VI. EVOLVING BUT UNCLEAR: THE FUTURE OF EFFECTS-BASED APPROACH UNDER SECTION 4 OF INDIAN COMPETITION LAW

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ABSTRACT

This paper examines the evolution of the concept of "abuse of dominance" under Section 4 of the Competition Act, 2002. It focuses on the recent Schott Glass judgment, which marks a clear shift from a rigid, form-based approach to a more flexible, effects-based approach. Effect-based analysis focuses on the actual or likely impact on the market rather than relying on the earlier tick-box approach that focused only on the form of the practice. The paper examines the understanding of exclusionary and exploitative abuses, as well as the relevance of the As Efficient Competitor (AEC) Principle in assessing these abuses, with an emphasis on case-by-case analysis. It discusses the position of the Doctrine of Special Responsibility and the defense of objective justification as a tool for assessing legitimate business conduct. In doing so, it reflects on the ongoing challenges of defining what constitutes abuse, understanding when competition is harmed, and striking the right balance between maintaining fair markets and allowing dominant firms to compete on their strengths.

Keywords: Effects, Section 4, Competition, Abuse of Dominance, Exclusionary Harm, Special Responsibility, Objective Justification.

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I. INTRODUCTION

In modern competition law regimes, the challenge of regulating market power has become increasingly complex. As industries consolidate and dominant firms gain unprecedented influence, the legal framework governing their conduct becomes extremely important. Within this context, Section 4 of the Competition Act, 2002 [1] (the Act) assumes a central role. It helps to ensure that markets remain fair and contestable, particularly at a time when rising concentration heightens concerns about fairness, innovation, and consumer choice.[2]

Over the years, courts, the Competition Commission of India **("CCI"),** and scholars have continued to debate on what amounts to abuse of dominance under the Act. In general, such abuse can take many forms: imposing unfair prices or conditions, limiting production, engaging in predatory pricing, creating barriers to entry, or applying different terms to similar transactions[3]. Given this diversity, cases involving dominance and its abuse need to be approached with the 'rule of reason' framework that focuses on two stages: first, proving that dominance exists, and second, examining whether the conduct harms competition.[4]

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[1] Competition Act 2002 (India), s 4.

[2] International Monetary Fund, Rising Corporate Market Power: Emerging Policy Issues (Staff Discussion Note SDN/21/01, 2021).

[3] Lakshay Anand, 'Abuse of Dominant Position – Meaning, Definition and Case Laws' (Legal Bites, 5 February 2021) <https://www.legalbites.in/abuse-dominant-position-competition-law/> accessed 10 October 2025.

[4]Alexander J Kububa, 'Dominance and Abuse of Dominance' (CUTS International 7Up3 Project, September 2007) <https://cuts-ccier.org/pdf/Paper-2-Ethopia.pdf> accessed 10 October 2025.

Yet defining abuse is rarely straightforward. It continues to be marked by ambiguity, falling short of a coherent normative framework.[5] A practice that seems perfectly fair in one market might turn out to be harmful in another; it all depends on who the players are and how that market operates. For example, long credit terms may be normal in the furniture market but damaging in the cement industry. Long credit terms might be harmless in the furniture market, where slow sales and flexible payments are normal, but the same practice can hurt competition in the cement industry because smaller companies cannot afford to wait so long for their money, letting the dominant firm push them out. When done well, tackling such abuse benefits not just the competitive process but also consumers,[6] by ensuring that markets remain fair, open, and driven by genuine efficiency rather than power.

The recent *Schott Glass*[7] Judgment marks a moment in the trajectory of India's Competition law. Long invoked as a landmark case to define the contours of dominance, the case has now reaffirmed India's transition towards an effects-based approach. By embracing this framework, the Supreme Court has marked a clear break from the earlier, rigid form-based approach. In doing so, India is moving closer to European Union style competition law.

Moreover, the effects approach requires formulating rules that assess conduct that is harmful to the competition and thus abusive, which is neither an easy nor an intuitive task.[8] This raises a set of important and practical questions. What does it really mean for competition to be harmed, and how should that harm be assessed? If such harm can be shown, can dominant firms

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[5] Robert O'Donoghue and Jorge Padilla, *The Law and Economics of Article 102 TFEU* (3rd edn, Hart Publishing 2020) 266.

[6] OECD, Remedies and Commitments in Abuse Cases (Competition Policy Roundtable Background Note, 2022) <https://www.oecd.org/daf/competition/remedies-and-commitments-in-abuse-cases-2022.pdf > accessed 10 October 2025.

[7] *CCI v. Schott Glass India (P) Ltd.,* [2025] 257 Comp Cas 1.

[8] Opinion of AG Rantos in Case C-377/20 *Servizio Elettrico Nazionale SpA v Autorità Garante della Concorrenza e del Mercato* EU:C:2021:998, [53].

still defend their actions with legitimate justifications? And even within an effects-based approach, do these firms continue to carry a special responsibility not to impair competition in the market?

The broader aim of this Paper is to examine the consequences of adopting an effects-based approach within the Indian framework. This has been facilitated through a Comparative and Critical methodology. The paper is divided into eight parts. Part [I] provides a brief introduction. Part [II] gives a summary of the *Schott Glass* Case. Part [III] provides an overview of Section 4 and the distinction between form-based and effects-based approaches. Part [IV] discusses the classification of abuses as exclusionary or exploitative. Part [V] examines the implementation of the AEC Principle and AEC Test in Indian Competition Law. Part [VI] assesses the Doctrine of Special Responsibility. Part [VII] explores the concept of objective justification and its challenges. Finally, Part [VIII] concludes the paper.

II. OVERVIEW OF SCHOTT GLASS RULING

A. Background

After 11 long years, a division bench of the Supreme Court finally delivered its verdict on the landmark case of *Schott Glass v. Competition Commission of India & Anr.* on May 13th, 2025. It dismissed the appeal filed by the CCI and Kapoor Glass Private Limited ("Kapoor Glass") against the judgment delivered by the now dissolved Competition Appellate Tribunal (COMPAT) in 2014. Initially, the CCI had levied a penalty of Rs 5.66 crores against Schott Pharmaceutical Packaging GmbH ("Schott Glass") for engaging in discriminatory practices. Schott Glass challenged this before COMPAT. The COMPAT discharged its liability for anti-competitive practices. This was challenged in the Supreme Court, wherein the Court upheld the decision of COMPAT and overruled the CCI's decision of holding Schott Glass liable for abusing its dominant position under Section 4 of the Act. The Supreme Court set a precedent for all Competition law cases, justifying volume-based discounts as an industrial norm, emphasizing the importance of ensuring procedural transparency and establishing an effect-based approach.

B. Facts of the case

In May 2008, Schott Glass entered into a Joint Venture agreement with a downstream ampoule manufacturer, Kaisha Manufacturers Pvt. Ltd. ("Kaisha"). This vertical integration was known as Schott Kaisha Private Limited ("Schott Kaisha"). Through this joint venture, the companies were able to produce both borosilicate glass tubes and glass ampoules.

On the other hand, Kapoor Glass is a private company that manufactures glass ampoules, vials, and dental cartridges, which serve as primary packaging materials for liquid injectables in the pharmaceutical industry.

Kapoor Glass claimed Schott Glass, as a dominant player in the market, was abusing its position by selling glass tubes below production cost, engaging in predatory pricing that threatened to push competitors, including Kapoor Glass, out of the market. Additionally, Kapoor Glass alleged that Schott Glass implemented discount schemes and loyalty rebates that created an uneven playing field. By offering preferential benefits to selected companies, it placed other competitors at a disadvantage.

1. CCI'S RULING

Relevant Market: The CCI[9] identified two markets: the upstream market for borosilicate glass tubes in India (Schott Glass operated in this market) and the downstream market for containers such as ampoules, vials, dental cartridges etc (wherein Schott Kaisha and Kapoor Glass operated).

