintain the same price level while keeping an eye on what their rivals are doing.[44] As a result, in an oligopolistic market, consumers are paying prices that are greater than the degree of competition, or higher than they would if there were more competitors, forcing businesses to drop their prices. Additionally, one may assume that such a practice would be outlawed given that businesses in an oligopolistic market can raise their prices,

restrict their ability to produce goods, and maintain higher pricing. However, the oligopolistic market accomplishes this without making a deal or engaging in concerted activity, which is against Article 101 TFEU. Therefore, their actions would not fall under the purview of that Article 101. This brings up the question of whether such conduct would be illegal under Article 102 TFEU in the context of collective dominance.

There have been two opposing viewpoints regarding the phrasing of collective dominance. One idea was that, if one were to read the passage more narrowly, one may claim that the phrase was intended exclusively for several legal organisations that were part of the same business group. The logic was supported by other ECJ decisions where members of a group that formed a single economic entity were determined to hold a dominant position.[45] The broad interpretation of the article, however, suggested that it might also apply to legally and economically independent enterprises holding a collective dominant position in addition to a single economic entity.[46] The commission determined that three separate *Italian flat glass*[47] makers had a collective dominant position and had abused that advantage, which eventually validated the broad perspective.

In *Almelo*[48], the ECJ further stated "the companies in the group must be connected in such a way that they behave in the same way on the market for such a collective dominant position to exist. It is up to the national court to decide whether there are enough connections between the regional electricity distributors in the Netherlands to give rise to a group dominant position in a sizable portion of the market."[49] In *Compagnie Maritime Belge Transports v. Commission*[50] case the commission concluded that the phrase 'one or more undertakings' suggested that two or more economic organisations could hold a dominant position as long as they act together on a specific market.[51] It is for the EU Courts to consider whether the undertakings jointly create a collective entity vis-á-vis their rivals. It is pertinent to analyse whether that collective entity holds a dominant position and subsequently whether they have abused it.[52] The commission ruled that to determine whether a collective entity exists, it is important to analyse the economic ties or causes which give birth to a connection between the involved undertakings.[53] In deciding whether there was collective domination, the ECJ put more stress on 'connecting elements' than on economic ties in the case of France v. Commission.[54]

According to the ECMR 139/2004 (European Competition Merger Regulation), a merger is illegal if it is likely to strengthen or create a group dominating position.[55] For example, the commission determined that collective dominant undertakings had violated Art. 102 TFEU in *Cewal*.[56] The businesses in question had engaged in a variety of tactics meant to drive out rivals from the market.[57] The practices could also be as selective price cutting and the grant of loyalty rebates.[58] The first instance to demonstrate that Article 102 TFEU might be applied to dominating positions held by more than one undertaking was *Italian Flat Glass*.[59] The General Court in this instance also recognised the distinction between a 'collective entity' and a single economic entity, concluding that Art. 101 TFEU could not be applied to the undertakings that were a part of the same economic unit.[60] According to the General Court's ruling in the *Irish Sugar case*[61], a joint dominant position is when several businesses can work together, particularly due to factors that give rise to a connection between them, to adopt a common strategy on the market and act largely independently of their rivals, customers, and ultimately customers.[62]

While it is unnecessary in circumstances of single dominance, collective dominance results from shared policies amongst multiple activities. In a single dominance situation,

the company in question will be big enough to maintain a dominant position all by itself. The General Court determined in the Irish Sugar case that the collective entity as a whole rather than each party in the collective dominant position was the source of the abuse. Furthermore, because Irish Sugar and its distributor were found to be a single collective entity, the parties in question were in a vertical relationship. In this way, the case demonstrated that collective domination is possible in vertical settings. The General Court ruled that, even though it had not been considered by the EU Courts before the case, no precedent in the case law might support the ability for businesses in vertical relationships to take advantage of a joint dominant position.[63]

