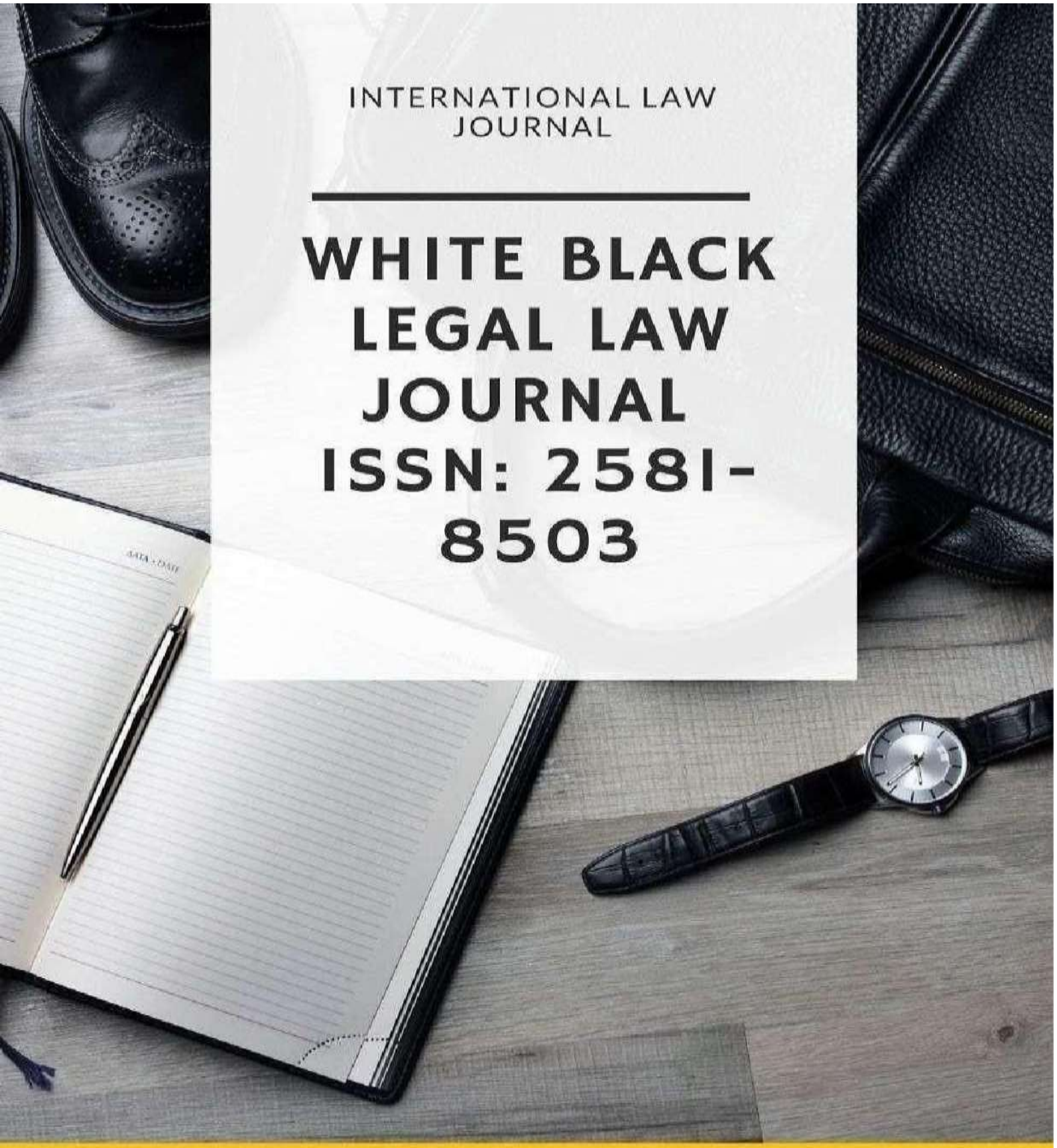

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ABUSE OF DOMINANT POSITION BY CORPORATE GROUPS: REVISITING THE SINGLE ECONOMIC ENTITY DOCTRINE IN INDIA

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Abstract

The evolution of competition laws in India has been observed with gradual development of laws from monopoly control laws to anti-competition control laws. Even though Competition Act 2002 gives detailed guidelines on dealing with the issue of abuse of dominant position, the company-focused approach taken by the act fails to deal with modern-day corporate realities. Corporations operate as economic entities, allocating their operations in subsidiaries and affiliates, and this causes serious difficulties when it comes to enforcing competition law with respect to such cases of abuse of dominance. This paper critically assesses the importance of the Single Economic Entity approach in dealing with the issue of abuse of dominant position of corporate groups in India. Relying on relevant provisions from statutes, court judgments, and comparative analysis of juridical doctrines, this paper will try to prove that failure of explicitly including the single economic entity approach in Indian competition law is a serious drawback. It will also show that incorporation of such a doctrine is necessary to keep up with new developments in the economy.

