

# CASE STUDY ON JAYPEE GREENS, 2015

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**Abstract:** After the well-known case of DLF, it was time for another group to face CCI, Jaypee Group. The Commission ordered an investigation under the Competition Act against Jaypee Greens Noida in reference to abusing its dominant position. The Complainant in this dispute were some of the flat owners of Jaypee Greens Noida project who raised an alarm that the conditions in the agreement were unfair. The informants stated that the disclosures made by the company in the prospectus shows clear dominant position. The latest order in this case came on October 26<sup>th</sup>, 2015 which exonerated the company from the allegations of abuse of dominant position. A pertinent issue is now raised that in what circumstances in a given situation like that the project of Jaypee Greens be considered as dominant over its competitors and whether the order passed by the CCI is the final word in the industry of real estate sector?

**Key Words:** Jaypee, dominant, abuse, Competition.

## 1. JUSTIFICATION:

The latest order of the CCI brought relief to the Jaypee Company from the allegations of abuse of dominant position. The study of the case of Jaypee Company brings attention to the analysis of 'Relevant Market' which is still on the process to settle its grip. The present paper will include detailed study of this case in light of the previous cases on the same issue in hand with the same sector of industry, this is an area of unsettled yet decided interpretations of the relevant market.

## 2. STATEMENT OF THE RESEARCH PROBLEM:

The previous decisions of the issue of Relevant market, the various doctrine working over the factor has brought another debate to analyze the effect on the market, buyers, demand and supply etc. The paper is focused on the interpretation of the term relevant market focusing abuse of dominant position as deliberated by the CCI in the case of Jaypee Company and critiquing it.

## 3. INTRODUCTION:

The Competition Act, 2002 hereinafter referred as 'Act' is crafted to cultivate healthy competition and to protect the marketplace against numerous anti-competitive acts.<sup>1</sup> The preamble of the Act defines the broader objectives as:-

- Promoting and sustaining healthy competition in the market, and
- Protection of the interest of consumers, and
- Ensuring freedom of trade carried on by other participants in the market.<sup>2</sup>

The Competition Commission of India<sup>3</sup> is the key agency commended with the duty of overseeing effective competition in India. This statute is majorly influenced by the United States<sup>4</sup> and European Union<sup>5</sup> laws. The focus of the Act is on three prime areas that are:

1. Anti-competitive conduct,
2. Abuse of dominance, and

<sup>1</sup> Preamble to the Competition Act, 2002, 'An Act to provide, keeping in view of the economic development of the country, for the establishment of a Commission to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets, in India, and for matters connected therewith or incidental thereto.'

<sup>2</sup> Ibid.

<sup>3</sup> Section 7 of the Competition Act, 2002 which deals with the Establishment of Commission.

<sup>4</sup> The end of the 19th Century saw a number of laws being enacted in the United States (US) to restrict monopolistic practices, known as the antitrust laws, which in turn had considerable influence on the development of European Community competition laws after the Second World War. Increasingly the focus has moved to international competition enforcement in a globalized economy cited from S.H Bathiya and Associates, *background and basics of Competition law* (2012) available at <http://www.shbathiya.com/files/docs/%20research-labs/fc6.pdf> last seen on February 13<sup>th</sup>, 2018.

<sup>5</sup> Ibid.

### 3. Combinations

The present research paper seeks to delve upon the provisions of the Indian Antitrust law, its jurisprudence relating to abuse of dominance in the light of the recent case of *Jaypee Greens*<sup>6</sup> and its contrast with *DLF*<sup>7</sup> case.

### 4. ABUSE OF DOMINANT POSITION

The position of strength enjoyed by an enterprise in the relevant market which enables it to first operate independently of the competing forces prevailing in the relevant market or affects its competitors or consumers or the relevant market in its favor. Dominance *per se* is not bad, abuse of such 'powered' position is.<sup>8</sup> Position of strength is not some objective attribute that can be measured along prescribed mathematical index or equation. It has to be based on rational consideration that is on relevant facts keeping in mind the holistic interpretation seemingly unconnected statistics are aspects of Indian economy.<sup>9</sup>

Generally it is difficult to measure such power directly, CCI places great emphasis on the factors giving radiance to market share and barriers to entry. In defining market dominance various points of issues are considered like whether an enterprise, or a group of such enterprise, completely or substantially controls a service or product in a given geographic area.