In the Airtours[64] case, the ECMR provided some guidelines to determine collective dominance: first, each member of the dominant oligopoly must be able to see how the other members are acting to determine whether they are adopting the common policy. Second, the situation of tacit coordination must be sustainable over time, which means there must be a motivation to stick with the market's common policy. Third, the anticipated response of current and future competitors as well as of consumers must not jeopardise the restraining mechanism.[65]

The US Department of Justice has also filed a complaint against two payment card networks Visa and Master Card which broke the Sherman Antitrust Act. Both jointly using the exclusionary method prevented their member banks.[66] The 'Canadian Competition Tribunal' held that Visa and Master Card both are liable for abusing joint dominance.

The Federal Trade Commission Act prohibits unfair methods of competition and conscious parallelism.[67] Anyone who monopolises or attempts to monopolise, or who joins forces with or conspires with another person or persons to monopolise any part of trade or commerce among the various states, or with foreign countries, is guilty of a crime, according to Section 2 of the Sherman Act, passed more than a century ago.[68] Most of the provisions of the Sherman Act are civil but it also has criminal punishment. Criminal fines under the Sherman Act can be as high as $100 million for businesses and $1 million for individuals, with a maximum prison term of ten years. Federal law permits the maximum fine to be increased to twice the amount the conspirators made from the illegal activity or twice the money lost by the victims of the crime, whichever is greater if one of those sums is greater than $100 million.[69] In Mr. Mohit Manglani and flip-cart and others, the CCI found that it was unnecessary to investigate the charges of abuse of dominance against the companies involved because none of them were dominant.

India's competition regime is largely based on EU law, with a corresponding relationship to US law. However, the EC Treaty deals with abuse of dominance done by one or more undertakings but the Competition Act of 2002 begins with no firm or group that does not allow it. The phrase 'one or more undertakings' was first used in the *Italian Flat Glass* case. Being united with more than one independent entity in a specific market through economic links hold a dominant position over other market entities. This declaration marked the start of Europe's collective dominance paradigm.

The European Union's General Court confirmed that a link of dependency between parties to a tight oligopoly that allowed for coordination was sufficient to establish collective control.[70] Furthermore, the court established some guidelines in the Airtours[71] decision to examine whether the idea of joint dominance was being abused. It had set out three following significant questions to undermine the joint dominance:

1 How were other members behaving, did each firm know?

2 Was tacit coordination sustained between enterprises?

3 Would the tacit coordination jeopardise the common policy between competitors and consumers?

8 Meru case analysis

'First Track Call Cab' and 'Meru Transport Solution Private Ltd.' separately filed two cases against 'ANI Technologies Pvt. Ltd.' led by Ola. The same allegations were previously filed against 'Uber' by the same 'Meru Transport Solution Private Ltd.'. 'Competition Appellate Tribunal' showed serious concern about the issues filed by informant 'Meru'. Subsequently, the 'SCI' upheld the judgment of COMPAT. The sudden change in the radio-taxi market impacted seriously not only the traditional yellow taxi service but also the other key rivals like Meru, and First Track Call Cab that existed in the radio-taxi market itself. The informant brought the allegation of joint dominance against ANI Technologies Pvt. Ltd. led by Ola under Vide Case No. 6/2015 and 74/2015 mentioning that the Penal Section 27(b) that penalty could be imposed upon "person or enterprises which are parties to such agreements or abuse"[72] so more than one enterprise dominance could be possible. However, commission had not taken this view stating that legislation does not allow this concept.