Introduction

The need for change in the regulatory structure concerning market regulation, post-liberalization reforms in India since 1991, called for a major change in India's approach to market regulation laws. The previous system was governed under the MRTP Act, 1969, where the primary purpose of that regime was to check on the concentration of economic power, and ensure that there is no creation of monopoly through ex ante regulations and license control procedures. However, such a system was found to be outdated and incapable of being effective in a liberalized economy driven by competition among private players. The introduction of the Competition Act, 2002 heralded a new era in competition laws.[1]

[1] Competition Act, No. 12 of 2003, pmbl. (India).

The law demonstrates a clear appreciation of market forces in its acknowledgment that merely being dominant is not intrinsically negative. In fact, dominance could very well arise out of efficiency, ingenuity, or simply smart business practice. It is, however, the abuse of this dominance which the law endeavors to outlaw, specifically if this results in distortion of market forces or limitations on consumer freedom..[2] This approach reflects a broader shift from structural regulation to behavioral control, emphasizing the effects of conduct on the competitive process.

Despite this theoretical clarity, the application of abuse of dominance rules is fraught with challenges when it comes to corporate groups. In today's era, businesses do not exist as one entity alone but rather through a web of subsidiaries, joint ventures, and other affiliated companies that span several countries. Although each company operates independently, there may be a common controlling agency coordinating and directing the efforts of these enterprises, thus forming a single economic entity.

This phenomenon raises the question of how Indian competition law should deal with corporate groups. The law is based on the premise that the unit of analysis is the "enterprise" the legal entity that forms the basis for the determination of whether dominance exists and the possible abuse thereof. When anti-competitive practices occur through a conglomerate of firms controlled by one company, the enterprise-based approach may miss the actual center of dominant power.

In this case, Single Economic Entity principle formulated in the context of EU competition law provides a powerful approach to analysis. Based on the principle of substance over form, the principle regards entities that are controlled by the same entity as one undertaking under competition law.[3] Thus, the regulators will be able to allocate the liability within the group and handle any anti-competitive behavior much more efficiently.

The primary objective of this paper is to review the relevance of the Single Economic Entity principle in the Indian jurisdiction, specifically concerning the abuse of dominant position. According to the author, the lack of an adequate doctrinal framework that would be used to deal with such dominance leads to serious enforcement problems. In turn, those problems

[2] Id. § 4.
[3] Case C-97/08 P, Akzo Nobel NV v. Commission, 2009 E.C.R. I-8237.

enable companies to organize themselves in a way that makes them less vulnerable to legal prosecution but allows them to maintain significant market power.

Concept of Dominant Position in India

The non-abuse of dominant position is among the most important pillars of the Competition Act, 2002. According to Section 4 of the Act, a dominant position is one whereby an enterprise holds sufficient power in the relevant market that enables it to act independently of competition or influence other enterprises or consumers in its favor.[4] This definition emphasizes the functional approach towards dominance, considering not only the size of the company or its market share, but rather its capability to act independently from the market pressures.

The definition of the dominant position in Indian competition law is approached through a systematic two-stage analysis. First, it is necessary to establish the relevant market by determining its scope both geographically and from the perspective of product lines. The relevant product market can be established according to the principle of substitution in demand – it is required to determine if consumers consider certain goods or services to be substitutes for each other according to their characteristics, price, and potential use.[5]

After determining the appropriate market for which the test needs to be conducted, the second step includes the determination of whether the company holds a position of dominance in that particular market. Section 19(4) of the Act lists several factors which include but are not limited to market share, size and resources, economic power, vertical integration, barriers to entry, and consumer dependence, among others.

In Indian legal precedents, it has always been made clear that the issue of dominance cannot simply be resolved based on market share. This can be seen in the decision rendered by the Competition Commission of India in ESYS Information Technologies Pvt. Ltd. v. Intel Corp., where it has been highlighted that dominance is not simply achieved by virtue of having a large market share.[6] This recognition of the qualitative factors is indicative of the recognition that the market power could be generated through structural factors which may not be easily quantifiable.

[4] Competition Act, No. 12 of 2003, § 4, Explanation (a) (India).
[5] I Id. §§ 2(r), 2(s), 2(t), 19(4).
[6] *ESYS Information Technologies Pvt. Ltd. v. Intel Corp.*, Case No. 48 of 2011, Competition Commission of India.

In the case of Belaire Owner's Association v. DLF Ltd., the Commission noted that the dominant position of DLF in the real estate market in Gurgaon was supported by high entry barriers, dependence of consumers, and lack of substitutes.[7] The judgement underscores the significance of the contextual analysis, which includes an understanding of the particular features of the market as well as the relative bargaining strength of consumers.