Dominance has negative significance only when the effect is explained in reference to a defined relevant market. In India, the determination of 'dominance' is based on a qualitative assessment of the prevalent market dynamics and the relative position of strength enjoyed by the market participants.<sup>10</sup> The 'relevant market' means "the market that may be determined by the Commission with reference to the relevant product market or the relevant geographic market or with reference to both the markets". The Act lays down several factors of which any one or all shall be taken into account by the Commission while defining the relevant market.<sup>11</sup> Relevant product market<sup>12</sup> is defined in terms of substitutability. It is the smallest set of products (both goods and services) which are substitutable among themselves.<sup>13</sup>

The market for tobacco products, for example, may consist of separate 'relevant product markets' for simple cigarettes, luxury cigars etc. as these are not substitutable for each other on a small change in price. 'Relevant geographic market'<sup>14</sup> is defined in terms of "the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighboring areas".

There are three essential elements to abuse of dominance and all must be present for an offence to occur:

- Substantial or complete control over a relevant market.
- Engaged in anti-competitive activities.
- Hinder or lessen competition in a market or be likely to in near future.

Abuse of dominant position thereby hinders fair competition between firms, exploits consumers and makes it difficult for the other market participants to compete with the dominant undertaking.

The abuse of dominant position includes;

1. Imposing unfair competition or price
2. Predatory pricing<sup>15</sup>
3. Limiting production/market
4. Creating barriers to entry and applying dissimilar conditions to similar transaction

Section 4(2) of the Act lays down that if an enterprise is involved in;

<sup>6</sup> *Sunil Bansal & ors v. M/s Jaiprakash Associates Ltd. & ors* 2015, Comp L R 1009 (CCI).

<sup>7</sup> CCI, *Provisions related to Abuse of Dominance Advocacy Series 4* available at [http://www.cci.gov.in/sites/default/files/advocacy\\_booklet\\_document/AOD.pdf](http://www.cci.gov.in/sites/default/files/advocacy_booklet_document/AOD.pdf) last visited on February 13th, 2018.

<sup>8</sup> *Belair Owner's Association v. DLF Limited Haryana Urban Development Authority Department of Town and Country Planning, State of Haryana* [2011]104CLA398(CCI).

<sup>9</sup> *MCX Stock v. NSE 2011*Comp L R 129 (CCI).

<sup>10</sup> Cyril Shroff & Nisha Kaur Uberoi, India: *Abuse Of Dominance, The Asia Pacific Antitrust Review 2015* Available at <http://globalcompetitionreview.com/reviews/69/sections/235/chapters/2749/india-abuse-dominance/> last visited on February 13th, 2015.

<sup>11</sup> Sub-section (r) of Section 2 of Competition Act, 2002.

<sup>12</sup> sub-section (t) of Section 2 of Competition Act, 2002.

<sup>13</sup> Cuts International Comments on Consultation Paper *Monopoly/Market Dominance In Cable Tv Services Consultation Paper No.: 5/2013* (July 08, 2013) [http://www.cuts-ccier.org/pdf/CUTS\\_Comments\\_on\\_Consultation\\_Paper\\_on\\_Monopoly\\_Market\\_Dominance\\_in\\_Cable\\_TV\\_Services.pdf](http://www.cuts-ccier.org/pdf/CUTS_Comments_on_Consultation_Paper_on_Monopoly_Market_Dominance_in_Cable_TV_Services.pdf) last visited on March 4th, 2015.

<sup>14</sup> Section (s) of Section 2 of Competition Act, 2002.

<sup>15</sup> Explanation (b) to section 4(2) of the competition Act, 2002.

- a. Directly or indirectly imposes unfair or discriminatory'
  - (i) condition in purchase or sale of goods or services; or
  - (ii) price in purchase or sale (including predatory price of goods or service)

Explanation added to the section 4(2) (a) gives a clarification that the unfair or the discriminatory condition in purchase of sale of goods (including predatory price) or services shall not include such discriminatory conditions or prices which may be adopted to meet the competition.