Not only in this case the concept of collective dominance arose but also in *Arjun Jawahar Ganj v. Viacom 18 Zion Bizworld*[73], *Flyash Based Bricks Manufacturers and Promoters Association*, *Uttar Pradesh v. Chief Secretary*[74], *Govt. of Uttar Pradesh and Others*, *Royal Energy v. IOCL, BPCL and HPCL*[75], *Indian Sugar Mills Association v. Indian Jute Mills Association*[76], *K. Sera Sera Digital Cinema Pvt. Ltd.*, *V. Digital Cinema Initiatives*, *LLC & Others*[77], *Sanjiv Rao v. Andhra Pradesh Higher Purchase Association*[78], *Shri Sonam Sharma v. Apple*, *Vodafone*, *Airtel and Others*[79], the same allegation of 'collective dominance' concept arose but due to not inclusion of this joint or collective dominance concept commission straightly rejected those by stating a common precedent that no single enterprise was considered to be dominant so matter of abuse of dominance did not arise and as the legislation did not consider it so matter of consideration of this debatable concept could not be negotiable. But confusion awakes when these series of cases come and because of not incorporation of this collective dominance concept, the adjudication does not take place.

9 Conclusions and suggestion

There are five kinds of the market system. Five kinds are 'perfect competition', 'monopoly', 'oligopoly', 'monopolistic competition' and 'monopsony'. When there are a huge number of buyers and sellers, as well as a large number of market participants, it is difficult for one member to change the market's prevailing price. This is the perfect desirability of a market system. It is called perfect competition. In a monopoly market, there is only one entrant who can set their rates, but their ultimate revenue is restricted by customers' capacity or willingness to pay their price. An oligopoly is a market system where a handful of players exist. It is so much similar to monopoly. However, because of

the handful of players, it is possible, that due to poor government regulation, oligopolists can set prices and behave like a monopolist. A market system that combines monopolistic and perfect competition characteristics is known as monopolistic competition. Like in a fully competitive market system, there are several competitors on the market. Monopsony occurs when there is only one buyer for a specific good or service, giving that buyer enormous negotiating power over the price of the goods supplied. The radio-taxi market is a market where a handful number of players exist. Those were according to DG report in *Fast Track Call Cab & Others*[80] case except 'Ola' and 'Uber' there was also 'Fast Track', 'Mega Cabs', 'Easy Cabs' and 'Meru' exist. So, it is looking like an oligopoly market. The market system of oligopoly itself speaks that a handful number of firms can behave like a monopoly and set prices at their own choice like monopolists. So, this radio-taxi market may have to be handled carefully.

When Competition Amendment Bill, 2012 came but lapsed due to the dissolution of Lok Sabha. Later, the Competition Law Review Committee on 2019 rejected the concept from incorporating. Thereafter, the concept was never introduced. Though the Competition Law Review Committee argued that the concept of cartel, group in the act is sufficient to deal with these matters. Not only that they also gave an example of US Antitrust laws which also do not consider the collective dominance concept. The model followed by US Antitrust Laws, vividly Sherman Act is the combination of civil and criminal nature both. Also, if the enterprise against which the order is issued does not follow it, Section 42(3) of the Competition Act, 2002 punishes the enterprise with three years in prison or a fine of up to Rs.25 crores, or both. But the punishment which the US gives is ten times more than India. Indian competition regime is mostly modelled like Europe in this context. It is very much civil like Europe. The Competition Act's Section 27 addresses ending abusive agreements or compensatory orders, and Section 28 addresses 'stop and desist' orders. The CCI issued an immediate refusal in the case of *Fast Track Call Cab & Meru Transport Private Ltd. v. ANI Technologies Private Ltd*.[81], stating that Section 27(b) of the Indian Competition Act allows the commission to impose a fine for not more than 10% of the average turnover for the three prior fiscal years on each of those persons or enterprises who are parties to such agreements or abuse more. So, the penalty section identifies more than one could abuse dominance. But commission argued definition and determination process of abuse of dominance written in the act, do not consider dominance can be done collectively. Section 27(b) read with Section 4 of the Competition Act may be needed to re-look by legislatures. In the series of cases mentioned in this paper where the concept of collective dominance is involved but due to not inclusion of this concept the CCI refuses it straightway. The developed jurisprudence related to collective dominance in Europe may be required to be checked again by the legislature and judiciary to understand whether any lacuna remains unchecked or not in the abuse of dominance determining process.