Establishing Dominance: The CCI found that Schott Glass held a dominant position under Section 19(4) of the Act.[10] exercising considerable power across both the upstream and downstream markets. Smaller players in the industry were heavily dependent on Schott Glass for the supply of glass tubes, leaving them with little ability to counter its conduct or influence market dynamics. The CCI further observed that significant barriers to entry, such as high capital costs, long gestation periods, and the advantages of economies of scale, prevented new competitors from entering the market. All these factors led the CCI to conclude that Schott Glass occupied a dominant position.

Unfair discounting schemes: Schott Glass mainly offered two types of discounts to downstream converters: (i) volume/target discount, (ii) loyalty discount/functional bonus.

Initially, they granted quantity-based discounts on purchase volume, with different target slabs. The discounting process expanded when Schott Glass introduced functional discounts. To qualify this, buyers had to purchase a minimum quantity and avoid using China Glass while maintaining fair prices for Schott's tubing products. Additionally, converters signed a Marketing Support Agreement to promote Schott and its products, receiving quarterly financial compensation. Due to this, Kapoor Glass challenged Schott Glass' policies for infringement of Section 4(2) (i) and/or (ii) of the Act.[11]

[9] *Kapoor Glass Private Limited v Schott Glass India Private Limited* [2012] SCC OnLine CCI 15.
[10] Competition Act 2002, s 19(4).
[11] Competition Act 2002, s 4(2)(i),(ii).

The CCI observed that Schott Glass offered Schott Kaisha significantly higher discounts than other converters. Schott Glass defended this by saying Kaisha placed larger orders, but the CCI rejected this argument. It noted that while offering discounts isn't always anti-competitive, giving one player special terms can still disrupt fair competition. In this case, even though other converters sold more, their profits shrank, while Kaisha's profits grew, showing how the playing field had tilted in its favor.

Margin Squeeze: The CCI also found that Schott Glass strengthened its position in both upstream and downstream markets, reducing competition significantly. Its joint venture with Kaisha squeezed other converters' profit margins, forcing them to consider joining Schott Glass' structure. This discriminatory pricing drove out players like Kapoor Glass and reduced others' market share, threatening downstream competition.

In conclusion, the CCI in its majority order determined that the discount policy violated Sections 4(2)(a)(i) and 4(2)(a)(ii) of the Act, which prohibits unfair or discriminatory pricing by dominant enterprises. Additionally, Schott Glass used its upstream market dominance to gain downstream advantages, violating Section 4(2)(e) of the Act.[12] However, it is pertinent to note that the minority order by Smt Geeta Gouri[13] held that Schott Glass' discount policy does not impose unfair conditions and does not have the potential to harm competition. Through her analysis, it was observed that the policy was not capable of creating any exclusionary effect. Hence, Schott Glass was relieved of these allegations in the minority order.

[12] Competition Act 2002, s 4(2)(e).
[13] *Kapoor Glass Private Limited v Schott Glass India Private Limited* [2012] SCC OnLine CCI 16.

2. COMPAT'S AND SUPREME COURT'S JUDGEMENT

Aggrieved by CCI's decision, Schott Glass appealed against the order that held them guilty of contravening Section 4. COMPAT considered the minority order by Smt. Geeta Gouri, who exonerated Schott Glass from several allegations. Both COMPAT and later the Supreme Court dealt with similar issues of discriminatory pricing, exclusionary policies under Section 4(2)(a), and leveraging dominant position under Section 4(2)(e).

Unfair discounting schemes: CCI had concluded that Schott Glass offered discriminatory discounts by giving favorable terms to Schott Kaisha. COMPAT refuted this by stating that Schott Kaisha's purchases far exceeded other converters' capabilities. In order to retain a valued downstream market customer, Schott Glass's discounting policies were objectively justified. Other converters promising 30% or more purchase would receive similar discounts.

The Supreme Court[14] found that no converter purchasing equivalent glass tube was denied benefits, and the discount policy reflecting larger volumes was not discriminatory under Section 4(2)(a). The Court emphasized that borosilicate requires mass production, making high-volume orders crucial. Volume-based discounts benefit manufacturers, customers, and pharmaceutical consumers.

It further referred to the landmark EU case of *Intel*[15], wherein it was observed that incentivizing distributors to sell slower-moving products was reasonable. The Supreme Court's views aligned with COMPAT's principles and the European Court's Intel case, requiring proof of harm on competition while allowing valid business reasons.

Dissimilar treatment of equivalent transactions: One of the major takeaways from COMPAT, which the Supreme Court later relied on, was that

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[14] *CCI v Schott Glass* (n 7).

[15] *ESYS Information Technologies Pvt Ltd v Intel Corporation* [2014] SCC OnLine CCI 10.

dissimilar treatment of transactions that were similar in nature was held to be anti-competitive. Since discounts were provided on a slab basis with fixed rates for transactions under the same quantity slab, transactions of different volumes could not be considered "equivalent transactions". Hence, maintaining different slabs for different quantities cannot be deemed discriminatory.

Harm caused in the downstream market: COMPAT indirectly introduced the foundation of effect-based analysis by focusing on the harm that discriminatory policies caused in the downstream market. The downstream market consisted of Schott Kaisha as the largest tube converter, followed by two other companies and several small players. The price charged by converters to pharmaceutical companies was similar, sometimes identical, indicating that "the cost differential in inputs caused by the volume-based discount scheme of the Appellant did not get translated into price differential in the final products for the pharmaceutical companies."[16] This meant that the pharmaceutical companies faced the same pricing levels from Schott Kaisha and the other small converters.

Hence, any change in converters' market structure was not due to Schott Glass's volume-based discounts, as converters' selling prices were similar. In fact, Schott Kaisha's prices were sometimes higher than other players. Thus, COMPAT concluded there was no contravention by Schott Glass regarding target discounts.

Margin Squeeze: While CCI ruled that preferential input pricing through discount policies and agreements allowed Schott Kaisha to squeeze competitors' profit margins, COMPAT stated the discount policies were not preferential and anti-discriminatory. Schott Kaisha's container prices were often equivalent to or higher than downstream market rivals. Thus, concluding

[16] *Schott Glass (India) (P) Ltd v CCI* [2014] SCC OnLine Comp AT 3, [20]–[22].

that Schott Kaisha did not use its position to squeeze competitors' profits through lower pricing.

The Supreme Court fully endorsed COMPAT's findings using the ECJ criteria in *TeliaSonera Sverige AB v. Konkurrensverket* [17], requiring 3 essential elements. This case provided a 3-step test that the complainant must demonstrate to show margin squeeze:

(1) The Dominant enterprise should be active in the downstream market - The Court held that Schott Glass had no downstream participation as it neither converted nor sold containers. Schott Kaisha, a separate company with a 50% Schott AG stake, operates downstream. This doesn't constitute leveraging under Section 4, as the upstream entity merely supplies.

(2) No demonstrable margin squeeze of equally competitive rivals - A price differential would constitute a squeeze only if it drove equally competitive converters into a loss. Evidence showed other converters recorded increasing profits while Schott Kaisha's prices exceeded competitors'.

(3) The compression threatens competitive harm - No market foreclosure was evident as imports increased and competitors expanded capacity. No converters exited the downstream market. The Supreme Court found the policies justified, as Schott India's factory needed continuous full capacity operation. The Court noted that "take-or-pay" commitments are allowed if their competitive benefits exceed restrictions. The Court explained that "take-or-pay" clauses are not automatically anti-competitive. They can be necessary to ensure a

[17] Case C-52/09 *TeliaSonera Sverige AB v Konkurrensverket* [2011] ECR I-527.

steady supply, encourage investment, or manage production costs. In this case, the clause helped maintain a consistent supply and did not prevent converters from choosing other suppliers. Since its benefits outweighed any potential restrictions, the Court held that it did not violate Section 4(2)(e).