- b. Limits or restricts;
  - (i) Production of goods; or
  - (ii) Technical or scientific development; or
- c. Indulges in practical resulting in denial of market access; or
- d. Makes conclusion of contracts subject to acceptance by other parties of supplementary obligations; or
- e. Uses its dominant position in one relevant market to enter into or protect other relevant market.

When examining an activity to determine if it is anti-competitive or not, the CCI assesses whether it falls into any of the below mentioned factors:<sup>16</sup>

- The intensity of the market share of an enterprise;
- size and resources of the enterprise;
- size and importance of competitors;
- economic power of the enterprise, including commercial advantages over competitors;
- vertical integration of the enterprises or sale or service network of such enterprises;
- dependence of consumers on the enterprise;
- legal monopoly or dominant position;
- entry barriers, including barriers such as regulatory barriers, financial risk, high capital cost of entry, marketing entry barriers, technical entry barriers, economies of scale, high switching costs;
- countervailing buyer power;
- market structure and size of the market;
- social obligations and social costs;
- relative advantage, by way of the contribution to the economic development, by the dominant enterprise; or
- Any other factor that the CCI may consider relevant for the inquiry.

In the case of *Hoffmann-la-roche Ag v. Commission of European Communities*<sup>17</sup> the court listed the following as the relevant factors in determining the existence of a dominant position. The relationship between the market shares of the undertaking concerned and its competitions, the existence of a highly developed sales network and the absence of potential competition.

## 5. RELEVANT MARKET:

In the *Continental can*,<sup>18</sup> the ECJ insisted on the commission analyzing a firms market power. The relevant market has two dimensions: the product or the service and the geographical area affected. Markets do not always have clear limits, and the insistence on definition rather than analysis may be misleading. There may be substitutes which are not perfect, in which case selecting a narrow definition will overstate the market power of a firm supplying a larger portion of the defined product.<sup>19</sup> Under the competition law of India the dominant position defined in explanation (a) of section 4 related to relevant market.

Factors which are important to be considered in determining the relevant product market<sup>20</sup>:

- Physical characteristics or end use of goods
- Price of goods or services
- Consumer preferences
- Exclusion of in house production
- Existence of specialized producers and
- Classification of industrial products

The first three factors would sum in assessing the interchangeability of products and services.

<sup>16</sup> Section 19(4) of the Competition Act, 2002.

<sup>17</sup> [1979] 3 CMLR 211.

<sup>18</sup> T-219/99, [2004] 4 CMLR 1018.

<sup>19</sup> Valentine Korah *An Introductory Guide To EC Competition Law And Practice* 95 [2004].

<sup>20</sup> Abir Roy and Jayank Kumar *Competition law in India* 103 [2008].

## 6. CURIOUS CASE OF JAYPEE GREENS :

A debate has stuck upon the real estate market where the issue was connected to a developer of a particular geographical area is considered dominant over other market competitors, this was the issue in the recent case of *Sunil Bansal*<sup>21</sup> mostly known by the name of *Jaypee Greens* case<sup>22</sup>. In which some striking observations were made by the commission and which at length are dealt ahead in this paper.

## 7. THE FACTUAL MATRIX:

- The information was filed by various individuals which are referred as ‘*informants*’ under section 19(1) (a) of the Act against M/s. Jaiprakash Associates Ltd., M/s. Jaypee Infratech Ltd. and Jaypee Greens (Jaypee) alleging Abuse of Dominant position under section 4 of the Act.
- The Informants are allottees of residential units in JAL’s project named ‘Jaypee Aman’ at Noida. The Informants are allottees of residential units in ‘Jaypee Sun Court’ and ‘Jaypee Sea Court Apartments’ at Greater Noida.<sup>23</sup>
- JAL and JIL are engaged in real estate business. M/s. Deutsche Postbank Home Finance Ltd. is a financial services provider to Indian corporate, institutional and individual clients and NOIDA.<sup>24</sup>
- The Informants in all the above mentioned cases alleged that JAL along with its group company i.e. JIL abused its dominant position by imposing highly arbitrary, unfair and unreasonable conditions in the agreements for allotment of residential apartments which blatantly violated the principles of free and fair competition and thereby contravened sections 4(2)(a) and 4(2)(e) of the Act.<sup>25</sup>

