



# 1

## What is a dominant position?

In competition law, dominant position refers to a position of economic strength that an entity holds, making it capable of controlling the relevant market independently from any or a combination of the following: competitors, customers, suppliers, or consumers.

In other words, a company (or group of companies) is said to be dominant if it is so big, or is capable of controlling the market, that it can act independently or regardless of how other players may act or react to its actions.

– may have a disproportionately severe effect on the market and its competition. At its extreme, their acts can lead to the demise of much smaller competitors.

The PCA does not mean to unfairly burden dominant companies. What the law is really concerned with, and punishes, is **abuse of dominant position**, not success or bigness.

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## What is wrong with being dominant?

Nothing.

It is not wrong for a company to be big or dominant. “Bigness” may be a result of good business practices. It creates scale and efficiencies that ultimately benefit the public. Thus, big companies may be better able than their smaller competitors to introduce innovations or efficient processes that can reduce their costs while improving quality. As a result, products or services become more affordable and of better value to the consumer.

So to emphasize, there is nothing wrong with being big or dominant!

# 3

## If there is nothing wrong with being dominant, why does the Philippine Competition Act deal with dominance?

The law’s provisions on abuse of dominance are not meant to punish companies for their success. But, markets that are dominated by a small number of large companies are vulnerable to anti-competitive practices.

In the conduct of their business, dominant companies, considering their size, scope, and position of economic strength

## What is “abuse of dominant position”?

*There is abuse of dominant position when an entity with a significant degree of power in a market engages in conduct that substantially prevent, restrict, or lessen competition.*

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## How might a dominant player engage in abusive anti-competitive behavior?

The Philippine Competition Act identifies several instances that might indicate possible abuse of dominant position, including:

- **Predatory Pricing.** Selling goods or services below cost with the object of driving competition out of the relevant market;

- **Imposing barriers** to entry or committing acts that prevent competitors from growing within the market in an anti-competitive manner, except those that develop in the market as a result of, or arising from a superior product or process, business acumen, or legal rights or laws;

- **Tying/Bundling.** Making a transaction subject to acceptance by the other parties of other obligations which have no connection with the transaction; or making the supply of particular goods or services dependent upon the purchase of other goods

or services from the supplier which have no direct connection with the main goods or services being supplied;

- **Discriminatory Behavior.** Setting prices or other terms and conditions that discriminate unreasonably between customers or sellers of the same goods or services;

- **Imposing restrictions** on the lease or contract of sale or trade of goods or services concerning where, to whom, or in what form goods or services may be sold or traded, such as fixing prices, giving preferential discounts or rebate upon such price, or imposing conditions not to deal with competing entities. It is not necessarily unlawful to enter into:

- Permissible franchising, licensing, exclusive merchandising or exclusive distributorship agreements

such as those which give each party the right to unilaterally terminate the agreement; or

- Agreements protecting intellectual property rights, confidential information, or trade secrets.

- **Monopsony.** Directly or indirectly imposing unfairly low purchase prices for the goods or services of, among others, marginalized agricultural producers, fisherfolk, micro, small, and medium enterprises (MSMEs), and other marginalized service providers and producers;

- Directly or indirectly **imposing unfair purchase or selling price** on their competitors, customers, suppliers or consumers; and

- **Limiting production,** markets or technical development to the prejudice of consumers.

*Again, there is nothing illegal about having a dominant position, or acquiring, maintaining and increasing market share through legitimate means that do not substantially prevent, restrict, or lessen competition.*

*The law recognizes that conduct which contributes to improving production or distribution of goods or services within the relevant market, or promoting technical and economic progress while allowing consumers a fair share of the resulting benefit may not necessarily be considered an abuse of dominant position.*



## How will the Philippine Competition Commission determine if a company has a dominant position?

To determine if a company has a dominant position, the Commission could consider the following factors:

- (a) Its market share in the relevant market and whether it is able to fix prices unilaterally or restrict supply in the relevant market;
- (b) The existence of barriers to entry;
- (c) The existence and power of its competitors;
- (d) The possibility of access by its competitors or other entities to its sources of inputs;
- (e) The power of its customers to switch to other goods or services;
- (f) Its recent conduct; and
- (g) Such other criteria that it may deem to be relevant.



## How can the Philippine Competition Commission discourage or prevent abuse of dominance?

As previously mentioned, the effect of an anti-competitive act by a dominant player can have a disproportionate effect on competitors and on competition in the market that may be very difficult to remedy.

The PCC can minimize the threat of abuse of dominance by requiring players with dominant position to comply with *ex ante* (or “before the event”) rules. These are preventive measures—sometimes referred to as significant market power

(SMP) obligations—to help big businesses avoid anti-competitive practices, provide safeguards for non-dominant businesses, and ensure that the market remains competitive.

The Commission can also work with sector regulators to issue rules that promote competition, protect consumers, and prevent abuse of market power by dominant players within their respective sectors.



*There shall be a rebuttable presumption of market dominant position if the market share of an entity in the relevant market is at least fifty percent (50%).*

*The Commission, however, may also set a new market share threshold for any particular sector, and it shall, from time to time, determine and publish the threshold for dominant position or minimum level of share in the relevant market that could give rise to a presumption of dominant position.*