Nevertheless, in spite of the highly sophisticated nature of the judgment and its consideration of all the relevant factors, there still remains a considerable degree of reliance on the idea of the individual enterprise in the statutory scheme. The notion of a "group" is included in the Act only in respect of the regulation of combinations in accordance with Section 5 of the Act.

As a result, there arises a considerable theoretical discrepancy and lack of coherence in the legislation. When one speaks about the joint dominance of several entities within a single group, then there emerges the problem that each of them considered in isolation from others cannot be classified as a dominant enterprise. Such a situation becomes especially important when one discusses markets characterized by the presence of vertical integration.

Abuse of Dominant Position under Indian Law

The Competition Act, 2002, under Section 4(2), enlists some practices as examples of abuses of dominant position, which include unfair or discriminatory terms, pricing, predatory pricing, denial of access to the market, tying and bundling, and use of dominance in one market for entering into another. The purpose behind drafting such a provision is to make it as broad as possible in order to give the Competition Commission greater latitude in dealing with any anti-competitive conduct.

The nature of 'abuse' under the Indian competition laws is basically effects-based, and it takes into account the effect of the practice on the competitive process without being concerned about the intention behind the practice of the enterprise. This view is in accordance with the international jurisprudence on the matter, as seen in the case of Hoffmann-La Roche v. Commission, decided by the European Court of Justice.[8]

[7] *Belaire Owner's Association v. DLF Ltd.*, Case No. 19 of 2010, Competition Commission of India.
[8] Case 85/76, Hoffmann-La Roche & Co. AG v. Comm'n, 1979 E.C.R. 461.

There are many important instances from Indian case law on how these concepts have been utilized in practice. In the case of Belaire Owner's Association v. DLF Ltd., the Competition Commission determined that DLF had committed abuse of dominance by dictating unilateral and arbitrary terms to apartment purchasers.[9] These clauses granted unilateral right to DLF for changing the building plans, delaying possession and penalizing the buyers disproportionately, while protecting itself from any liability. In this context, the Commission held that the behavior of the company was indicative of the imposition of unjust and discriminatory terms given the weakness of the consumers in negotiation power.

In another case of abuse of dominant position by a corporation, the Commission reviewed the practices of Coal India in imposing standard fuel supply agreement to the power producers in Maharashtra State Power Generation Company v. Coal India Ltd. The terms imposed by Coal India in this matter were very oppressive and were clearly favorable to the former party, without giving consumers an option of opting out as there were no alternative sources of supply.

Predatory pricing was explained in the case of MCX Stock Exchange Ltd. v. National Stock Exchange of India Ltd., in which the National Stock Exchange was alleged to have practiced zero pricing in the currency derivatives market. Pricing practices such as these were ruled to be illegitimate methods of competing and meant to remove competitors from the market. This judgment emphasized the importance of looking into both the pricing practice and the potential market consequences that result from its implementation.

Despite the usefulness of the Indian system in dealing with all kinds of anti-competitive behavior, however, there is still a very significant gap in the Indian approach. In all of these judgments, attention is limited to the conduct of each individual company. In some instances, such anti-competitive conduct may be a result of coordinated efforts among companies within a group, but responsibility tends to focus on only the particular firm engaged in the activity.

This might not be a sufficient means of dealing with today's corporate environment. Anti-competitive conduct is often conceived and executed within the scope of groups, whereby different companies will take up their different responsibilities within the strategy. One subsidiary will adopt a certain pricing practice, one will control the distribution network, and

[9] *Belaire Owner's Association v. DLF Ltd.*, supra note 7.

another will handle the data or the IP. On an individual basis, each practice is legal, but together, they become anti-competitive practices.

It is impossible to consider the above-described behavior collectively in the corporation's group, which leads to an inadequate analysis of market power and abuse of it. This gap calls for the development of a legal approach acknowledging the economic identity of the group of companies.

Corporate Groups and Economic Reality

Business Groups constitute one of the prominent characteristics of modern corporate structures, especially in times where globalization, technological advancements, and elaborate supply chains characterize business activity. Corporate groups generally comprise a set of legally independent enterprises bound together by means of ownership, control, and contractual relations, often extending beyond geographical and market boundaries.[10] Although each enterprise in the corporate group retains its own independent legal identity, the practical reality of business is that their activities often form part of an interconnected whole towards a common goal.[11]

The issue of the separation of legal form and economic substance assumes even greater importance in terms of competition laws. Under the legal form, each member firm is seen as separate legal entity with powers to enter into agreements, hold property, and incur obligations independently.[12] In economic terms, however, individual firms in a group act as integral parts of one business, with all key decisions regarding the price setting, production, market access, and distribution being taken not by individual subsidiaries, but by the controlling parent or group management body.[13]