### Conditions mentioned in the Contract which were disputed

The applicants claimed that the documentation required by the Jaypee greens were arbitrary and were not reasonable. They cited various instances in the documentation process like the application form has no provision for the project whereabouts as to its name, the terms related to the consideration were left empty, the undertaking to be given with the application form was arduous and totally one sided, during the deal there was no mention about the terms related to maintenance deposit/ maintenance charges/ club membership fees; various provisions in the agreement were made pre requisite for applicants like separate maintenance agreement; there were significant changes in the original plan which was modified to build 28 floors; there was delay in giving possession without any compensation or relief; in summary JAL had by way of a standard contract gave themselves unfettered rights in dealing with the applicants to do any variations in the plan and on the other hand the Informants had no right to question or dispute such changes;

JAL failed to construct the apartment as per the specifications assured by it in its advertisements and representations and that the Informants were provided with shoddily constructed, poor quality flats which by no means could be considered of a ‘premium’ category as advertised; it was also stated that the agreement provided a force majeure clause giving the right to JAL to indefinitely delay the project without any obligations. These were few of the conditions put in the agreements with the applicants.<sup>26</sup>

## 8. THE OF DOMINANCE AND RELEVANT MARKET:

The issue came up as a complaint and the investigation was conducted by the Directorate General in the first motion the DG didn’t find any abuse of dominant position, the DG after submitted its report was again directed by the Commission to look into more depths and the in depth findings of the investigation are mentioned below:

- The Jaypee group in the Greater Noida Industrial Development Authority in 2000-2001 is 452 acres of land which is leased to Jaypee. Another 6,175 acres was given as a part of the Yamuna Expressway. As such, Jaypee’s land could not be compared to the land allotted and leased to other builders so as to give any commercial advantages to Jaypee.
- The financial resources, Unitech held Rs105.8 billion while Jaypee held Rs78.9 billion.
- Other similar projects for residential apartments.

<sup>21</sup> *Sunil Bansal and others v. M/s Jaiprakash Associates Ltd and others*, Case Nos. 72 of 2011, 16, 34, 53 of 2012 and 45 of 2013.

<sup>22</sup> *Ibid*.

<sup>23</sup> Para 3 supra note 6.

<sup>24</sup> *Ibid* at Para 4.