Notes

1 Meru Travel Solutions Private Ltd. v. Uber India System Private Ltd., Case No. 96/2015 [online] https://www.cci.gov.in/sites/default/files/26(2)_96%20of%202015.pdf.

2 Meru Travel Solutions Private Ltd. v. ANI Technologies Private Ltd., Case No. 74/2015 [online] https://www.cci.gov.in/sites/default/files/6%20%26%2074%20of%202015.pdf.

3 Fast Track Call Cab Pvt. Ltd. v. ANI Technologies Private Ltd., Case No. 06/2015 [online] https://www.cci.gov.in/sites/default/files/6%20%26%2074%20of%202015.pdf.

4 Ibid, No. 1.

5 Ibid, No. 2.

6 Ibid, No. 3.

7 'Predatory price' refers to the selling of goods or provision of services at a price that is lower than the cost of production of the goods or provision of services, as set by rules, in order to decrease competition or remove competitors.

8 Uber India Systems Pvt. Ltd. v. Competition Commission of India, Civil Appeal No. 641 of 2017.

9 Competition Act 2002, Sec. 4(1).

10 Competition Act 2002 as amended Competition (Amendment) Act 2007.

11 Competition Act 2002, Sec. 5(b).

12 EC Treaty, Art. 82 repealed as TFEU, Art. 102.

13 Shrivastava, V. and Maheshwari, K. (2020) 'Exigency of Indian competition law: the concept of collective dominance', *NLUJ Law Review, Journal & Blog*, 29 May, Jodhpur Publication [online] http://www.nlujlawreview.in/exigency-of-indian-competition-law-the-concept-of-collective-dominance/ (last accessed 19th October 2022).

14 Whish, R. and Balley, D. (2011) *Competition Law*, Vol. 566.

15 Competition Act 2002, Sec. 2(r).

16 Competition Act 2002, Sec. 2(s)

17 Competition Act 2002, Sec. 2(t).

18 Competition Act 2002, Sec. 19(6).

19 Ibid no. 10.

20 Ibid.

21 Competition Act 2002, Sec. 26(1).

22 Meru Travels Solutions Private Limited v. Competition Commission of India, Appeal No. 31 of 2016.

23 Supra, No. 10.

24 Supra, No. 3.

25 Competition Act 2002, Sec. 27(b).

26 Competition Act 2002, Sec. 2(c).

27 Competition Act, Sec. 2(b).

28 Consumer Online Foundation v. Tata Sky Ltd. & Others. Case No. 02/09 (CCI).

29 Manappuram Jeweller Private Ltd. v. Kerala Gold & Silver Dealers Association, 2012, CompLR, No. 548 (CCI).

30 Bharti Airtel v. Reliance Infocom Ltd., Case No. 03/2017, CCI [online] https://www.cci.gov.in/sites/default/files/3%20of%202017.pdf.

31 United Brands Company v. EC Commission, (1978) ECR 207.

32 Hoffman La Roche v. Commission 85/76 [1979] ECR 461.

33 Judgment of 23 April 1991, Höfner and Elser v. Macrotron GmbH, C-41/90, EU:C:1991:161.

34 Odudu, O. and Bailey, D. (1721/1725) 'The single economic entity doctrine in EU Competition Law', *Common Market Law Review*, Vol. 51, pp.1721–1758, Kluwer Law International, UK.

