

**KAPOOR GLASS VS. SCHOTT GLASS: HOW THE SUPREME COURT WEIGHED
ECONOMIC EVIDENCE IN ABUSE OF DOMINANCE CASES**

ABSTRACT

The case notes analyses the Supreme Court's ["SC"] recent judgment in Competition Commission of India v. Schott Glass India Pvt. Ltd. This case marks an important development in Indian Antitrust Law. The Court moved from a form-based and presumption-driven approach to an effects-based analysis supported by strong economic evidence. This shift brings domestic standards closer to global competition law trends. The Court rejected the idea that simply having dominance or achieving commercial success is enough to establish liability.

It emphasized that competition authorities must prove claims of abuse by demonstrating clear, negative effects on competition. However, applying effects-based analysis in digital markets is still uncertain. Digital ecosystems can change rapidly, with complex entry barriers and data-driven business models. This makes it hard to identify and measure anti-competitive harm in real time.

Effects might not show up right away and can be hidden by changing consumer preferences, evolving business models, and overlapping market boundaries. Additionally, the complexity of digital markets often makes it difficult to conduct counterfactual analysis, complicates the establishment of clear cause-and-effect relationships, and increases the risk of both false positives and negatives in enforcement. These unresolved challenges show the urgent need for better methods and new regulatory approaches to keep antitrust oversight effective in the digital economy.

Keywords: Schott Glass Judgement, Abuse of Dominance, Effects-Based Analysis, Economic Evidence, Digital Markets

I. INTRODUCTION

The anti-trust jurisprudence of India reached a watershed moment with the SC's dismissal of the Competition Commission of India ["CCP"] and Kapoor Glass' appeal against the Competition Appellate Tribunal's ["COMPAT"] vindication of Schott Glass.¹¹⁹ The Court examined various facets of Competition Law and clarified the architecture of abuse-of-dominance proceedings and firmly established the requirement of effects-based analysis.

The SC addressed whether an enterprise could be held liable for abuse of dominance merely for the reason of their scale, commercial success or engagement as per a pre-conceived notion of dominance or was there a burden on authorities to investigate if the impugned actions of the enterprise have actually caused an Appreciable Adverse Effect on Competition ["AAEC"], and demonstrate that there has been a threat or likelihood of threat to consumer welfare or market competition. The Court's judgement lays an additional emphasis on market data, financial figures,

¹¹⁹ *Competition Commission of India v Schott Glass India Pvt Ltd* [2025] INSC 668.

efficiency measures, and establishing economic evidence as pivotal in deciding abuse of dominance as opposed to a supporting factor.

II. BACKGROUND OF THE CASE

The case originated between Schott Glass, which held a position of dominance in the manufacture and upstream supply of USP-I borosilicate glass tubing, identified and determined as the “relevant market” by the CCI. Kapoor Glass, a leading independent entity in the conversion segment, acquiring glass tubing from Schott and processing it into finished pharmaceutical packaging such as ampoules and vials, filed a complaint before the CCI, alleging an abuse of dominance by Schott Glass.

Kapoor Glass argued that Schott Glass indulged in multiple exclusionary practices which were anti-competitive in nature, including their discriminatory rebate schemes, tying and bundling, refusal to supply, margin squeeze among others. A major contention was regarding a preferential treatment to Schott-Kaisha- a joint venture of Schott and Kaisha in the downstream, skewing the dynamics of the market competition by sidelining the competitors. The CCI has found Schott guilty, however, they successfully appealed before the COMPAT which was further upheld by the SC, thus placing further reliance on economic evidences.