<sup>25</sup> *Ibid* at Para 5

<sup>26</sup> Para 6 *Supra* note 6

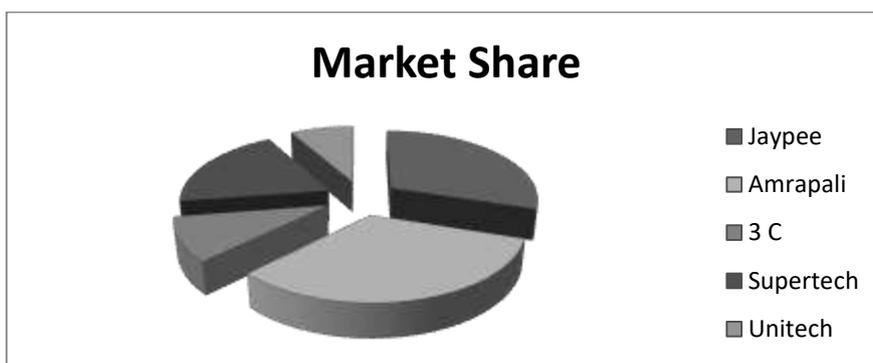


Fig. 1<sup>27</sup>

## 9. FACTORS OF DEMAND SUBSTITUTABILITY:

Consumer in reference to the residential real estate industry count the decisions on the location, price, services, brand value of the developer etc, the factors of substitutability are not restricted to the services which will be provided to the consumer. The consumer will compare the same with the other products and then make a decision. The substitutability or the inter-changeability principle is applicable to the entire market of services provided by the developers/builders in respect of residential apartments launched in a particular period.<sup>28</sup> The latest investigation report of the DG concluded the relevant market as the market for provision of services for the development of integrated township.<sup>29</sup> This reasoning of the DG was refuted by the CCI, that the issue is about any degree of substitutability or inter-changeability between standalone apartments and the integrated township or not, which was refuted by CCI referring to the cases of similar issue of integrated township was in question to be a separate product market, *Shri Sunil Chowdhary v. M/s TDI Infrastructure Ltd.*,<sup>30</sup> stated that the integrated township ordinarily be the market of residential units. On the same lines Commission also took cognizance of another case of *Shri Deepak Kumar Jain & Anr. v.M/s TDI Infrastructure Ltd*<sup>31</sup>, wherein it was seen that integrated township and agreed to the fact that such townships does have different features as compared to the other residential units, and held that on the basis of the same that integrated township cannot be considered as a ‘separate relevant product market’.<sup>32</sup> At last on this issue CCI in Jaypee Greens case stated that “*there is sufficient degree of inter-changeability of residential apartments in standalone apartment projects with the so called integrated township in the present case.*”<sup>33</sup>

## 10. RELEVANT MARKET: Jaypee Greens

Market definition focus upon consumer needs and identifies what products consumers could switch to if the products under scrutiny became more expensive and whether suppliers might enter the market with little time delay. According to the Commission’s Notice on Market Definition, the emphasis is upon demand substitution, using empirical and econometric evidence to identify products market.<sup>34</sup> Hence, to apply all the other special features of the product market is to be taken into consideration.

As compared to the strong walls of European Union and other countries having well defined antitrust legislations India’s, Competition Act section 4 which is dealing with the dominant position and its abuse is clearly elaborated on the principle of market power.

### 10.1 MARKET SHARE

‘A firm is dominant if it has a high market share which is protected by barriers to entry. This is a structural approach which allows the court to infer dominance.’<sup>35</sup> The ultimate recourse to prove dominance is to see that the firm is likely to be able to defeat the challenges posed by potential competitors. Dominance in most of the cases is thus based upon the combination of high market shares and high barriers to enter.<sup>36</sup>

### 10.2 CCI ORDER

In Jaypee case the majority’s decision overruled the DG’s findings that Jaypee there was dominance in the relevant market. It must be noted that the earlier investigation report was based on a different relevant market and next

<sup>27</sup> *Ibid* at Para 17.

<sup>28</sup> Para 15 *Supra* note 6.

<sup>29</sup> *Ibid* at Para 85.

<sup>30</sup> Case No. 27 of 2014 decided on 23.09.2014.

<sup>31</sup> Case No. 40 of 2014 decided on 24.09.2014.

<sup>32</sup> Para 91 *Supra* note 6.

<sup>33</sup> Para 93 *Supra* note 6.

<sup>34</sup> EC commission Notice on Definition of the Relevant Market for the purposes of community competition law [1997] OJ c/372/5. Cited from Cosmo Graham and Fiona Smith, *Competition regulation and the new economy*, 24 [2004].

<sup>35</sup> *US v. Microsoft* 253 F 3d 34 (DC Cir 2001).

<sup>36</sup> *Supra* note 34.

to that the latest report of the DG was based on a different relevant market. Therefore, gave a lot of space to ambiguity to creep in. thought the minority decision was with the DG for holding Jaypee for abuse of dominant position. The majority went ahead with the previous trend that was considering the relevant market for the sale of residential apartments.

The minority decision was logical and was in pursuance to the present scenario of modernization of consumer preferences, to a streamlined approach of sale of residential units in integrated townships. The minority decision also took note of the unfair terms and conditions in the documentation of the agreements.

Below is an analysis of the contradicting opinions in relation to the definition of 'relevant market' and the views on the evolution on the concept of relevant market and its applicability in real estate litigation.

