

“Effects based” doctrine in Abuse of Dominance makes a comeback:

Supreme Court’s judgement in CCI v Schott Glass

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On 13 May 2025, the Supreme Court of India passed its judgment in the matter of Competition Commission of India v Schott Glass¹ bringing an end to the 15-year-old litigation between Schott Glass and Kapoor Glass in relation to the alleged abuse of dominant position by the former.

Factual Background

Schott Glass was a manufacturer of “neutral USP-1 borosilicate glass tubing” which is used to manufacture pharmaceutical containers such as ampoules, vials, cartridges and syringes. Kapoor Glass was one such manufacturer of pharmaceutical containers and procured borosilicate glass tubing from Schott Glass.

Kapoor Glass was aggrieved because of:

- (i) the additional rebates provided by Schott Glass to another group company – Schott Kaisha – a competitor of Kapoor Glass amount to discriminatory pricing, and margin squeeze
- (ii) the requirement to not process “Chinese tubing” imposed by Schott Glass as a precondition for availing functional discount and termed it unfair
- (iii) rebates being conditional on achieving the purchase quantity of two different variants of borosilicate glass tubing amounted to tying in

Proceedings before the CCI and the COMPAT

Based on a complaint from Kapoor Glass in 2010, the CCI directed the Director General, CCI (DG) to investigate, and based on the investigation report, found Schott Glass guilty of abuse of dominant position. Accordingly, the CCI imposed a penalty of INR 56.6 million (approx. USD 650,000 at present currency exchange rates) along with cease-and-desist order.

Schott Glass challenged the CCI’s order before the erstwhile Competition Appellate Tribunal (COMPAT) which reversed the findings of the CCI and imposed cost of INR 100,000 (approx. USD 1,200 at present currency exchange rates) on Kapoor Glass.

Supreme Court’s Judgment

Both the CCI and Kapoor Glass appealed against the COMPAT’s decision to the Supreme Court. The Supreme Court has dismissed the appeal. The key takeaways of the judgment are as follows:

Volume Discounts and Margin Squeeze

While relying on the judgment of the European Court of Justice in British Airways (2007), the Supreme Court held that while dominant firms must not “favour or disfavour” trading partners, applying different

¹ Civil Appeal No. 5843 of 2014

prices only becomes abusive only when it lacks an objective commercial justification or when equivalent customers cannot obtain the same terms.

The court observed that since all the manufacturers of pharmaceutical containers were informed of the rebate ladder (i.e., the thresholds of sales volume to be achieved for availing a particular discount) in advance, and no hidden concessions existed outside the rebate ladder, volume-discounts to Schott Kaisha cannot be considered abusive.

Further, the court also did not consider the rebate to Schott Kaisha leading to a margin squeeze since Schott Glass was found to be absent in the downstream market; the rivals were able to operate with sustainable margins; and the market exhibited neither exit nor price elevation, on account of the volume discounts.

Functional Discounts

The Court held that the functional discounts which were premised on performing certain functions were also not discriminatory since these restrictions applied uniformly to all the players. The Court was also of the view that the conditions imposed by Schott Glass were objectively connected with the legitimate aim, patient safety and brand integrity.

Tying in

The Court rejected the contention that Schott Glass indulged in tying-in since the two variants were alternative specifications of one input rather than as independent products.

Accordingly, the Supreme Court upheld the COMPAT's order and imposed cost on Kapoor Glass for prolonging the litigation.

One of the salient features of the judgment is also the Court's finding that the investigation and the final order were vitiated since Schott Glass was denied the opportunity to cross-examine the witnesses whose testimony was relied upon to reach the finding of contravention.

On a separate note, the judgment also lays down the principle for assessment of cases of abuse of dominant position. The Court has clarified an "effect based" assessment is necessary. Accordingly, in the absence of visible and substantial harm, an allegation of abuse of dominant position will not sustain even if the impugned conduct falls within the categories of abusive conducts listed in Section 4 of the Competition Act, 2002 (as amended).

Conclusion

The judgment addresses three central issues:

1. Whether volume-based discounts violate the abuse of dominance provisions under the Act;
2. Whether cross-examination is warranted during the CCI's adjudicatory process; and
3. Whether an "effects-based" approach is essential in cases involving abuse of dominance.

On the first issue, the Supreme Court held that volume-based discounting does not amount to abuse of dominance as long as the discounting policy is neutral, objective, and uniformly applicable to all customers and devoid of foreclosure effects. In such cases, there is no unequal treatment of equivalent transactions and therefore allegations of discrimination are unsustainable.

On the second issue, the Court observed that cross-examination is warranted when the findings of infringement rest significantly on witness testimony. Where such testimony forms the evidentiary basis of the decision — particularly when the deponents are adverse to the defendants — the right to cross-examine becomes critical to test the credibility and veracity of the evidence presented.

On the final issue, the Court underscored the necessity of adopting an "effects-based" approach in abuse of dominance cases. This interpretation was grounded in the Preamble of the Act, Sections 19(3) and 19(4), and the constitutional doctrine of proportionality. The adoption of this standard raises the evidentiary bar for the Commission, requiring it to establish concrete, demonstrable effects of the impugned conduct on competition. Consequently, the CCI's investigative burden is likely to increase, as it may require detailed

and time-consuming market studies, potentially prolonging the duration of investigations. This may have a cascading effect on the investigations in the tech sector which are currently underway; the DG will now be required to conduct market surveys, interview a wide range of stakeholders – the end consumers, competitors, ancillary service providers, etc. before reaching its conclusion.

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