III. APEX COURT’S JUDGEMENT

The Court, through its judgement, reanalysed the procedure and standard required to establish an abuse of dominance under Section 4 of the The Competition Act, 2002 [“*Act*”]. It has been sufficiently established that the sole possession of a position of dominance by an enterprise, in absence of its abuse, cannot be punishable in itself. The crux of the Court’s reasoning lay in the added focus on evidentiary value along with economic data to back the claim of abuse of the established dominance, thereby shifting from the doctrinal formalism of an assumption-based reasoning.¹²⁰

To appreciate the Apex Court’s judgment, it becomes imperative to engage with its doctrinal method. The articulation of an “effect-based” analysis is not merely superficial, but arises out of alignment with global competition law standards. The Court in its order states “*Section 4 of the Act does not per se prohibit dominance; it prohibits the abuse of dominance. Abuse, by definition, is conduct that distorts the competitive process or harms consumers...*”

¹²⁰ Kumar Aditya, ‘Supreme Court’s effects-based ruling resets competition law enforcement, fortifies business confidence’ (ETLegalWorld, 25 July 2025) <<https://legal.economictimes.indiatimes.com/news/corporate-business/supreme-courts-effects-based-ruling-resets-competition-law-enforcement-fortifies-business-confidence/121306417>> accessed 22 July 2025

The Court here re-drew the line between dominance and its abuse and reaffirmed a two-step enquiry into it. Assessment under Section 4 hinges on two core questions- whether the conduct falls under Section 4(2) and whether it produces an AAEC, both of which, can only be answered through market-based judgement, and rejecting any presumptions of guilt due to other factors.

The Hon'ble Court also incorporated the 'Equally Efficient Competitor' ["EEC"] test, which aligns with the EU standards established in the case of *TeliaSonera* (Para 59) wherein it laid down three essentials for proving margin-squeeze.¹²¹ It requires, firstly, for the dominant firm's presence in downstream, secondly, the price spread must be insufficient for an EEC, and lastly, an actual or likely harm to the competition. Given Schott India's absence in downstream markets and the continued presence of rivals, the Court found no exclusionary effect making a shift toward rigorous and economically grounded scrutiny.

The Court further examined the importance of economic evidence as a determining factor to establish abuse. For instance, it observed that converter output of ampoules and vials witnessed an increase of 38 per cent, undermining Kapoor Glass' claim of abuse of dominance and eliminating the question of an appreciable adverse effect on competition.

The judgement acts as a central pillar for economic evidence in abuse of dominance cases in India. Liability would only arise when sufficient distortion of market competition and adverse impact on consumers was sufficiently proved. Such a framework promotes equitable enforcement and convergence with international standards, fostering competition rooted in actual market dynamics as opposed to formalistic legal presumptions.

IV. BURDEN ON REGULATORS: A NEW STANDARD FOR CCI INVESTIGATIONS

The SC's decision that effects-based analysis is a required mandate of every Section 4 investigation marks a major change in India's Competition Law. This judgement will significantly increase the evidentiary burden on the CCI. The Court has broadly enumerated this change in three ways. First, the evidentiary standard now calls for a shift from form-based assumptions to thorough economic analysis. This means concrete data is needed on market dynamics, price effects, and consumer welfare. Second, the analysis must look at effects over time rather than relying on static or snapshot assessments. And, thirdly, there is an unspoken requirement for counterfactual analysis. In this context, the CCI must provide evidence of what would have happened in the market "but for" the challenged conduct.

The judgment offers a clear direction for the CCI's future enforcement actions: only proven effects should lead to liability, not presumed ones. The Court points out that in the Schott Glass case, the

¹²¹ *Case C-52/09 TeliaSonera Sverige AB v Konkurrensverket* [2011] ECR I-527 (CJEU)

factual record was already accessible to the authorities. The problem was not about gathering facts but about the lack of analysis and evidence. Therefore, the CCI's failure was not due to missing information but to the shortcomings in its evaluation process.

V. ACTUAL VS. LIKELY HARM: THE COURT'S REVOLUTIONARY DISTINCTION

Most importantly, the SC's approach to distinguishing between "actual harm" and "likely harm" is revolutionary. The Court places a strong emphasis on market-based evidence for anti-competitive outcomes, regardless of whether harm has fully crystallized or is still only probable, by confirming that both can be grounds for intervention, but only if supported by evidence of actual effects. Liability for abuse of dominance, according to this new regime, "*squarely hinges on substantiated, market-based evidence of anti-competitive effects, and the procedural integrity of competition inquiries.*"

In sum, the SC's judgment recalibrates the relationship between dominance, abuse, and liability. It demands not only an effects-based approach with hard evidentiary thresholds, but also careful procedural safeguards. While this may promote fairness and rigor in enforcement, it may simultaneously raise challenges for competition authorities, particularly in fast-moving and complex digital markets.