Effect-based analysis is essential under Section 4: The Supreme Court emphasized effect-based analysis in examining abuse of dominance. It held that there was no competitive harm as independent converters expanded output and margins, and buyers paid similar or higher prices from Schott Kaisha. It upheld COMPAT's Order, rejecting CCI's Order for lacking a credible harm assessment. Further, it also accepted the precedence of *Alphabet Inc. v. Competition Commission of India.* [18], where the National Company Law Tribunal **("NCLAT")** held that the actual or likely effects of a company's conduct on competition must be examined. The Court clarified that to hold any conduct as abusive under Section 4 of the Act, the CCI must demonstrate competitive harm through evidence, not merely theoretically. This requires the CCI to analyze the effects of the conduct by weighing its pro-competitive and anti-competitive impacts under Section 19(4) of the Act, ensuring a proper assessment based on facts before declaring conduct abusive.

By analyzing the three different judgments given by CCI, COMPAT, and the Supreme Court, it becomes quite evident that the approach of CCI vastly differed from that of the Supreme Court and COMPAT. Indian Competition law is undergoing a noticeable shift as to how abuse is to be examined.

[18] *Alphabet Inc v Competition Commission of India* [2025] SCC OnLine NCLAT 850.

III. ABUSE UNDER SECTION 4

The debate over the form-effect dichotomy has been longstanding in EU and Indian jurisprudence. However, one often fails to analyze the ground on which this dilemma stems from. The core issue arises from the uncertain definition of what constitutes an abuse under the Act. This conceptual ambiguity finds its legal anchor in Section 4 of the Act. Section 4 bars enterprises or groups from abusing a dominant position. Section 4 sub-section (2) illustrates what counts as abuse, such as charging unfair or discriminatory prices, restricting production or innovation, blocking market access for rivals, forcing tie-in sales or bundles, and using dominance in one market to gain an edge in another.

The Explanation of Section 4 clearly defines the term dominant position as "a position of economic strength that enables an enterprise to operate independently of competitive forces or to affect the relevant market in its favor."[19] Notably, dominance itself is not prohibited; only abuse is. Yet, how abuse must be proven has been a matter of evolving interpretation. In contrast, Section 3 of the Act[20] includes the AAEC test, which focuses on the actual or likely harm to competition. The lack of a clear definition of abuse under Section 4 and the absence of AAEC raise concerns and leave enterprises uncertain about the threshold for liability. This gave rise to significant ambiguity on whether Section 4 treated certain practices as abusive by their very nature (form-based approach), or whether proof of actual anti-competitive effects was required to establish abuse.

Pre-Schott Glass / Form-based approach: For a long time, before *Schott Glass*, Section 4 had been interpreted or implemented according to the

[19] Competition Act 2002, s 4 Explanation.
[20] Competition Act 2002, s 3.

language of the Act. Abuse of dominance was treated as a *per se* violation, meaning that engaging in certain prohibited practices can itself constitute a violation, regardless of the actual harm caused. The CCI had at times interpreted Section 4[21] as permitting form-based findings, particularly where pricing practices appeared exclusionary on their face without a rigorous demonstration of harm to competition.

This form-based approach traces back to the landmark case *Hoffmann-La Roche & Co. AG v. Commission of the European Communities.*[22] The European Court of Justice ruled that Hoffmann-La Roche had abused its dominant position by entering into exclusive purchasing agreements with certain customers and offering loyalty rebates to others. The Court's decision made it clear that certain practices could be considered abusive in themselves, suggesting that a company could be held liable for abuse of dominance simply by engaging in them, without requiring separate proof of anti-competitive effects. This case is also heavily relied upon in India and is frequently cited by the CCI. [23]

In India, landmark judgments in *Belaire Owner's Association v. DLF Ltd*.[24] and *MCX Stock Exchange v. National Stock Exchange*[25], abuse was inferred mainly based on structural dominance with a clear prima facie case of unfair or "below-cost" conduct without requiring a detailed proof of market harm. Hence, form-based approach was followed.

[21] *Fx Enterprise Solutions India Pvt Ltd v Hyundai Motor India Ltd* [2017] SCC OnLine CCI 26.
[22] Case 85/76 *Hoffmann-La Roche & Co AG v Commission* EU:C:1979:36.
[23] 'Abuse of Dominance: Effect over Form?' (Competition – Cyril Amarchand Mangaldas Blog, March 2018) <https://competition.cyrilamarchandblogs.com/2018/03/abuse-dominance-effect-form/> accessed 8 October 2025.
[24] *Belaire Owners' Association v DLF Limited* [2011] SCC OnLine CCI 89.
[25] *MCX Stock Exchange Ltd v National Stock Exchange of India Ltd* [2011] SCC OnLine CCI 52.

But form-based approach struggles in modern markets because it often results in false positives: punishing actions that are pro-competitive. For instance, while rebates that are offered by a dominant firm may appear as exclusionary practices, as it may push out existing competitors from the market, on the other hand, it may also have procompetitive effects when lower costs and greater incentives to innovate due to economies of scale are passed on to consumers.

Traditional competition law focused on protecting competitors, and so it primarily enforced a form-based approach. The logic behind this was that perfect competition is an ideal scenario, and firms were price-takers with limited or no market power.[26]

In modern markets, relying on a form-based approach to assess abuse of dominance has brought several problems. The biggest issue relates to the meaning of dominance itself. The most common indicator of dominance is the market share, which is an unreliable measure when used in isolation, especially since there is no clear threshold at which a firm automatically becomes dominant. Above all, a form-based approach tends to overlook legitimate business reasons or efficiency justifications for the conduct in question. As a result, behaviour that may ultimately benefit consumers could be wrongly penalised.[27]

Hence form-based approach focuses only on the type of conduct, for example, rebates, exclusive agreements, tying etc, without examining why the firm behaved that way or what actual impact the conduct had on the market. Therefore, such a model will actually end up limiting consumer

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[26] Frank Easterbrook, 'Changing Views of Competition, Economic Analysis and EC Antitrust Law' (Macerata Lecture on European Economic Policies, University of Macerata, Macerata, 2008).

[27] Payal Malik, Neha Malhotra, Ramji Tamarappoo and Nisha Kaur Uberoi, 'Legal Treatment of Abuse of Dominance in Indian Competition Law' (2019) 54(2) *Review of Industrial Organization* 435.

welfare and creating inconsistencies in outcomes of competition assessment, which results in the evolution of a muddled jurisprudence.[28] Moreover, it may also become a hindrance to growth in today's fast-moving, digital evolution, and extremely complex and inter-linked markets, by unnecessarily restricting the freedom of firms to pursue strategies in their best business interest.

Post-Schott Glass / Effect-based approach: Through the *Schott Glass* case, the interpretation of abuse has shifted from the approach that a dominant entity abuses its position merely by practicing the conduct given under Section 4 to an approach where anti-competitive effects must be shown to constitute abuse. The Court acknowledged the difficulty that Section 4 does not expressly require Appreciable Adverse Effect on Competition (AAEC) unlike Section 3, but nevertheless identified 3 legislative signposts for this effect requirement:

1. The Preamble states that the Act prevents practices having adverse effects on competition.

2. A dominant position is defined as power enabling enterprises to affect the relevant market in their favor.

3. Section 19(4)(l)[29] requires CCI to consider "relative advantage through economic development," indicating that dominant companies supporting development should not face penalties.

The Supreme Court based its interpretation on the Raghavan Committee Report (2000)[30] and Article 102 of the European Union Treaty regarding the assessment of competition harm, and stated that nowhere in the enacted text does it suggest an irrebuttable presumption of competitive harm. Section 4's

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[28] Ibid.

[29] Competition Act 2002, s 19(4)(1).

