

Abuse of monopoly situation

How does the law define a monopoly situation?

As per section 46 of the Competition Act 2007 (the 'Act'), a monopoly situation exists when the supply of goods or services of any description are supplied or acquired on the market by

- (a) one enterprise supplying 30% or more of those goods and services; or
- (b) 3 or fewer enterprises supplying 70% or more of those goods and services.

When is a monopoly situation reviewable?

The Act provides for the review of a monopoly situation where there are reasonable grounds to believe that an enterprise or group of enterprises, meeting the prescribed market share threshold, is engaging in a conduct:

- that has the object or effect of preventing restricting or distorting competition; or
- in any other way constitutes exploitation of the monopoly situation in Mauritius.

What types of conducts that can amount to an abuse of monopoly situation?

There are two types of conducts which can amount to an abuse of monopoly situation:

1. **Exclusionary conduct** - occurs when an enterprise in a monopoly situation is engaging in a conduct that has the object or effect of preventing, restricting or distorting competition. Examples of exclusionary conduct are anti-competitive foreclosure, exclusive dealing, predatory pricing and tying and bundling.
2. **Exploitative conduct** - occurs when an enterprise in a monopoly situation is engaged in a conduct that in any other way constitutes exploitation of the monopoly situation. It includes unilateral market power (excessive pricing, reduced quality, choice or service) and co-ordinated effects (tacit collusion).

The Act empowers the Competition Commission to remedy for an abuse of monopoly situation by imposing behavioural remedies.

Is an enterprise in a situation of monopoly in breach of the law?

No. Being in a monopoly situation in itself does not constitute a breach of Act. It is the abuse of market power by an enterprise in monopoly situation that calls for intervention from the Competition Commission, particularly if used to weaken competition in a particular market.



Factors considered when reviewing a monopoly situation

- Market share threshold.
- Extend to which a position of dominance is enjoyed by the enterprise.
- Availability of substitutes to consumers in the short term.
- Availability of nearby competitors to whom consumers could turn to in the short term.
- Evidence that conducts have or are likely to have adverse effects on the efficiency, adaptability and competitiveness or likely be detrimental to the interest of consumers.

Try our 'CORE Training':

www.competitioncommission.mu

These materials do not constitute legal advice and should not be relied upon as such.