### **Landmark decision which influenced the ambit of relevant market: Real Estate Industry**

#### ***Belaire Owners' Association v. DLF Limited & Ors***<sup>37</sup>

The informants (Belaire Owners' Association) filed an information Section 19 (1) (a) of the Competition Act, 2002 against DLF, HUDA and Department of Town and Country Planning Haryana (DTCP). It was alleged that DLF and others imposed highly unfair and unreasonable conditions on the informants who were the allottees, which led to consequences and adversely affected the rights of the allottees. Amongst various conditions one was that there will be 19 floors with 368 apartments which was stated at the time of booking which was later increased, the facilities earlier stated were subsequently decreased. The project was delayed without any justification given.

The Commission observed the scope of the relevant market is delineated on the basis of a distinct product or service market and a distinct geographic market. As per the Commission, the brochures provided for numerous additional facilities which were considered to define the characteristics of "high-end residential accommodation". The Commission was of the view that the relevant market in the instant case is the market for services of developer/builder in respect of high-end residential accommodation in Gurgaon. The Commission had inflicted a penalty of Rs.630 crores, which was 7% of turnover on the DLF and made them liable for abuse of dominant position.

#### **CCI Order in case of Jaypee Greens**

As mentioned above, the case of DLF in which the CCI based the reasoning of relevant product market and relevant market on the basis of "high-end residential apartments" which as per the CCI's decision is not a substitute to the "low-end or mid-end apartments", therefore, is a separate product. So, the order was against DLF. Later, in the appeal the COMPAT agreed with the definition of the relevant market. And presently, final appeal is pending in the Supreme Court.

The CCI's definition of the relevant market in the *Jaypee Greens* case departs from its previous setting of relevant market definition in *DLF* case. Alas, the crucial price variation was not given proper heed by the CCI in *Jaypee*.

#### **SSNIP Test**

The commission of india has been inconsistent in the application of the SSNIP test for determining relevant markets. On the same notes the cases of NSE in which the CCI deliberated that this test to be more 'esoteric', 'technical' and 'arcane' also in the case of DLF, on the application of this test the commission found that 'often applied in the case of dominance cases and it was concluded that without any economic analysis that SSNIP test will lead to the same relevant market as delineated otherwise by CCI.'<sup>38</sup>

## **11. STANDALONE APARTMENTS V. INTEGRATED TOWNSHIPS**

**Integrated township** is a cluster of residential units and commercial business within a marked area.<sup>39</sup> There are various facilities/ amenities which makes them more lucrative for the buyers to buy.

A properly channelized township will provide various advantages to the consumers. It offers quality of life at a very affordable price. The reasons why will a person decide to move to suburbs primarily because of the lower of apartments. And to add the developer will provide the best possible social infrastructure. There is economy of scale in all aspects which accrue to the inhabitants of a township right from cable, internet, gas and other such connections to subsidized transport, convenience stores etc.<sup>40</sup>

**Standalone apartments** doesn't offer the services which are provided by the integrated township. So, availing other services fetches the residents an extra cost. The maintenance is higher.

If we take into consideration the present scenario there has been substantial shift of people to the integrated townships. The CCI in the *jaypee green* case though gave a credit that the demand and supply is changing but ended up

<sup>37</sup> 2014 Comp L R 1 (CompAT).

<sup>38</sup> Dr. Souveik Chaterjee, *Competition Law In India And Cartels In India And USA* 45 [2014].

<sup>39</sup> Para 22 *Supra* note 6.

<sup>40</sup> Naushad Panjwani, *Should you buy a flat in standalone building or a township?* Available at [http://www.moneycontrol.com/news/real-estate/should-you-buyflatstandalone-building-ortownship\\_1340344.html#anchore\\_top\\_strip?utm\\_source=ref\\_article](http://www.moneycontrol.com/news/real-estate/should-you-buyflatstandalone-building-ortownship_1340344.html#anchore_top_strip?utm_source=ref_article) last seen on February 5<sup>th</sup>, 2018.

in declaring that this concept was nebulous and evolving and thus did not constitute a separate product market. And, rejected the findings of the DG that integrated townships are separate product markets.

## PRICE

The most important consideration from the point of consumers is the prices to be paid for the product opted. The CCI consciously analysed the features of the stand alone and integrated townships but totally failed to delve upon the price consideration of both. The hypothecial example can be cited here to elaborate more a standalone apartment is available for Rs4 million and a residential apartment of a similar nature is available in an integrated townships for Rs6 million, would the consumer consider them substitutes for one another? Unfortunately, statistical analysis of this kind was missing from the majority order.