This divergence between legal form and economic reality has profound implications for the enforcement of competition law. The framework under the Competition Act, 2002 is premised on the concept of the "enterprise" as the unit of analysis.[15] While this approach is workable in

[10] Vishwas H. Dhanapal, *Single Economic Entity Doctrine in India*, 2017 WL 4325678 (SSRN).
[11] Vishwas H. Dhanapal, *Single Economic Entity Doctrine in India*, 3 INDIAN COMPETITION L. REV. 10, 12–13 (2018).
[12] Competition Act, No. 12 of 2002, § 2(h) (India).
[13] Neeti Niyaman, *Leniency & Single Economic Entity in Indian Competition Law* (2025), https://neetiniyaman.com/leniency-single-economic-entity-competition-law-india/.

cases involving standalone firms, it becomes problematic when dealing with corporate groups that exercise market power collectively. In such cases, the artificial separation of entities may obscure the true extent of dominance and the manner in which it is exercised.

Of special importance is the issue of regulatory arbitrage. A business group can allocate its activities among its affiliates such that, taken separately, each affiliate does not qualify as dominant in a narrowly defined market. For example, the first affiliate could be responsible for manufacturing, the second for distribution, while the third would be in charge of pricing or information processing. On their own, none of these affiliates may meet the dominance test under Section 4. But in combination, the business group will have significant market power to affect market dynamics and exclude competitors.

This division of functions can be used to circumvent liabilities. Competitions regulators, bound by the enterprise approach, might find it difficult to impute the anti-competitive behavior of one affiliate to the business group as a whole. In such circumstances, business groups can coordinate their efforts in pursuit of an anti-competitive strategy that goes unnoticed by competition authorities. This is especially relevant for vertically integrated industries and digital platforms, where activities are purposefully segregated between affiliated firms.

Furthermore, the emergence of business models based on the exploitation of big data has caused additional difficulties with regard to drawing lines between the entities that constitute a corporate group. Big data generated by one entity can be exchanged between others, thus allowing the corporate group to benefit from its informational superiority in several markets at once. While this may lead to increased market power and even create entry barriers, it is rather hard to combat without taking the corporate group into account.

In light of the above, the necessity to reconcile legal reasoning with economic realities becomes particularly acute. If competition law fails to recognize the economic realities of today's market structure, then it will lose its effectiveness. It is vital to treat corporate groups as coherent economic players.

The Single Economic Entity Doctrine

The concept of the Single Economic Entity doctrine is particularly important in addressing the issues caused by the gap between formality and substance.[14] Specifically, the Single Economic Entity doctrine holds that two or more corporations controlled by the same person(s) can actually be regarded as a single undertaking, for the purpose of application of competition laws, even if formally they exist independently of each other.

The doctrine has been most thoroughly explained in the context of EU competition law where an "undertaking" includes any entity engaging in economic activity irrespective of its legal nature. For example, according to Article 81 of EC Treaty (as of 2003), a parent company and its subsidiaries shall be regarded as one entity if the former has "decisive influence" over the latter.

The idea of decisive influence lies at the core of the theory. Decisive influence is understood as the ability of the parent company to determine or control the business activities of the subsidiary company using a variety of means, including ownership or management control. Typically, the European court systems tend to assume the existence of decisive influence when a parent company owns 100 percent or close to 100 percent shares in a subsidiary company.[17] Such presumption is rebuttable; however, it puts the burden of proof on the parent company to prove the independence of the subsidiary company.

It should be acknowledged that there are three main components of the Single Economic Entity doctrine, including common ownership, centralized control, and economic unity. The former establishes the existence of connection between companies, the latter indicates the fact that key decisions are made by the parent company. Economic unity means the fact that entities act as a single unit with no independence from the parent company.

This theory can be explained based on both enforcement and economic considerations. The theory is justified from the point of view of enforcement because the doctrine will ensure that there is no manipulation of the firm’s structure for purposes of avoiding liability. If there was no such doctrine, then the parent company would simply avoid liability for its anticompetitive activities by entrusting the activities to the subsidiary. Thus, the doctrine ensures that the

[14] Vishwas H. Dhanapal, *Single Economic Entity Doctrine in India*, 2017 WL 4325678 (SSRN).

liability is in line with control.

Economically, this doctrine recognizes the fact that the competition takes place among economic entities rather than legal entities. For example, firms compete as a unit, utilizing their resources, information, and capabilities in various parts of the firm. Therefore, looking at each firm in isolation will not reflect the true nature of competition.

