

EVOLUTION OF DIFFERENT PERSPECTIVES ABOUT DOMINANT POSITION IN COMPETITION LAW

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<https://doi.org/10.5281/zenodo.14538847>

In competition law, the idea of a dominant position has many different legal, economic, and social facets. The consequences of dominance have been the subject of much discussion among academics, especially with regard to the possibility of abuse and the legal structures required to reduce such threats.

The framework of competition law that surrounds the idea of causation is one important component of dominating positions. Munyai highlights that dominant enterprises accused of anti-competitive behavior may face unfair penalties if there is no strong causality framework in place during competition proceedings. He contends that, given the harsh financial penalties that can result from abuse of dominance cases, it is imperative for fair competition law enforcement to establish a strong causal relationship between a firm's actions and market distortions (Munyai, 2017).¹ The idea that competition law must strike a balance between the need for regulation and the preservation of lawful economic practices is consistent with this viewpoint.

Furthermore, understanding dominance is made more difficult by the way intellectual property rights and competition law interact. Syed talks about the ways that patent rights and competition law might interact, especially when it comes to licensing arrangements that might limit competition. This emphasizes how competition law must change to reflect the subtleties of intellectual property in order to prevent dominant companies from using their market dominance to unfairly suppress competition (Syed, 2019).² In industries where intellectual property drives innovation, this interaction is essential and calls for a cautious regulatory approach.

The Antitrust Paradox by Robert Bork (1978): Bork made the well-known claim that the idea of market domination should center on the capacity to limit output or raise prices above levels that are competitive. In this sense, market power—which can be quantified by looking at things like market share, entry hurdles, and price-setting ability is very similar to the economic concept of dominance.³ Public Sector Economics by Joseph Stiglitz: Stiglitz addresses market power in relation to “imperfect competition”, which allows companies in dominating positions to take advantage of customers and skew market results. Dominant companies frequently have the power to affect innovation, pricing, and obstacles to entrance for rivals.

The Theory of Price by George Stigler (1966): Stigler highlights that the market's structural features, such as entry hurdles, technological advantages, and control over vital

¹ Munyai, M. "Causation in Abuse of Dominance Cases: Towards a Fair Enforcement of Competition Law." *Journal of Competition Law and Economics*. 2017.

² Syed, A. "The Intersection of Intellectual Property Rights and Competition Law: Licensing Arrangements and Market Dominance." *Intellectual Property Quarterly*. 2019.

³ Bork, R. H. *The Antitrust Paradox: A Policy at War with Itself*. New York: Basic Books. 1978.

resources, should be taken into consideration when evaluating dominance rather than just market share. When dominance results in exclusive behaviors that stifle competition, it becomes detrimental.⁴

The Meaning of Dominance in Law EU Case Law: The European Court of Justice (ECJ) has always understood dominant position in EU competition law as an undertaking's capacity to act independently of its rivals, clients, or consumers. A corporation is in a dominating position if it has a sizable market share and the ability to shape market conditions without being restricted by competition, per Case 27/76 United Brands corporation Commission.⁵

Legal experts and economists in Russia frequently explore the idea of a dominant position in competition law, frequently referencing both domestic legal frameworks and Western perspectives.

A dominant position is defined under Russian competition law, which is mainly regulated by the Federal Law on Protection of Competition (2018), as a position of economic power in the relevant market that permits a corporation to act independently of its rivals, clients, or consumers. In Russia, the Federal Antimonopoly Service (FAS) is in charge of keeping an eye on and controlling dominating positions and abuses of power.

According to Dmitry M. Shakhov, the dominating position in Russia should be viewed in terms of both market share and the capacity to affect market dynamics. According to Shakhov's research, a company's dominance should be determined by more than simply its market share; it should also take into account whether it has the authority to manage supply or set pricing in a way that limits competition. Though with a particular Russian legal and economic framework, this reflects concepts from EU competition law. Shakhov also stresses how crucial it is for legal definitions to reflect economic realities when determining dominance.⁶

Legal Theory and Dominance Abuse Prominent Russian legal expert Irina M. Morozova provides a critical viewpoint on how Russian law handles the misuse of a dominant position. Morozova investigates the relationship between anticompetitive behaviors such price discrimination, exorbitant pricing, and supply refusal and dominance. Despite being influenced by European standards, she contends that Russian antitrust legislation should adopt a more market-oriented stance given the country's industries' rapid growth and the possibility of abuse by state-sponsored businesses. She demands that the Federal Antimonopoly Service (FAS) provide more precise instructions on how to determine dominance, particularly in industries that are changing quickly, like energy and technology.⁷

The future of competition law in Russia is examined by Elena V. Zhilina (2021), particularly in view of growing globalization and the growth of multinational enterprises. According to Zhilina, Russia must keep modifying its competition laws to meet the new difficulties presented by digital platforms, where network effects rather than conventional market share may give birth to dominating positions. Drawing on global experiences, she

⁴ Stigler, G. J. *The Theory of Price* (3rd ed.). New York: Macmillan. 1966.

⁵ Case 27/76 United Brands Company and United Brands Continentaal BV v Commission of the European Communities [1978] ECR 207.

⁶ Shakhov, D. M. (2017). *Competition Law in Russia: The Development of Antitrust Regulations*. *Russian Law Journal*, Vol. 5, No. 4.

⁷ Morozova, I. M. (2015). *The Abuse of Dominance in Russian Competition Law: Legal and Economic Analysis*. *Russian Law Review*.

supports a more adaptable regulatory structure that can take into account the ever-changing digital economy while keeping an eye on consumer safety and market equity.

A variety of viewpoints on prevailing views in competition law that combine national legal frameworks with more general economic theories are offered by Russian scholars. Important areas of attention consist of:

the definition and evaluation of dominance while taking market power and share into account. The part state-owned businesses play in preserving hegemonic status. Difficulties presented by digital platforms and network sectors. Russian competition law should be changed to reflect changing economic circumstances.

Competition authorities, economists, and legal experts have all contributed to the complex topic of the dominating position in competition law. Legal experts stress the dangers of abusing dominance, but the economic viewpoint typically concentrates on market power and its impact on pricing and competition. The optimum way to balance regulation to encourage fair competition without going overboard and stifling innovation is still up for dispute.

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