[30] High Level Committee on Competition Policy and Law, *Report of the High Level Committee on Competition Policy and Law* (Government of India 2000) <https://theindiancompetitionlaw.files.wordpress.com/2013/02/report_of_high_level_committee_on_competition_policy_law_svs_raghavan_committee.pdf> accessed 12 October 2025.

implied presumption cannot be conclusive without a rebuttal opportunity. CCI must assess actual competitive harm using economic tests and apply the "fairness test" uniformly[31] to comply with Article 14.

However, even with the shift to an effects-based analysis, several interpretative inconsistencies remain. The judgment does not clarify how effects are to be assessed, whether the effects requirement applies uniformly across different types of abuses, or how this approach aligns with the additional burden placed on dominant enterprises. It also leaves the scope of efficiency-based defences unresolved. All these issues are examined further in this paper.

IV. EXCLUSIONARY OR EXPLOITATIVE HARM?

Although the Court insisted on an effects analysis for every case under Section 4, it raises a genuine concern: is it practical to apply this blanket requirement for every type of abuse?

Addressing this question requires understanding that Section 4 recognizes two types of abuse: exclusionary and exploitative. In its ordinary sense, "exploitative abuse refers to any conduct that directly causes harm to the customers of the dominant undertaking." [32] Whereas, exclusionary conduct includes "those actions that attempt to exclude competitors from the competitive landscape."[33]

In India, this was recognized by the CCI in *HT Media Ltd v Super Cassettes Ltd* (2014). The CCI observed that pricing abuses may be 'exclusionary' (i.e., pricing strategies adopted by dominant firms to foreclose

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[31] *Indian National Shipowners' Association v ONGC* [2019] SCC OnLine CCI 26.

[32] R O'Donoghue and AJ Padilla, *The Law and Economics of Article 82 EC* (Hart Publishing Oxford 2006) 174.

[33] Observer Research Foundation, *ORF Report* (2023) <https://www.orfonline.org/public/uploads/posts/pdf/20230814004736.pdf> accessed 8 October 2025.

competitors) or 'exploitative' (i.e., which cover instances where a dominant firm is accused of exploiting its customers by setting excessive prices)[34].

This view is seen in the Report of the Competition Law Review Committee in 2019[35] which stated that effects analysis in Section 4(2) is unnecessary, since certain types of abuse, like exploitative abuse, do not always require such an analysis. Cosidering this, it becomes crucial to evaluate the correctness of the Supreme Court's approach. Two interpretative viewpoints have emerged on how *exploitative* and *exclusionary* abuses should be understood under Competition law.

Viewpoint 1: Scholars like Aditya Battacharjea[36] argue that Competition law should primarily focus on exclusionary abuses. He opines that exploitative abuse harms the consumers without necessarily harming the competition. This is better addressed through sector-specific regulation, such as licensing conditions, consumer protection laws. Competition law, therefore, should be reserved for exclusionary behavior that harms the competitive process and deters market entry.

Further, in the absence of any barriers to entry, a dominant undertaking that makes competitive profits will attract new entrants to the market. This means that if a business has already entered the market but faces exploitative abuse, the competitive process itself is considered a better way to remedy the situation. For instance, if a dominant firm offers excessive prices and low-quality products, it will naturally lose customers if a new entrant comes along and provides lower prices with better quality. But if this does not happen, it

[34] *HT Media Ltd v Super Cassettes Industries Ltd* [2014] SCC OnLine CCI 120.
[35] Competition Law Review Committee, *Report of the Competition Law Review Committee* (Ministry of Corporate Affairs, Government of India 2019) <https://www.ies.gov.in/pdfs/Report-Competition-CLRC.pdf> accessed 16 October 2025.
[36] Aditya Bhattacharjea, 'Abuse of Dominance under the Competition Act: The Need for a Competitive Effects Test' (2022) 7(2) *Indian Competition Law Review* 36.

may be because the incumbent is blocking entry in ways that amount to exclusionary abuse.

In contrast, exclusionary practices directly block competition at the entry stage, making it more relevant to address them under Competition law. Hence, effects on the competition and not the consumers should be considered under Section 4.

Despite this perspective, Bhattacharjea acknowledges the challenges exploitative abuse poses to the effects approach under Section 4. He proposed an alternative to amend Section 19(3)(d) of the Act to include the phrase "benefits or harm to the consumers". This aims to make it possible to capture both exploitative and exclusionary abuses within an effects-based framework. The same has been incorporated in the Competition (Amendment) Act, 2023.[37]

It is however important to note the context in which the scholar included the pharse "harm to consumers" in the provision. Competition law, with respect to exploitative abuse, must only be resorted to if there are inconsistencies or gaps in the regulation specific to the sector. For example, in the case of *Belaire Owners' Association v. DLF Limited & Ors*[38] , CCI imposed penalty on the property developer for imposing unilateral contracts on purchasers, which constitutes exploitative abuse. This intervention occurred because, at the time, there was a clear regulatory vacuum in the real-estate sector, leaving consumers without adequate protection. Through the introduction of Real Estate (Regulation and Development) Act, 2016[39], this regulatory void has now been filled and these matters fall primarily within RERA's domain, reducing the need for CCI intervention in such cases.

[37] The Competition (Amendment) Act, 2023.
[38] *HT Media Ltd v Super Cassettes Industries Ltd* (n 34).
[39] Real Estate (Regulation and Development) Act, 2016.

Viewpoint 2: Whereas other Scholars take a different approach. They believe that there should be only one type of abuse, i.e., exploitative abuse.[40] They emphasize the notion that the Act is ultimately a welfare act; hence, every conduct of a dominant undertaking that is being scrutinized for abuse has to consider whether it is impacting consumer welfare in any manner. That is to say that a conduct should be considered abusive only when it leads to the exploitation of consumers.

These Scholars believe that there is no place in Competition law for both exploitative and exclusionary conduct to exist separately from each other. They argue that the exclusion of competitors without exploitation should not be found offensive. Similarly, pure exploitation without the harm to competition cannot be abuse under the Competition law. Ultimately, there is only one type of abuse, that is, exploitative abuse, and exploitation should be the result of harm to competition. [41]

Pınar Akman provides three advantages of this type of interpretation over the one that completely excludes exploitative abuse, as given by Aditya Bhattacharjea. Firstly, it acknowledges that the true nature of this legislation is to protect consumer welfare and thus prohibit exploitation. Secondly, it ensures that practices that harm both consumers and competitors, not merely competitors, are prohibited. Lastly, it ensures that abuse is found in competition rather than contract or consumer law, as in the case of purely exploitative abuses. Thus, the ideal test for abuse must be harm to competition that results in harm to consumers.

The scholar emphasizes that exploitation should be part of the effects test itself. By treating exploitation as a measurable effect, the effects-based

[40] **Eleanor M Fox,** 'What Is Harm to Competition? Exclusionary Practices and Anticompetitive Effect' (2002) 20 *Antitrust Law Journal* 371.
[41] Pinar Akman, 'Article 82 Reformed? The EC Discussion Paper on Exclusionary Abuses' (2006) *Journal of Business Law* 816, 821–22.

framework stays true to the goal of protecting consumers. Hence, exploitation serves as concrete evidence of harm to competition, translating into consumer harm, rather than automatically creating abuse.

For example, if a dominant firm is undertaking the practice of excessive pricing, on its own, a high price does not constitute abuse. However, if the undertaking uses exclusivity agreements to block competitors from entering the market, and this leads to exploitation of consumers, then it is considered anti-competitive. Hence, exploitative effects should serve as evidence of the impact on the market. Akman further emphasizes that, unlike exclusionary abuse, exploitation must demonstrate actual and not merely potential harm. In doing so, exploitation becomes the key indicator of market harm.

To evaluate the two viewpoints, it is necessary to identify the role they play in shaping effects analysis. As identified in this paper, the core difficulty in applying an effects-based inquiry was the fact that Section 4 covers two distinct types of abuses: exclusionary and exploitative, raising the question of whether both can meaningfully be subjected to an effects test.