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Within the Indian scenario, the failure to include any express provision recognizing the doctrine of Single Economic Entity reduces the efficacy of the competition agencies in dealing with the issue of group dominance. While some of the rulings passed by the Competition Commission recognize the interdependence between corporate groups, the lack of doctrinal clarity persists. The introduction of the doctrine within the Indian competition law regime will thus be a major development towards achieving harmony between economic reality and the law.[16]

Comparative Jurisprudence

The creation and utilization of the Single Economic Entity doctrine greatly differ depending on jurisdictions owing to different philosophies of competition law enforcement. A comparative study of the EU and USA would provide insights into how legal systems address

[15] Oorvi Mehta, *Application of the Single Economic Entity Doctrine to Anticompetitive Agreements*, INDIACORPLAW (Feb. 8, 2018), https://indiacorplaw.in.
[16] Vishwas H. Dhanapal, *Single Economic Entity Doctrine in India*, 2017 WL 4325678, at 22 (SSRN).

the dichotomy between the formal distinction between corporations and actuality.[17]

Firstly, the doctrine is deeply embedded into the competition law of the European Union. The European Commission and the European Court of Justice always understand the notion of "an undertaking" in a wider perspective than just a business enterprise.[18] It is based on economic activities and not the legal personality.[19] Thus, liability can be attributed to several enterprises that are part of one and the same economic unit, despite their formal distinction.[20]

One of the distinctive features of the competition law of the European Union is the principle of "decisive influence."[21] According to it, parent companies can bear responsibility for the anti-competitive behavior of subsidiaries.[22] If the parent company makes commercial strategies for its subsidiary, the latter cannot claim its independent operation on the market.[23] It is especially true of wholly-owned subsidiaries. Courts often believe that owning the whole enterprise gives a chance for decisive influence.

The EC has applied this principle in cartel investigations where liability is sought to be imposed upon the economic entity accountable for the violation and not restricted to the actor itself. The doctrine makes the application of the enforcement action more effective as it avoids corporations from using their complicated organizational structure as an excuse to evade accountability. At the same time, it helps in imposing penalties upon entities who can afford to pay, making the enforcement more powerful as a deterrent against violations of the competition laws.

Furthermore, the EC system is distinguished by its economic realism and pragmatism when addressing competition concerns. The principle does away with legalistic notions in favor of real-life issues in the market and relations among entities. In this way, the economic power of corporations, especially those vertically integrated and/or in digital markets, can be better assessed and determined.

[17] Vishwas H. Dhanapal, *Single Economic Entity Doctrine in India*, 3 INDIAN COMPETITION L. REV. 1–2 (2018).
[18] Case 27/76, *United Brands Co. v. Commission*, 1978 E.C.R. 207, ¶¶ 197–199.
[19] Case 6/72, *Commission v. Hoffmann-La Roche AG*, 1973 E.C.R. 1025.
[20] Case 27/76, *United Brands Co. v. Commission*, 1978 E.C.R. 207.
[21] Case 15/74, *Société Technique Minière SA v. Maschinenbau Ulm GmbH*, 1976 E.C.R. 419.
[22] Case 22/71, *Ladbroke v. Commission*, 1973 E.C.R. 1035.
[23] Case 6/72, *Commission v. Hoffmann-La Roche AG*, 1973 E.C.R. 1025, ¶ 19.

On the other hand, the USA approaches the issue of a single economic entity more cautiously. According to the decision in Copperweld Corp. v. Independence Tube Corp., the parent corporation and its wholly-owned subsidiary do not form a "contract, combination or conspiracy" for the violation of Section 1 of the Sherman Act because they represent a single economic entity. Indeed, concerted activity inside a corporate entity is not regarded as a "contract, combination or conspiracy," which would bring liability.

Nevertheless, the implications of the Copperweld decision are limited. First of all, Copperweld was designed to address the issue of distinction between unilateral and concerted activities. Unlike the European Union, the USA does not consider the single economic entity approach in terms of establishing group liability in relation to Section 2 violations.

In the United States, jurisprudence in this area has evolved through the introduction of an examination of the level of economic integration and whether there is any independent decision-making capacity in the entities concerned. In American Needle, Inc. v. National Football League, the Supreme Court of the United States made clear that the core issue is whether or not the entities can independently decide and engage in activities that deny the market the existence of independent centers of competition. This approach to the matter may be seen as nuanced and fact-intensive but lacks clarity of doctrine as well as enforcement capability of the European regime.[24]

The above comparison of the approaches demonstrates the superiority of the European approach when dealing with the problem of abuse of dominance. This is because it recognizes the economic unity of corporate groups, allowing the attribution of liability among the various entities in such a case.[25] The US approach, although intellectually superior, does not appear adequate in addressing issues of concerted action in corporate groups.

