

**PREPARED BY DR.S.CHAKRAVARTHY
CONSULTANT ON
COMPETITION POLICY AND LAW**

CASE STUDY ON ABUSE OF DOMINANCE

The Ministry of Trade and Industry (MOTI) of an African country, which has the charge and responsibility of promoting competition in the market, received a complaint from one of the operators of the city bus transport in the Capital city of the country. The complainant operator CCC owns buses of various models and operates bus lines in the Capital city. The complaint is directed against a public limited company called GGG which has the Municipal Authorities as the largest and controlling shareholder.

The complaint of CCC is that GGG having a market share of 80% is dominant in the market and has been abusing its dominant position. CCC is having just 2% of the market share along with 13 other operators, all small players. CCC has the reputation of being an efficient operator perceived so by the travelling public. Besides the city bus transport, some of the operators including CCC run buses in small towns and rural areas of the country essentially to cater to the needs of the local people. Local people do travel to the capital city but their number is not significant.

The market share of the operators in the capital city may be seen in the Table below:

Sl. No.	COMPANY	MARKET SHARE (percentage)
1	GGG	80.0
2	CCC	2.5
3	A	2.3
4	B	2.0
5	C	2.0
6	D	1.8
7	E	1.6
8	F	1.4
9	G	1.0
10	H	1.0
11	I	1.0
12	J	1.0
13	K	1.0
14	L	1.0
15	M	0.4
	Total	100.0

CCC listed the following allegations in its complaint of abuse of dominance.

1. GGG is applying different conditions to CCC from those applied to other operators offering comparable services. For instance, GGG is insisting on CCC taking shares in a new company floated by GGG.
2. CCC is being imposed with “incongruously strict” conditions (relating to performance) by GGG on the premise that CCC could be a strong competitor.
3. The city Council and city Office are showing favour to GGG in the field of economic competition by promoting it to the function of guarantor and organiser of city bus transport in not only the capital city but also the small towns and rural areas.
4. The Competition Law of the country does not apply the market share criterion for determining dominance. It defines a dominant enterprise as one which has a position of strength and which is able to operate independently of competitive forces prevailing in the relevant market. The Law
 - (a) prohibits abuse of dominance
 - (b) prohibits imposition of discriminatory conditions to parties in purchasing or selling of goods and services
 - (c) prohibits making conclusion of contracts subject to acceptance by parties of supplementary obligations, which by their nature or according to commercial usage, have no connection with the subject of such contracts.

The Competition Commission of the country framed the following issues:

1. What is the “relevant market” in this case?
2. Is GGG a dominant enterprise?
3. Is CCC an effective competitor to GGG?
4. Are discriminatory conditions in evidence, as alleged?
5. Is there any condition imposed on CCC extraneous to the main subject of the contract?

Do you think there are more issues that should be considered by the Competition Commission? If so, list them.

Please articulate your decisions on the 4 issues framed by the Commission and any other issues you would like to raise.