Exploitative abuses were traditionally regarded as *per se* unlawful under a form-based framework. This is because it was a presumption, from early Article 102 TFEU jurisprudence, that allowed exploitative conduct to be condemned without proving harm, relying solely on the form of the conduct. Both Bhattacharjea and Akman respond to this analytical gap.

Bhattacharjea initially distinguishes between exclusionary and exploitative abuses, stating that exploitative abuses do not form part of section 4; hence, effects analysis under the provision is with respect to exclusionary abuse. Yet he ultimately carves out an exception that, in certain circumstances, where there is a regulatory gap in a sector, exploitative conduct can be addressed by competition law. Therefore, he proposes a structured effects-based test using Section 19(3), expanded to explicitly include consumer harm.

Akman reaches the same destination through a different route. She argues that the conceptual divide between exclusionary and exploitative abuses is artificial because both categories produce competitive harm; one harming rivals and market structure, and the other harming consumers directly. Thus, she contends that both forms must "work hand in hand" under a unified effects-based standard. She insists that effects analysis must link harm to competition with harm to consumers.

Despite starting from different premises, both viewpoints converge on one critical conclusion: *all* abuses under Section 4 must undergo an effects-based analysis. This shared conclusion resolves the long-standing ambiguity surrounding exploitative conduct and reinforces that, in modern markets, neither exclusionary nor exploitative behaviour can be meaningfully assessed without examining actual economic effects. Together, Bhattacharjea's pragmatic approach and Akman's conceptual route reinforce the correctness of the *Schott Glass* judgment in asserting that effects-based analysis must exist in every inquiry under Section 4.

V. AEC PRINCIPLE OR AEC TEST?

With the effects approach established in Section 4, the Supreme Court, in the *Schott Glass* case, had to apply a framework to assess such abuses. It then chose to apply the AEC Test in the context of margin squeeze. It was asserted that *Schott Glass* offered preferential pricing to Schott Kaisha, thereby constraining the profit margins of the competitors in the downstream market. Drawing on the EU's jurisprudence, the Court laid down the three-pronged test in *TeliaSonera Sverige AB v Konkurrensverket*[42]. To establish margin squeeze, the test requires the informant to show that (i) the dominant firm operates both in upstream and downstream market, (ii) the act forces equally

[42] Competition Act 2002 (n 20), s 3.

efficient competitors into losses, (iii) there is a threat of actual or likely harm. In doing so, the Court analyzed whether an equally efficient competitor can compete in the market despite Schott Glass's pricing strategy, thus operationalizing the AEC Test in India's Competition law.

While this is a step towards introducing a more structured assessment of competitive harm, it is pertinent to note that the Court applied the AEC Test, not the principle, for assessing margin squeeze. In this light, the authors opine that it would be more effective if the Competition authorities, as well as the Courts, apply the AEC Principle and not the Test. To delineate the contours of such an approach, it is needed to understand and make a distinction between the AEC Principle and the AEC Test.

AEC Principle may be understood as a general framework or standard for assessing whether a practice is pro-competitive or anti-competitive.[43] Posner first put forward the AEC Principle as a tool for examining allegedly exclusionary conduct, describing it as the "equally efficient or more efficient competitor standard."[44] In other words, it ensures that a dominant enterprise can appropriate its gains while making sure that exclusion of less efficient competitors through *per se* means does not impose an unnecessary liability. The application of the AEC principle shifts the focus from the *per se* approach of protecting smaller competitors to protecting the broader competitive process itself, where firms that succeed in lowering costs and driving innovation are the primary beneficiaries.[45]

[43] Pablo Ibáñez Colomo, *The Shaping of EU Competition Law* (Cambridge University Press 2018) 312–35.

[44] Richard A Posner, *Antitrust Law* (2nd edn, University of Chicago Press 2001) 194–95.

[45] Carl Shapiro, 'Competition and Innovation: Did Arrow Hit the Bull's Eye?' in Josh Lerner and Scott Stern (eds), *The Rate and Direction of Inventive Activity Revisited* (University of Chicago Press 2012); Gunnar Niels, Helen Jenkins and James Kavanagh, *Economics for Competition Lawyers* (2nd edn, Oxford University Press 2016).

Whereas the AEC Test generally refers to a technical aspect of price-cost analysis and whether the competitors must compete with a dominant entity charging below cost, leading to their exclusion.[46] It checks whether an equally efficient competitor would be able to match the policies/offers that a dominant entity makes in terms of the costs it incurs. This distinction was made clearer in *ENEL*, wherein it held that the AEC Principle must be used as a standard rule in all exclusionary abuses, whereas the AEC Test applies to only pricing conduct.[47]

The authors suggest that the AEC Principle must be used as a general and broader rule for assessing all kinds of exclusionary abuse. Whereas, AEC Test involves technical economic formulas that must be used in cases of pricing-based conduct, such as predatory pricing, margin squeeze, and rebates. [48] This is because one of the most effective practices to build a 'dynamic' and 'workable' effects-based approach is by applying the AEC Principle.[49] The AEC Principle provides a practical analytical framework, whereas the AEC Test is vulnerable to misinterpretation, producing outcomes that do not reflect true competitive harm. For instance, the Intel[50] case failed to recognize that the outputs of AEC Tests must be interpreted as ranges and not as point

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[46] European Commission, 'Call for Evidence for an Initiative: EU Competition Law—Guidelines on Exclusionary Abuses by Dominant Undertakings' (27 March 2023) <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13796-EU-competition-law-guidelines-on-exclusionary-abuses-by-dominant-undertakings_en\> accessed 8 October 2025 [23], [25]– [27].

[47] Case C-377/20 Servizio Elettrico Nazionale SpA and Others v Autorità Garante della Concorrenza e del Mercato (AGCM) EU:C:2022:379, [72].

[48] Adriano Barbera, Nicolás Fajardo Acosta and Timo Klein, 'The Role of the AEC Principle and Tests in a Dynamic and Workable Effects-Based Approach to Abuse of Dominance' (2023) 14 *JECL* 582–94.

[49] European Commission, *A Dynamic and Workable Effects-Based Approach to Abuse of Dominance* (Publications Office of the European Union 2023) <https://op.europa.eu/en/publication-detail/-/publication/ef8f0a39-cf77-11ed-a05c-01aa75ed71a1/language-en\> accessed 8 October 2025.

[50] Case T-286/09 RENV *Intel Corporation Inc.* v Commission EU: T:2022:19.

estimates due to the margin of error in mathematical equations.[51] Courts often treat the numerical output as precise and definitive but it consists of statistical uncertainty. This has major implications for the evidence put forth and may lead to mechanically rigid outcomes.

Additionally, the AEC Test also fails to capture modern exclusionary strategies in technological and digital markets. For example, there is a dominant digital platform engaging in discriminatory data practices. There is no pricing conduct involved, making the AEC Test useless. Therefore, applying AEC Test in this circumstance may lead to over-enforcement or under-enforcement errors.[52] Whereas the AEC Principle would still identify that an equally efficient competitor cannot survive due to these data access restrictions as it does not depend on prices.

Moreover, in exclusionary abuse cases, where the scope of the conduct is often unclear and continues to evolve through case laws, a framework like the AEC Principle provides legal certainty and a tool for the Courts to assess such conduct. As noted by the EU Commission **("EC"),** the AEC Principle is seen as a part of the broader objective to focus antitrust investigations on the preservation of 'consumer welfare'. [53] Thus, it is consistent with the Act's objective of protecting consumer welfare because it distinguishes between legitimate competition and exclusionary conduct.

However, it is also worth noting that there is no one-size-fits-all approach to the extent of the AEC Principle and tests. They must be used by the Courts and Antitrust authorities depending on the varying circumstances of each case.