## Wanadoo test

The popular present in the commission didn't consider the *Wanadoo test*. In brief, this test evolved in the famous case of Wanadoo in which the EC, to evaluate the relevant market in relation to internet use for residential customers. The variation of actual performance between fast and slow-internet access, determined that such variation was clearly distinguished by off-takers. As the product was based on the price and the performance the analysis of price differences between them showed that consumers were inclined to pay more money for a better product of fast speed internet.<sup>41</sup> The DG has stated out that the relevant product market would be services provided by the developers for providing high end apartments to the customers.<sup>42</sup>

In the case of Jaypee Greens, the commission which was divided in decision demarcated product market on the bases of services given to buyers in residential townships as opposed to standalone apartments.

If this test was applied to the present case the buyer's will be inclined to pay quality prices in return for quality services. As this test was applied in the case of DLF and DLF was made liable for abusing its position in the Jaypee Greens the CCI just couldn't relate this test for deciding the relevant market.

## 12. CONCLUSION:

The Jaypee case which runs into 133 pages, majority and dissenting decisions of the CCI. The DLF judgement made it clear that the real estate market also needs a proper statistical analysis of the variety of products which are being made available to the consumer. In the case of Jaypee greens there was lack of objective detailed analysis which should have been backed by statistical evidence. An additional important hypothesis is that dominant position in the market must always be considered in the context of the market in which the abusing enterprise operates. The term relevant market enumerates many folds of principles and reasoning. The ruler to measure the market for the product or service must be based on the degree of substitutability, its connection with price, the geographical region. These are the premises on which the relevant market is to be determined. In the case of Jaypee Greens the majority decision clearly doesn't base its reasoning on the statistical data like the market share, brand power of the developer which was clearly made out by the dissenting opinions.

Our country which is still on the initial path still has a lot of discover and implement. Though, the legal regime of competition law has kept the EC laws as the base but still there needs to be exhaustive criteria's to determine the scale of abuse of position by a dominant entity in reference to the relevant market. In the DLF case the CCI invested better methods to accurately assess the market influence and made analysis statistically in context to the issue of relevant market and the same was done by the dissenting order of the Jaypee Greens. The development of various methods as already discussed earlier like the *SSNIP* test and the *wanadoo* test discussed above which is to get an accurate and reasonable method to come to any conclusion was straight away not considered by the commission Majority opinion.

The lack of consideration is noticed on the part of the Majority decision:

- The statistical data available on the market power of the Jaypee greens is overlooked by the commission's majority decision,
- They also referred the standalone apartments on the same foot of integrated township and not considered the price factor which majorly affects all the market products.
- The conditions of the agreement of DLF and of Jaypee Greens were majorly similar. In both the cases there was delay, unfair terms and conditions of the agreements, facilities provided were not up to the price paid. And lastly, in both the cases the developers increased the number of floors.

Moreover, the legislature has also acknowledged requirement for regulations in the real estate sector and introduced the Real Estate (Regulation and Development) Bill. This proposed Bill provides for the establishment of the Real Estate

<sup>41</sup> Wanadoo, COMP/38.223 [2005] 5CMLR 120 cited from Christine Koenig, EC Competition and Telecommunications Law 125 [2009] also available at <https://books.google.co.in/books?id=7M-Xqm2YMTAC&pg=PA125&dq=Wanadoo&hl=en&sa=X&ved=0ahUKEwjQmezKwajLAhWLx14KHcjQBogQ6AEIIZAB#v=onepage&q=Wanadoo&f=false> last seen on March 1<sup>st</sup> 20016.

<sup>42</sup> Para 5.17 *Supra* note 8 .

Regulatory Authority for regulation and promotion of real estate sector and to ensure sale of plot, apartment or building, as the case may be, in an efficient and transparent manner and to protect the interest of consumers in real estate sector<sup>43</sup> Therefore, now the burden stands on the Parliament to take immediate and urgent measures to enact a law which gives a framework for providing solutions to the grievances of the purchasers through a mix of structural and behavioral remedies.