Indian Position on the Single Economic Entity Doctrine

The Indian competition law, which consists of provisions contained in the Competition Act of 2002, does not make any express provision of the theory of Single Economic Entity when dealing with abuse of dominant position.[26] Instead, the provisions within the Act have been

[24] Vishwas H. Dhanapal, *Single Economic Entity Doctrine in India*, 2017 WL 4325678, at 12–13 (SSRN).
[25] Vishwas H. Dhanapal, *Single Economic Entity Doctrine in India*, 2017 WL 4325678, at 20–22 (SSRN).
[26] Competition Act, No. 12 of 2002, §§ 2(h), 4 (India).

crafted in such a way that the "enterprise" is considered the main unit when evaluating issues relating to dominance as well as abuse. Although the definition of "group" has been given under Section 5 of the Act, it is mainly restricted to combinations.[27]

Notwithstanding the lack of explicit recognition in doctrinal terms, it is possible to discern an implicit recognition of economic reality in the case law of the Competition Commission of India. In MCX Stock Exchange Ltd. v. National Stock Exchange of India Ltd., for example, the Commission took into account the behavior of the National Stock Exchange of India within various market segments, taking note of the fact that the pricing behavior of the exchange in the currency derivatives market could not be viewed in isolation from its activities in other market segments.[28]

In a similar vein, in regard to investigations into markets involving digital platforms, the Commission has taken up an approach that is based on the concept of an ecosystem while conducting the analyses. For instance, in the case of Umar Javeed vs. Google LLC, it was established that Google had engaged in the practice of abusing its market dominance within the market for licensable mobile operating systems through the imposition of conditions. In this case, the conditions involved pre-installation requirements as well as limitations on the use of other applications.[29]

The importance of the Google Android decision in the context of digital ecosystems becomes clear when examining how it considered the connectedness of these environments. It is worth noting that the Commission understood that the various Google services were linked to each other, and Google's monopoly in one segment could have been employed to exert pressure on other competitive spheres. This logic bears striking resemblance to that of the Single Economic Entity principle without actually referring to it.

Another sign of the changing approach in assessing competition on the digital market is associated with the Commission's focus on the concept of data and network effect. The understanding that data and user network could be a strong source of market power provides another example of expanding competition definition.

[27] Competition Act, No. 12 of 2002, § 5 (India).
[28] *MCX Stock Exchange Ltd. v. National Stock Exchange of India Ltd.*, Case No. 29 of 2010, Competition Commission of India (2015).
[29] *In re Google LLC (Android)*, Case No. 7 of 2018, Competition Commission of India, at 140–145.

Nevertheless, this evolution occurs on a more ad-hoc basis rather than a doctrinal one. Lack of coherence in the approach adopted results in inconsistency and unpredictability of competition law enforcement. In turn, without acknowledging the principle of the Single Economic Entity, the Commission will lack the necessary tools for establishing liability in groups of corporations.[30]

Such an approach becomes highly questionable in light of modern technologies and their use in business operations, which involves complicated corporate structures that are aimed at maximizing efficiency.[31] Inability to view them as a whole economic entity can lead to underestimation of market power and its abuse.[32]

Challenges in Applying the Doctrine in India

The introduction of the concept of Single Economic Entity in India presents a range of issues related to interpretation, legal considerations, and enforcement that have to be tackled in order for it to be successful. Although this principle provides a potent weapon to combat anti-competitive behavior on the part of associations, its successful application poses several challenges.

A particularly problematic issue in this context is the problem of "decisive control." The task of determining whether there is decisive control of the parent company over the subsidiary is not easy at all. It involves looking into various aspects, including corporate structure, stock ownership, voting rights, management structures, and the degree to which subsidiaries can act independently from the parent company. Often control is exercised via informal channels or by means of a contract, thus being very hard to trace.[33]

Another important challenge is finding the right balance between effective enforcement and concepts of fairness and legal certainty. When dealing with several entities collectively from an antitrust perspective, the application of strict liability against entities that have very little involvement in the anticompetitive practice becomes inevitable. For example, a separate entity that functions somewhat independently can be made liable based on the anticompetitive

[30] Vishwas H. Dhanapal, *Single Economic Entity Doctrine in India*, 2017 WL 4325678, at 16–18 (SSRN).
[31] Competition Commission of India, *Provisions Relating to Abuse of Dominance* 5–6 (2022).
[32] Vishwas H. Dhanapal, *Single Economic Entity Doctrine in India*, 3 INDIAN COMPETITION L. REV. 26 (2018).
[33] Cyril Amarchand Mangaldas, *Abuse of Dominance and Vertical Agreements in India* 10–11 (2020).

practices of its parent firm or other separate subsidiaries of the group.[34]

To resolve this dilemma, there is a need for the establishment of certain objective criteria for determining economic unity. This will not only cover structural considerations like ownership and control but will also include functional considerations that involve the integration of the commercial activity of the business group. The creation of such guidelines by the Competition Commission of India can prove to be instrumental in achieving this purpose.[35]

However, the increasing complexities that have arisen due to the emergence of digital markets have added another layer of complication to the use of the doctrine. Digital businesses function in markets where there are several key features such as network effects, economies of scale, and data.[36] All these factors make it difficult to apply conventional approaches to the assessment of competitive conditions in the market, including market definition and pricing tests for dominance. In multi-sided markets, market dominance is not easy to discern since the service can be offered for free, without any monetary charge. Rather, market dominance arises from having control over the data and networks.