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[51] Damien J Neven, 'The As-Efficient Competitor Test and Principle: What Role in the Proposed Guidelines?' (2023) 14 *Journal of European Competition Law & Practice* 483–91.
[52] Ibid.
[53] European Commission, 'Commission Imposes Fine on Microsoft for Non-Compliance with March 2004 Decision' (2008) (IP/08/1877) <https://ec.europa.eu/commission/presscorner/detail/en/ip_08_1877\> accessed 8 October 2025.

One way to assess the relevance of the AEC Principle is whether the protection of less efficient competitors is detrimental to consumer welfare.

VI. DOES SPECIAL RESPONSIBILITY SURVIVE EFFECTS-BASED MANDATE?

One of the important legal questions arising from the *Schott glass* case is whether a dominant firm carries a 'special responsibility' to follow Indian Competition law, particularly in light of the Supreme Court's growing emphasis on the need for effects analysis. However, the Court in this case has once again missed the chance to guide on the issue, which is crucial for understanding cases where a dominant company is accused of unfair or discriminatory practices.[54]

The Doctrine of Special Responsibility conveys that dominant entities have a special responsibility to ensure genuine competition is not distorted. This concept was originally derived from the Michelin I Judgment pronounced by the European Court of Justice **("ECJ").** In this case, it was held that,

> *"a finding that an undertaking has a dominant position is not in itself a recrimination but simply means that, irrespective of the reasons for which it has such a dominant position, the undertaking concerned has a special responsibility not to allow its conduct to impair genuine undistorted competition on the common market."*[55]

In essence, the Doctrine of Special Responsibility clarifies that being dominant is not an issue *per se*, but an entity with such a position is cast with an additional responsibility. This is solely because the presence of a dominant

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[54] Sumit Jain and Vikrant Singh, 'Abuse of Dominance under Indian Competition Law: A Review of the Schott Glass Case' (*Kluwer Competition Law Blog*, 29 June 2025) <https://legalblogs.wolterskluwer.com/competition-blog/abuse-of-dominance-under-indian-competition-law-a-review-of-the-schott-glass-case/\> accessed 8 October 2025.

[55] Case 322/81 *Michelin* v Commission [1983] ECR 3461, [57].

entity suggests a weakened competitive market; hence, they must be subject to a higher standard. Here, the dominant enterprise faces a heavier burden, as certain practices they carry out may be deemed unlawful, even though the same practices would be perfectly legal if done by a non-dominant firm.[56]

In India, the liability of a dominant entity is embedded in Section 4 of the Act. They are prohibited from performing certain acts, such as engaging in market denial, discriminatory policies, leveraging, etc. This is an additional liability imposed on dominant entities, wherein they are penalized for distorting the market by engaging in the prohibited activities; a clear shift from the earlier Monopolies and Restrictive Trade Practices Act of 1969, which treated monopolies as inherently harmful. However, the CCI has, at times, interpreted Section 4 as embedding the Doctrine of Special Responsibility, thereby placing dominant firms under scrutiny, even in cases lacking demonstrable competitive harm.

Following the Michelin I Principle, the CCI in the case of *Biocon Ltd., Banglore v. F. Hoffmann-La Roche* held that dominant firms have a special responsibility not to disrupt competition in their markets[57]. Another instance where the CCI held that Section 4 places a heavier burden on dominant firms was *Belaire Owners' Association v. DLF Limited*. In this case, it was observed that practices which might be acceptable when carried out by non-dominant firms could still breach Section 4 when undertaken by a dominant player, reflecting the stricter standards imposed on them[58].

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[56] Bhawna Gulati and Ikleen Kaur, 'How "Special" Is the Responsibility of Dominant Enterprises?' (2020) Indian Competition Law Review <http://iclr.in/wp-content/uploads/2020/05/HOW-SPECIAL-IS-THE-RESPONSIBILITY-OF-DOMINANT-ENTERPRISES.pdf> accessed 8 October 2025.
[57] *Biocon Ltd v F Hoffmann-La Roche Ltd* [2017] Comp LR 503.
[58] *HT Media* (n 34).

However, this approach by CCI has not gone unchallenged. In the landmark case of *Alphabet Inc. v CCI (Google Play Store)* [59] The NCLAT provided opposing views. It reduced the penalties imposed on Google by CCI and criticized it for imposing ex-ante directions. NCLAT clarified that merely designating Google as a "gatekeeper" in the digital ecosystem does not justify the imposition of special responsibilities under Section 4 of the Act. The Tribunal emphasized that any finding of abuse of dominant position must be grounded in specific pleadings and supported by concrete evidence. It held that a conclusive determination of contravention under Section 4 cannot rest solely on its dominance, but must instead meet the statutory threshold of establishing actual anti-competitive conduct. Consequently, penalties under Section 27 of the Act can only be imposed following a clear and substantiated finding of violation based on the effects-based assessment mandated by law.

NCLAT's decision in the *Google Play Store*[60] case signifies that while the Doctrine of Special Responsibility is a sound theoretical ground, it does not reflect the same in its practicality, as it may shrink the effect-based analysis. This is because the Doctrine follows a form-based approach wherein a dominant entity is automatically burdened with special responsibility regardless of whether its conduct results in exclusionary abuse.[61] It penalizes dominant entities that use perfectly acceptable discount schemes or loyalty rebates that are competitive when applied by non-dominant firms, but are suddenly abusive when applied by entities that have special responsibility without a proper economic analysis of the harm.[62] Many Critics argue that this

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[59] Malik, Malhotra, Tamarappoo and Uberoi (n 28).
[60] Ibid.
[61] Ariel Ezrachi, *Article 82 EC: Reflections on its Recent Evolution* (Hart Publishing 2009).
[62] Rafael Allendesalazar Corcho, 'Can We Finally Say Farewell to the "Special Responsibility" of Dominant Companies?' (2007) EUI-RSCAS/Competition 2007/Proceedings, available at <https://www.eui.eu/Documents/RSCAS/Research/Competition/2007ws/200709-COMPed-Allendesalazar.pdf> accessed 8 October 2025.

approach risks punishing fair commercial behavior just because it makes "life harder for competitors."[63] Hence, its application may do more harm than good.

What is clear, however, is that Indian competition jurisprudence is heading decisively towards an effects-based approach. The Supreme Court in the *Schott Glass* ruling has effectively rejected any form-based approach to dominant entities. It can often be inferred that when an effects-based approach is used, special responsibility cannot be applied. But every time the Supreme Court had the opportunity to rule on Section 4, it seemed to miss the chance to clarify the scope of special responsibility. Meanwhile, the possibility of CCI continuing to apply the Doctrine creates uncertainty. A direct statement from the Court on special responsibility was needed to remove any doubt about its role in future CCI cases.

While this seems to be the appropriate approach to ensure fair competition in the market for the entities that gained dominance through their competitive merit, the problem arises from the ineffective and not-so-established standards of effects-based analysis in Indian law. The question that arises is whether an effects-based approach will be enough to regulate future super-dominant firms, or will a special responsibility be needed in this regard?

The concept of super-dominant firms, although not prevalent in India yet, was first introduced in *Napp Pharmaceutical Holdings Limited and Subsidiaries v Director General of Fair Trading*[64] Wherein the UK Competition Appeal Tribunal found that "super dominant firms may have particularly more onerous responsibilities than other dominant undertakings." It essentially proposes that a firm with 50% market share is dominant, but a

[63] Gunnar Niels, Helen Jenkins and James Kavanagh, *Economics for Competition Lawyers* (2nd edn, OUP 2016).

[64] Phumudzo S Munyai, 'Competition Law and Corporate Social Responsibility: A Review of the Special Responsibility of Dominant Firms in Competition Law' (2020) 53(1) *De Jure* (Pretoria), available at <https://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S2225-71602020000100018> accessed 8 October 2025.

firm with 90% market share is even more dominant.[65]. If a super-dominant entity is not burdened with heightened responsibilities, it can easily surpass the underdeveloped law on effects analysis. Hence the authors suggest that effects-based analysis may not be enough on its own once companies reach the scale of true "super-dominance." Imagine a scenario where a company in the pharmaceutical sector controls 90% of the insulin market in India, which is a clear super-dominant position. Under an effects-based approach, regulators would have to assess the actual or potential harm that the firm's conduct may cause to the competition.; by that time, the market could already be severely concentrated. Additionally, determining "potential harm" can be difficult in practice, especially in the case of a super-dominant firm where even a small action can reshape competitive conditions.