VI. DIGITAL MARKETS: APPLYING THE JUDGMENT IN A COMPLEX LANDSCAPE

An important question comes up about how to apply this thorough effects-based analysis in digital markets. The factors that led the Court to require closer examination, such as market dynamics, consumer harm, and actual effects, are often harder to see when major tech firms dominate in unique and rapidly changing ways. Effects in these markets might emerge gradually or only after a long time, making it much more challenging to collect and interpret relevant evidence. This may, as the judgment suggests, make it more difficult for authorities to intervene quickly and effectively in digital spaces controlled by Big Tech companies.

Big Tech companies often act as gatekeepers. They control critical digital infrastructure, app stores, and data flows between users and businesses. Their market power can lead to unfair practices, which may have far-reaching and sometimes hidden effects. Recent cases show how complex and technical these abuses can be. The European Commission fined Apple €1.84 billion in 2024 for restrictions in its App Store.¹²² Apple allegedly stopped app developers from telling users about alternative, often cheaper, subscription options outside the App Store. This practice helped Apple maintain its dominance and limited consumer choice. Similarly, Google has received penalties both

¹²² Randy C Picker, 'The European Commission Fines Apple €1.84 Billion and Spotify Still Isn't Happy' (*ProMarket* 19 March 2024) <<https://www.promarket.org/2024/03/19/the-european-commission-fines-apple-1-84-billion-euros-and-spotify-still-isnt-happy/>> accessed 22 July 2025.

globally and in India for misusing its dominance in search advertising and Android.¹²³ These issues often relate to setting defaults and limiting competitors access to essential digital marketplaces. These harms may not be immediately obvious in terms of price or customer experience, but they weaken competition over time.

Another complexity is that effects in digital markets may take years to appear. For example, exclusionary tactics might only lead to reduced innovation or higher consumer costs much later. This delay, along with the challenge of creating credible “counterfactuals” (i.e., what the market would look like without the accused conduct), makes it hard for regulators to step in with enough evidence and at the right time. Furthermore, the collection and use of user data, such as when a dominant firm restricts competitors’ data portability or interoperability, can strengthen their dominance without clear price effects. This complicates the detection and proof of harm.

VII. CONCLUSION

The SC’s judgement in Schott Glass case will act as a landmark in the antitrust landscape in the country with a newfound emphasis on effect-based analysis and economic evidence to establish abuse keeping consumer welfare and market competition as a foremost priority.

The framework presents a combination of economic modernity and legal predictability. It places India in a developed, rules-based competition framework that is favourable to both domestic and foreign investment by establishing ex ante compliance contours and validating efficiency-based dominance. The judgement protects against imposition of liability arbitrarily, while also ensuring the integrity of market competition by basing the detection of antitrust practices in noticeable competitive harm. However, there is a need for CCI to significantly improve its institutional capacity, methodological advancement, and procedural robustness in order to realize this jurisprudential shift.

However, the standard comes with its own limitations. It set poses a risk of under-detection of gradual or innovative forms of exclusion, especially in the digital market sector where it becomes increasing difficult to quantify the harm being suffered and end up creating a blind spot. The economic evidence raises the evidentiary burden on the CCI, which it may find comparatively difficult to establish in absence of institutional reforms.

¹²³ Suryash Kumar (ET Bureau), ‘NCLAT reduces Google’s ₹ 936 crore penalty to ₹ 217 crore over competition law violation’ (*The Economic Times* 28 March 2025) <<https://economictimes.indiatimes.com/tech/technology/nclat-reduces-penalty-on-google-to-rs-216-crore-in-play-store-matter/articleshow/119653302.cms>> accessed 23 July 2025; European Commission, ‘Antitrust: Commission fines Google €4.34 billion for illegal practices regarding Android mobile devices to strengthen dominance of Google’s search engine’ (Press Release IP/18/4581, 18 July 2018) <https://ec.europa.eu/commission/presscorner/detail/en/ip_18_4581> accessed 22 July 2025.