Further, most digital businesses operate under intricate corporate structures with separate entities handling different functions in the business, including data processing, advertisement, and services provided. Application of the doctrine in such scenarios will demand a higher level of competence when considering both technology and economics.[37]

Lastly, there is a general issue concerning the ability of the relevant institutions to effectively employ the doctrine. Adoption of the doctrine requires both the amendment of existing legislation and the creation of competence among the competition authorities to be able to undertake proper analysis of the structures. Overall, the Single Economic Entity doctrine presents a lot of promise regarding how it can benefit the field of competition law enforcement in India.[38] However, the above issues need to be addressed for its success.

[34] Competition Commission of India, *Provisions Relating to Abuse of Dominance* 19 (2022).
[35] Competition Commission of India, *Provisions Relating to Abuse of Dominance* 18–19 (2022)..
[36] *Reassessing Abuse of Dominance under Indian Competition Law*, 5 CIVIL L.J. 49, 54–55 (2025)
[37] Neeti Niyaman, *Leniency & Single Economic Entity in Indian Competition Law* 12–13 (2025).
[38] Indian Competition Law Review, Vol. 3: Single Economic Entity Doctrine in India (2018), at 26–28.

Need for Revisiting the Doctrine in India

Rapid growth in the number of digital markets and the emergence of corporate conglomerates with considerable economic influence have had a great impact on competition in India. The traditional approaches to studying competition, created during a time when market structures were rather simple, can hardly be applied to deal with contemporary business entities.[39] In this regard, it seems to be crucially important to reconsider the Single Economic Entity approach in India.

Firms like Google, Amazon, and Meta include various entities that play different roles within an organization and engage in different business activities, such as data gathering, advertisement, transportation, and other functions related to platforms and their operation. Even though all these firms seem to act separately from one another, in reality, they work in coordination to ensure maximum market power for the company as a whole. The division of tasks into smaller portions allows companies to represent themselves as decentralized entities.[40] Evaluating these entities on a stand-alone basis exposes them to considerable potential underestimation of their market power. Consider the case of a subsidiary in charge of offering advertisement services; such a business entity will seem not very dominant in a stand-alone evaluation of its market power but, when combined with data acquired from other entities in the group, its market power will be significantly amplified.[41] This aspect is especially evident in digital economies, where networks, data accumulation, and leveraging between markets become crucial aspects of competitive interactions.

Failure of the existing regulations to tackle issues related to group dominance creates avenues for regulatory arbitrage. Companies can purposefully organize their operations in such a way that their presence in the market is fragmented into several entities. This strategy helps them bypass any thresholds or criteria required in defining dominance under Section 4 of the Competition Act, 2002.[42]

In addition to that, the lack of a well-established doctrine to identify the economic unit may create problems related to inconsistency in decisions made in similar cases due to differences

[39] Indian Competition Law Review, Vol. 3: Single Economic Entity Doctrine in India (2018), at 1–3.
[40] CCI, Provisions Relating to Abuse of Dominance (2022), Competition Commission of India, at 15–16.
[41] Cyril Amarchand Mangaldas, Abuse of Dominance and Vertical Agreements in India (2020), at 11–12.
[42] Neeti Niyaman, *Leniency & Single Economic Entity in Indian Competition Law* 12–13 (2025).

in identification of the business entity involved in the practice. As a consequence, this creates legal uncertainty and unpredictability, and it becomes difficult to provide a strong deterrent effect through effective competition regulation.

A reconsideration of the Single Economic Entity doctrine could facilitate a better evaluation of market power by emphasizing its economic reality. Under this doctrine, the Commission will be able to analyze the activities of all corporate members, and hold them collectively accountable based on their control over the situation. This is crucial in dealing with anti-competitive practices that have developed in today's complex market environment, which involves such practices as leverage, bundle, and exclusion practices.[43]

Recommendations

Integration of the doctrine of Single Economic Entity in Indian competition law needs to be addressed from various angles like legislative, regulatory, and judicial. It is important to have a well-designed framework in order to make the doctrine serve its purpose of enhancing effectiveness of the law while ensuring that no principle of justice and legal certainty is violated in this process.[44]

As far as legislation goes, an amendment to the Competition Act, 2002 can recognize the notion of economic unity explicitly. This might require either widening the definition of "enterprise" or introducing a new one whereby the Competition Commission of India will be allowed to consider all companies under one corporate group as one unit if they are controlled by the same entity and do not have any decision-making capacity independently.[45] There should also be criteria provided in the statute that help determine economic unity.