With a framework of special responsibility for these super-dominant firms, the company would have a proactive duty to avoid practices such as exclusive supply agreements with hospitals or bulk discounts that block smaller players from the market. Hence, the degree of dominance must be taken into account while analysing the scope of abuse. Therefore, the Competition Authorities must be given limited discretion to invoke special responsibility in case of super-dominant entities. This will require the authorities as well as the Courts to spell out its scope and how it works alongside effects-based analysis, so that dominant firms are held responsible only for real harm, without discouraging any legitimate activities.

However, it is not easy for super-dominance to work alongside an effects-based approach. For instance, in the case of *Post Danmark v Konkurrencerådet.*[66]The Court held that in applying effects-based tests such

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[65] Damien Geradin, Nicolas Petit, Mike Walker, Paul Hofer and Frédéric Louis, *The Concept of Dominance in EC Competition Law* (July 2005), available at <https://ssrn.com/abstract=770144> accessed 8 October 2025.

[66] Case C-23/14 *Post Danmark A/S v Konkurrencerådet* EU:C:2015:651, [2015] 5 CMLR 25.

as the AEC test in a market which makes the emergence of an as-efficient competitor is practically impossible and would be of no relevance. Most super-dominant firms arise because they possess certain market characteristics like statutory monopoly, IP etc, causing huge entry barriers. Hence, there would practically be no as-efficient competitors.

This does not entirely vitiate the role of super-dominance in proving abuse of dominance through the effects approach. For instance, in the case of *Google Shopping*[67] Google was a super-dominant entity. But, its degree of dominance was not used to prove the existence of abuse; rather it was used as an assessment to establish the anticompetitive effects of Google's conduct.

By characterizing Google as the primary gatekeeper to the internet, the General Court emphasised that Google's responsibility exceeds that of an ordinary dominant firm. In markets with regular dominance, competitive conditions remain more open. Whereas, in the general search engine market, it had tipped in Google's favour completely as it maintained a market share of around 90% across several national markets. This level of dominance enabled Google to leverage its super-dominant position in the shopping service market without any competitive risk. Thus, although the finding of abuse was supported by effects assessment, the Court's conclusion ultimately rested on Google's dominant role in the digital markets and the impact its behavior could have on the competitive process.

The judgment reflects how an effects-based approach can be in line with recognizing the special responsibilities of a dominant firm in a market. Like any kind of dominance, super-dominance does not establish abuse, but it can influence the assessment of abuse. Additionally, in markets that already have

[67] Case T-612/17 *Google and Alphabet v Commission* EU:T:2021:763.

weak competitive dynamics, the risk of over-enforcement is limited. Hence, a more proactive regulatory stance is both justified and necessary. [68]

The *Google Shopping* case offers guidance to India in understanding super-dominance. However, the Indian context requires a more cautious adoption of this reasoning. The Government recently withdrew the Draft Digital Competition Bill[69] due to concerns relating to inflexible ex-ante regulations, excessive compliance burden, stifling competition etc. This signals that India is not yet prepared to impose Digital Markets Act-style obligations on its nascent digital economy. In this environment, the CCI should warrant a special responsibility while still grounding liability in demonstrative competitive effects. Where markets are tipping towards one super-dominant firm or where an as-efficient competitor is unlikely to emerge, the CCI should take a more proactive stance. However, such intervention must be reasonable and sensitive to India's fast-growing digital markets.

VII. REAL IMPACT OF CONDUCT- OBJECTIVE JUSTIFICATION

Effect-based analysis is about more than just ticking a box to see whether a practice restricts competition. Its true value lies in recognizing that once harm is alleged, there should be room for companies to explain *why* they acted the way they did.

In most cases where abuse of dominance is proven, firms accused of such behavior always try to defend themselves, and this defense is allowed if their actions were driven by legitimate reasons rather than an intent to harm

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[68] Alessia Sophia D'Amico and Baskaran Balasingham, 'Super-dominant and super-problematic? The Degree of Dominance in the Google Shopping Judgment' (2022) *European Competition Journal*, available at <https://doi.org/10.1080/17441056.2022.2059962> accessed 3 December 2025.

[69] Draft Digital Competition Bill, 2024.

competition. This means that not every practice is illegal. For instance, offering fidelity rebates can be considered a legitimate use if demonstrated with economic justifications such as increased efficiency derived for the consumers.[70] But the true idea behind the defense of objective justification is fairness: it prevents the law from punishing the conduct which, while restrictive on the surface, may benefit customers or the market.

In the present case of *Schott Glass*, the Supreme Court noted that the volume-based discounts offered by Schott Glass were uniform and transparent and did not constitute abuse of dominance as they were objectively justified. It was observed that merely because Schott Kaisha produced larger volumes, it did not result from unequal treatment, since all converters had access to the same volume-based discount structure. It further noted that such volume-based discounts are an industry norm and were applied equally to all converters. The Court also found that the discounts showed demonstrable efficiency gains, hence they cannot constitute abuse. This is because the upstream supply expanded and the prices remained stable during the period. Hence, there were no anti-competitive effects in the market, and it resulted in efficiencies.

In addition to this, the Supreme Court held that the functional discounts given by Schott Glass were not violative of Section 4(2). In fact, the Court found that each eligibility requirement was objectively justified. They were genuinely aimed at protecting patient safety and preserving the company's brand integrity, and were proportionate to those goals. However, the Court also made clear that not every explanation offered by a dominant company will be accepted. For instance, a claim that tying simply helps to maintain a uniform presence of the product in the market is not enough.

[70] Yash Bhatt, 'The Defence of Objective Justification in Competition Law: Is the Defence Really "Objective"?' (IRCCL Blog, 22 April 2020), available at <https://www.irccl.in/post/the-defence-of-objective-justification-in-competition-law-is-the-defence-is-really-objective> accessed 8 October 2025.

However, the *Schott Glass* case failed to elaborate on how to assess objective justification. Courts need to set out, very clearly, how these justifications will be assessed because effect-based analysis and objective justification are intertwined. For instance, in the European Union (EU), a firm accused of abuse of dominance can use objective justification as a defense under Article 102 of the Treaty on the Functioning of the European Union (TFEU)[71]. In this scenario, a dominant enterprise can justify either by demonstrating that its conduct is objectively necessary or it producing substantial efficiencies that outweigh any anticompetitive effects on consumers.[72]

On the other hand, in India, it is observed that objective justification is often invoked but is accepted only in limited circumstances. For instance, in *East India Petroleum v. South Asia LPG Company*[73], the CCI rejected South Asia LPG claim that its exclusionary conduct was necessary to protect its commercial interests, holding that the conduct imposed unfair conditions and effectively foreclosed competition. Similarly in *Auto Parts Case (2014)*[74], the COMPAT rejected the car manufacturers' claim that restricting access to spare parts was justified to prevent counterfeiting and unskilled repairs. It held that the restriction was disproportionate and that consumer interests would be better served by allowing affordable spare parts in the open market, coupled with government-mandated quality standards for repairers.

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71 Tjarda van der Vijver, 'Objective Justification and Article 102 TFEU' (2012) 35(1) *World Competition* 55–76, available at <https://kluwerlawonline.com/journalarticle/World+Competition/35.1/WOCO2012004> accessed 8 October 2025.

72 European Commission, 'Guidance on the Commission's enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings' (24 February 2009), available at <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52009XC0224%2801%29> accessed 8 October 2025.