35 Judgment of 10 March 1992, Shell v. Commission, T-11/89, EU:T:1992:33, paragraph 311.

36 Odudu and Bailey (No. 24) 1726.

37 Judgment of 9 November 1983, Michelin v. Commission, C-322/81, EU:C:1983:313.

38 Judgment of 14 February 1978, United Brands v. Commission, C-27/76, EU:C:1978:22.

39 Judgment of 21 February 1973, Continental Can v. Commission, C-6/72, EU:C:1973:22.

40 Ibid, paragraph 32.

41 Judgment of 3 July 1991, AKZO v. Commission, C-62/86, EU:C:1991:286.

42 Judgment of 13 February 1979, Hoffman-La Roche v. Commission, C-85/76, EU:C:1979:36.

43 Ibid, paragraph 91.

44 Jones, A. and Sufrin, B. (2014) *EU Competition Law: Text, Cases and Materials*, 5th ed., p.672, OUP, UK.

45 See for example Continental Can or Commercial Solvents.

46 Whish, R. and Bailey, D. (2018) *Competition Law*, 9th ed., OUP, UK, DOI: 10.1093/law-ocl/9780198779063.001.0001.

47 Italian Flat Glass (Case IV/31.906) Commission Decision 89/93/EEC [1989] OJ L33/44.

48 Judgment of 27 April 1994, Almelo and Others v. NV Energiebedrijf Ijsselmij, C-393/92, EU:C:1994:171.

49 Ibid, paragraphs 42–43.

50 Judgment of 16 March 2000, Compagnie Maritime Belge Transports and Others v. Commission, C-395/96, EU:C:2000.

51 Ibid, paragraph 36.

52 Ibid, paragraph 39.

53 Ibid, paragraph 41.

54 Judgment of 31 March 1998, French Republic and Others v. Commission, C-68/94, EU:C:1998:148.

55 Jones, A. and Sufrin, B. (2014) *EU Competition Law: Text, Cases and Materials*, 5th ed., OUP, UK.

56 Cewal (Case IV/32.448 and IV/32.450) Commission Decision 93/82/EEC [1993] OJ L34/20.

57 Ibid, paragraph 64.

58 Even if not mentioned in the previous segment regarding the abuse of dominant position, these are also condemned for single entities and not just in cases of collective dominance.

59 Judgment of 10 March 1992, Societa Italiana Vetro SpA and others v. Commission, T-68/89, EU:T:1992:38.

60 Ibid, paragraph 357.

61 Judgment of 7 October 1999, Irish Sugar Plc v. Commission, T-228/97, EU:T:1999:246.

62 Ibid, paragraph 46.

63 Ibid, paragraphs 61–63.

64 Judgment of 6 June 2002, Airtours Plc v. Commission, T-342/99, EU:T:2002:146.

65 Judgment of 26 January 2005, Laurent Piau v. Commission, T-193/02, EU:T:2005:22, paragraph 111.

66 https://www.lawaudience.com/collective-dominance-a-dilemma-in-the-indian-scenario/#google_vignette (accessed 15 September 2021).

67 Federal Trade Commission Act, Sec. 5.

68 Sherman Act, Sec. 2.

69 https://www.ftc.gov/tips-advice/competition-guidance/guide-antitrust-laws/antitrust-laws (accessed 15 September 2021).

70 Gencor v. Commission, 1999, E.C.R. II-753.

71 Airtours v. Commission, 2002, E.C.R. II-2585.

72 See footnote 25.

73 Arjun Jawahar Ganj v. Viacom 18 Zion Bizworld, CCI Case No. 57/2017.

74 Flyash Based Bricks Manufacturers and Promoters Association, Uttarpradesh v. Chief Secretary, CCI Case No. 22/2017.

75 Govt. of Uttarpradesh and Others, Royal Energy v. IOCL, BPCL and HPCL, CCI Case No. 57/2017.

76 Indian Sugar Mills Association v. Indian Jute Mills Association, CCI Case No. 38 of 2011.

77 K. Sera Sera Digital Cinema Pvt. Ltd. V. Digital Cinema Initiatives, LLC & Others, CCI Case No. 03 of 2015.

78 Sanjiv Rao v. Andhrapadesh Higher Purchase Association, CCI Case No. 49 of 2012.

79 Shri Sonam Sharma v. Apple, Vodafone, Airtel and Others, CCI Case No. 24/2011.

80 Supra, No. 5.

81 See footnote 24.