Besides legislative reform, the Competition Commission of India is advised to promulgate guidelines on how the doctrine will be enforced. Guidelines will take into account the experience from other jurisdictions, particularly those of the European Union, but in light of the local situation.[46] Such guidelines need to clearly specify what evidence needs to be

[43] Competition Commission of India, *Provisions Relating to Abuse of Dominance* 1–2 (2022).
[44] Vishwas H. Dhanapal, *Single Economic Entity Doctrine in India*, 2017 WL 4325678 (SSRN).
[45] Vishwas H. Dhanapal, *Single Economic Entity Doctrine in India*, 3 INDIAN COMPETITION L. REV. 20–22 (2018).
[46] Oorvi Mehta, *Application of the Single Economic Entity Doctrine to Anticompetitive Agreements*, INDIACORPLAW (Feb. 8, 2018), https://indiacorplaw.in.

presented in order to show that decisive influence exists. The conditions under which liability can be attributed to different parties and criteria for determining economic unity need to be spelled out as well.[47]

A coherent body of jurisprudence on the doctrine will depend to a large extent on judicial decisions. The National Company Law Appellate Tribunal and Supreme Court in India have an opportunity to create case law on the subject.[48] However, due to the distinctive nature of the digital market, it might also be useful to have targeted regulatory approaches.[49] The increased significance of data, algorithms, and platform economies necessitates a more sophisticated use of the existing competition legislation enforcement practices.[50] The creation of regulatory bodies capable of addressing concerns such as data sharing, interoperability, and platform neutrality can further complement the use of the Single Economic Entity doctrine.[51]

The development of capacity at the competition authorities would play an important role in the successful implementation of the doctrine. Its application demands extensive legal and economic knowledge. In particular, situations related to intricate corporate governance and digital markets may prove difficult to investigate without adequate expertise.[52]

Lastly, it is crucial to include protections against overstepping into areas that should not be touched. The application of the principle should not be automatic or mechanical in every case where there is an existence of group corporations. Rather, the application should be guided by a proper evaluation of the case at hand in relation to the freedom of each individual entity. Creating avenues for parties to controvert presumption and fairness.

Conclusion

The issue of regulating abuse of dominance in India is at a crossroads considering the dynamic nature of the present-day market and business organizations. While regulating abuse of dominance on the level of individual firms is enough to regulate simple situations in the market,

[47] Competition Commission of India, *Provisions Relating to Abuse of Dominance* 19 (2022).
[48] *Reassessing Abuse of Dominance under Indian Competition Law*, 5 CIVIL L.J. 49 (2025).
[49] Neeti Niyaman, *Leniency & Single Economic Entity in Indian Competition Law* (2025), https://neetiniyaman.com/leniency-single-economic-entity-competition-law-india/
[50] Id., at 8–10.
[51] Id., at 12–14.
[52] Vishwas H. Dhanapal, *Single Economic Entity Doctrine in India*, 3 INDIAN COMPETITION L. REV. 24–26 (2018).

it is no longer sufficient when dealing with group market power.[53] The corporate group can nowadays be described as a united economic entity that uses all its resources and information to affect the outcome in the market.

It would make sense to adopt the concept of Single Economic Entity which allows taking into consideration market power exercised through a group.[54] This would be beneficial as market competition involves not just legal but economic entities competing in the market. The Single Economic Entity approach would help the regulator to tackle complex cases of anticompetitive behavior and help avoid situations where firms manipulate their structures to evade legal responsibility.

However, the application of this doctrine itself needs to be done cautiously. While ensuring efficient implementation, the concept must maintain an equilibrium between legality and equity.[55] Clearly defined statutory measures, precise guidelines, and consistent judicial interpretation will help apply the doctrine in the most justifiable way possible.

Finally, the efficacy of competition law rests on its ability to evolve with changes in the economy. In today's environment, markets have evolved into a complex system that comprises several corporate entities functioning as a unit within themselves. Therefore, there is a strong need for an economic approach to competition law in order to keep pace with the dynamics of the market economy. The inclusion of Single Economic Entity doctrine in Indian Competition Law will be one such step towards fulfilling that purpose.[56]

[53] Competition Commission of India, *Provisions Relating to Abuse of Dominance* 5–6 (2022).
[54] Vishwas H. Dhanapal, *Single Economic Entity Doctrine in India*, 2017 WL 4325678, at 15–17 (SSRN).
[55] Vishwas H. Dhanapal, *Single Economic Entity Doctrine in India*, 2017 WL 4325678, at 22–24 (SSRN).
[56] Id. at 26–28.