73 *East India Petroleum Pvt Ltd v South Asia LPG Company Pvt Ltd* [2018] SCC OnLine CCI 59.

74 *Shamsher Kataria v Honda Siel Cars India Ltd* [2014] SCC OnLine CCI 95.

That said, there are instances where Indian authorities have accepted objective justification. In *Ghanshyam Das Vij v. Bajaj Corp Ltd & Others (2015)*[75], the CCI has observed that exclusive distribution agreements can be objectively justified on certain grounds, such as protection from free-riding, efficient management of product sales, and economic efficiencies. In *Hemant Sharma v. All India Chess Federation (AICF).*[76]In the special context of sports governance, certain restraints on competition may be justified if they are genuinely necessary for the development or integrity of the sport. But where such restraints serve no credible purpose and merely distort competition, they remain abusive. Apart from these, we have already seen how the Supreme Court in the Schott Glass case accepted objective justification for uniform, transparent, and efficiency-enhancing discounts, while clarifying that not all explanations offered by dominant firms will pass scrutiny of this justification.

A few scholars believe that the Act imposes a strict liability on enterprises abusing their dominant position, but they do not consider the conduct of an enterprise.[77] Whereas some scholars argue that a dominant enterprise's actions should not automatically be treated as abusive under Section 4 of the Act. They suggest that if the enterprise can show a valid and objective reason for its conduct, or prove that its behavior brings about efficiencies and benefits that outweigh any harm to competition, it may fall outside the scope of the prohibition.[78]

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[75] I*n Re Ghanshyam Dass Vij and Bajaj Corp Ltd* [2015] CCI 155.
[76] *Hemant Sharma v All India Chess Federation* [2018] SCC OnLine CCI 53.
[77] Cyril Shroff and Nisha Kaur Uberoi, 'Chapter 4: India' in *Competition Law in Asia Pacific: A Practical Guide* (2015) <https://www.amt-law.com/asset/pdf/bulletins8_pdf/150220.pdf> accessed 8 October 2025.
[78] Abir Roy, *Competition Law in India: A Practical Guide* (2nd edn, Kluwer Law International 2016) 223.

It is at this point that the efficiency becomes crucial. Efficiency is considered to be one of the objectives of Competition law[79], while many also consider it to be the ultimate goal of Competition law[80]. But relying on it as a defense in real cases is rarely simple. The term efficiency includes cost savings, intensive use of existing capacity, economies of scale, or efficiencies such as increased network size or product quality.[81] However, one particular efficiency may lead to the loss of another kind of efficiency. For instance, a merger may lead to greater efficiency because of increased resources, whereas the merged entity may also yield greater market power, leading it to impose supra-competitive prices, an outcome fundamentally at odds with the principle of allocative efficiency.[82] This makes it more difficult for this defense to succeed because of the inherent contradictions between different efficiencies. Above all, most cases have suggested that reasoning provided for objective justification does not show any real efficiency gains or consumer benefits; it only reflects that the company uses its dominance to shape the market on its own terms. If that is allowed, it would give a dominant undertaking the freedom to impose its own rule on the market rather than letting competition and consumer choice determine.

Given these difficulties, the authors argue that the *Schott Glass* case makes objective justification crucial. Since the Supreme Court has allowed effect-based analysis, there is a possibility that dominant companies might now use objective justification as a shield. Over time, this could enable firms to tighten their grip on the market and edge closer to a monopoly. The uncertainty and

[79] D Hildebrand, *The Role of Economic Analysis in the EC Competition Rules* (2nd edn, Kluwer Law International 2002) 388.
[80] M Furse, 'The Role of Competition Policy: A Survey' (1996) 17 *ECLR* 257–58.
[81] ICN Merger Working Group, Investigation and Analysis Subgroup, 'Merger Guidelines Workbook' (2006) 62.
[82] Roger J van den Bergh and Peter D Camesasca, *European Competition Law and Economics* (Intersentia 2001) 5.

inconsistency seen across existing Indian cases already demonstrate the risks of an unstructured approach. Therefore, the focus of Section 4 should now expand; courts must assess both the effects of the conduct and the firm's claimed efficiencies. This makes investigations more complex and increases the burden on the CCI unless a clear testing framework is developed. To avoid this, the Guidance Note of the EC with respect to abusive exclusionary conduct can be examined. It outlines specific conditions for accepting objective justifications.[83]

a) the efficiencies are or are likely to be realized by such conduct;

b) the conduct and the efficiencies are indispensably connected;

c) the efficiencies outweigh the negative effects on competition; and

d) the conduct does not lead to the removal of all effective competition."[84]

India would benefit from adopting a similar standard. A clear framework would ensure that justifications are assessed rigorously, based on evidence and proportionality, rather than accepted at face value. Without such a framework, there is a risk that justifications will become an *ex-post* excuse allowing dominant firms to shape the market on their own terms.

VIII. CONCLUSION

Traditionally, much like the EU, India has relied on a form-based approach in cases involving abuse of dominance. Although some decisions, both majority and minority, have shown elements of effects-based reasoning, the broader consensus is that the Competition Act, 2002, has largely been interpreted through a form-focused lens. However, as India's economy expands and private enterprises play an increasingly significant role, it

[83] European Commission, 'Guidance on the Commission's enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings' (n 73).

[84] Ibid

becomes crucial to understand what amounts to a violation of competition law and to recognise that firms may have genuine efficiency gains or business justifications behind their conduct.

In this context, an effects-based approach offers greater clarity and predictability. By grounding decisions in economic principles and evaluating both the pro-competitive and anti-competitive impact of a practice, the law can distinguish harmful behaviour from legitimate competitive strategies, ultimately leading to a more consistent enforcement regime. To assess abuse of dominance under Section 4 of the Act, requires a structured analytical framework. Thus, it is suggested by the authors that the Competition Authorities move from the conventional method of interpreting the Section by delineating relevant market, determining dominance and classifying conduct as abuse under section 4(2) to a more nuanced approach.

It must be done by adopting a four-stage effects-based enquiry. Firstly, we must first define the relevant market in which the abuse is taking place. Apart from this, the investigation must also be based on the market in which the conduct is likely to cause exclusionary effects. For example, effects may be seen in the same market, neighbouring market, and in vertical markets. Secondly, once delineated, the authority must assess whether the enterprise holds a dominant position as per section 19(4) of the Act. Here, the Authority can give relevance to the degree of dominance the entity possesses. For instance, once the Competition Authority recognises cases of super-dominance, obligations on the enterprise may be stricter, and this must be taken into consideration in the assessment of abuse.

Thirdly, once dominance is established, the next step is to identify whether the conduct falls within the forms of abuse under section 4(2). For example, price discrimination, rebates, tying, refusal to deal etc. At this stage, to reduce the evidentiary burden on the CCI, a rebuttable presumption of abuse may be drawn when the conduct satisfies the threshold under Section 4(2). Thus, shifting the burden to the dominant enterprise. At this final stage, Authorities must weigh in the anti-competitive effects and pro-competitive effects arising from the impugned conduct. The Authorities must apply clear and conduct-specific tests for evaluating competitive harm. The task before them is to ensure that detailed guidelines specify the enforcement mechanism through standard tests and required evidentiary thresholds.

Looking ahead, the implications of operationalizing this framework are significant. To make this model workable, the CCI must institutionalise it through publicly issued guidelines, specifying the evidentiary standards and economic tools applicable to each type of conduct. Adopting this structured four-stage framework will offer a clear route to the CCI in implementing what has been laid down in the Schott Glass case and bring in consistency and standard in the assessment of abuse.

Moreover, this evolution will change the way abuse of dominance is looked at in Section 4. It redefines how exploitative and exclusionary practices are understood. It places Special Responsibility in antithesis to effects analysis with craved out exceptions. The defense of objective justification also gains renewed significance when backed up by demonstrable efficiencies. In the end, the real test for Indian competition law is to apply this shift in a clear, consistent, and economically sensible way.