In brief, the CCI's decision establishes that the analysis of relevant market is yet to touch settled jurisprudence in various industrial sectors.

## REFERENCES:

### ARTICLES

1. S.H Bathiya and Associates, *background and basics of Competition law* (2012) available at <http://www.shbathiya.com/files/docs/%20research-labs/fc6.pdf>
2. CCI, *Provisions related to Abuse of Dominance Advocacy Series 4* available at [http://www.cci.gov.in/sites/default/files/advocacy\\_booklet\\_document/AOD.pdf](http://www.cci.gov.in/sites/default/files/advocacy_booklet_document/AOD.pdf)
3. Cyril Shroff & Nisha Kaur Uberoi, *India: Abuse Of Dominance, The Asia Pacific Antitrust Review 2015* Available at <http://globalcompetitionreview.com/reviews/69/sections/235/chapters/2749/india-abuse-dominance/>
4. *Cuts International Comments on Consultation Paper On Monopoly/Market Dominance In Cable Tv Services*, Consultation Paper No.: 5/2013, (July 08, 2013) [http://www.cuts-ccier.org/pdf/CUTS\\_Comments\\_on\\_Consultation\\_Paper\\_on\\_Monopoly\\_Market\\_Dominance\\_in\\_Cable\\_TV\\_Services.pdf](http://www.cuts-ccier.org/pdf/CUTS_Comments_on_Consultation_Paper_on_Monopoly_Market_Dominance_in_Cable_TV_Services.pdf)
5. Naushad Panjwani, *Should you buy a flat in standalone building or a township?* Available at [http://www.moneycontrol.com/news/real-estate/should-you-buyflatstandalone-building-ortownship\\_1340344.html#anchore\\_top\\_strip?utm\\_source=ref\\_article](http://www.moneycontrol.com/news/real-estate/should-you-buyflatstandalone-building-ortownship_1340344.html#anchore_top_strip?utm_source=ref_article)

### BOOKS

1. Valentine Korah *An Introductory Guide To EC Competition Law And Practice* 95 [2004]
2. Abir Roy and Jayank Kumar *Competition law in India* 103 [2008]
3. Cosmo Graham and Fiona Smith *Competition regulation and the new economy* 24 [2004]
4. Dr. Souveik Chaterjee *Competition Law In India And Cartels In India And USA* 45 [2014]
5. Christine Koenig *EC Competition and Telecommunications Law* 125 [2009] also available at <https://books.google.co.in/books?id=7M-Xqm2YMTAC&pg=PA125&dq=Wanadoo&hl=en&sa=X&ved=0ahUKewjQmezKwajLAhWLxI4KHcjQBoqG06AEIzAB#v=onepage&q=Wanadoo&f=false>

### CASES

1. *Sunil Bansal & ors v. M/s Jaiprakash Associates Ltd. & ors* 2015, CompLR1009(CCI)
2. *Belaire Owner's Association v. DLF Limited Haryana Urban Development Authority* [2011]104CLA398(CCI)
3. *MCX Stock v. NSE 2011* Comp L R 129 (CCI)
4. *Hoffmann-la-roche Ag v. Commission of European Communities* [1979] 3 CMLR 211
5. *Continental can T-219/99*, [2004] 4 CMLR 1018
6. *Shri Sunil Chowdhary v. M/s TDI Infrastructure Ltd* Case No. 27 of 2014 decided on 23.09.2014
7. *Shri Deepak Kumar Jain & Anr. v.M/s TDI Infrastructure Ltd.* Case No. 40 of 2014 decided on 24.09.2014
8. *US v. Microsoft* 253 F 3d 34 (DC Cir 2001)

### WEBSITES

- <http://globalcompetitionreview.com>
- <http://www.cci.gov.in/>
- <http://www.cuts-ccier.org>
- <http://www.moneycontrol.com>
- <http://www.shbathiya.com>
- [www.jstor.org](http://www.jstor.org)
- [www.manupatra.com](http://www.manupatra.com)
- [www.westlaw.com](http://www.westlaw.com)

<sup>43</sup> Para 114 of Dissenting Decision by the CCI *Supra* note 6.