

# IPR AND COMPETITION LAW: THE POWER COUPLE DEMYSTIFIED

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## ABSTRACT

As the enforcer of competition law, the Competition Commission of India ('CCI') has been actively pursuing the objectives mandated by the Competition Act, 2002, and aligning Indian competition law with international best practices. However, there are some intrinsic interplays between several sector specific regulators and the CCI. Are you aware of the interplay between Intellectual Property Rights (IPRs) and Competition Law in India, and the challenges it poses for a thriving ecosystem? Today, the central tenet of industrial organization is innovation. The global economy has changed to a production paradigm in which knowledge is a critical input and innovation is at the heart of this knowledge centric economy. An enterprise's competitiveness is determined by its capacity to transfer knowledge into innovation and commercialize it. As a result, policymakers all around the world are emphasizing the importance of developing an ecosystem that fosters innovation. IPRs and Competition Law are two indispensable components that incentivize creativity and innovation, while simultaneously fostering economic growth in India. The future of innovation, competition, and economic growth depends on our ability to strike the right balance between IPR and Competition Law. In this article, the author has tried to explore the relationship between the IPRs and the Competition Law and concluded that the union of IPRs and the Competition Act in India should not be seen as a clash, but as a union of harmony.

## INTRODUCTION

Intellectual Property Rights ('IPRs') and Competition Law are two crucial pillars of such ecosystem that drive innovation, incentivize creativity, and foster economic growth in India. However, a delicate balance must be struck between the two, as they often intersect and can potentially create conflicts. This blog explores the relationship between IPR and Competition Law in India, highlighting the challenges and the need for a harmonious coexistence.

IPR grants exclusive rights to creators and innovators to protect their intangible assets such as patents, trademarks, copyrights, and trade secrets. On the other hand, Competition Act, 2002 ('Competition Act') aims to ensure fair and healthy competition in the market, combating anti-competitive practices such as abuse of dominance, cartels, and mergers that stifle innovation and harm consumers. However, on a superficial level, both serve the same intent of encouraging innovation: IPR by providing an *ex ante* incentive for knowledge generation, and competition law by prohibiting anticompetitive use of IPRs *ex post*.

In India, the Competition Act, 2002<sup>i</sup> ('Competition Act') recognizes the value of IPRs such as patents, copyrights, trademarks, geographical indications, industrial designs, and integrated circuit designs. Furthermore, Section 3 of the Competition Act prohibits anti-competitive agreements; however, Section 3(5) states that this prohibition shall not limit "any person's right to restrain any infringement of or impose reasonable conditions, as may be necessary for protecting any of his rights" as protected by the statutes relating to the aforementioned IPRs. As a result, unreasonable requirements imposed by an IPR holder while leasing his intellectual property rights are plainly forbidden under the Competition Act.

Section 3(5) of the Competition Act offers an exception for IPRs based on the idea that IPRs should be separated and protected as an essential component of innovation. If the Competition Act stifles technological, creative, or intellectual innovation, the resulting product will lack the uniqueness that it desires. As a result, the Competition Act simply forbids illegal actions or procedures undertaken in the name of protecting one's intellectual property. To recapitulate, the Competition Act safeguards intellectual property licensing and other supply/distribution arrangements governed by or for IPR products or services.

As we all know, the CCI is in charge of regulating competition in all areas of the economy. The purpose of Competition Act has been to improve market efficiency and hence minimize market distortions, but intellectual property law's function has been to stimulate innovation by offering protection and rights over inventions.

The dance between IPR and the Competition Act has not always been harmonious. At times, IPR holders exploit their exclusivity, impeding competition and stifling market entry. The challenge lies in finding the right balance - one that acknowledges and protects the rights of creators while safeguarding the interests of consumers and fostering a competitive marketplace. The CCI's jurisdiction has been questioned in a number of High Courts/ National Company Law Appellate Tribunal ('NCLAT') proceedings on the pretext of overlapping jurisdiction. So, let us go over some of the challenges that have arisen at the junction of IPR and Competition Act in India.

## **LICENSING OF INTELLECTUAL PROPERTY**

The licensing conditions and the royalty issues in particular, have been at the focal point of many competition law cases in India. Licensing, on one hand, helps the IP owner commercialize its IP, on the other hand, it allows access to the IP protected technology to the follow-on innovators and to the players engaged in development of complementary technologies. In certain instances, license conditions imposed by the IP owner can restrict competition.

The CCI has generally been of the view that exercise of IPR will require imposition of certain restrictions on a licensee. This is inherent to the grant and exercise of IPR itself. The Competition Act recognizes this under Section 3(5) (i) and allows enterprises to impose 'reasonable' conditions which may be necessary for protection of IP rights conferred upon them by various Indian IP statutes. However, the scope of this provision is interpreted considering the facts and circumstances of each case in a 'rule of reason' framework, guided by factors laid down in the Competition Act.

The CCI as well as various High Courts in India had come across several cases where the defense of IPR as well as overlapping jurisdiction was not found tenable.

In *Shamsher Kataria case v. Honda Siel Cars India Ltd. & ors.*<sup>ii</sup>, the Original Equipment Manufacturers (OEMs) sought exemption under section 3(5) of the Act. The CCI held that mere sale of spare parts, which are manufactured end products, does not compromise upon the IPRs held by the OEMs. Therefore, the OEMs could contractually protect their IPRs and still allow sale of the spare parts in the open market without imposing the restrictive conditions. Contravention under section 3 (4)(c) and 3(4)(d) read with section 3(1) of the Act for exclusive distribution agreement and refusal to deal was established.

In *FICCI Multiplex Association of India vs. United Producers/Distributors Forum*<sup>iii</sup>, CCI found that various producers / distributors of films were indulging in cartel-like conduct in collectively refusing to license their films to multiplexes. The defense of protection of IP rights was not found tenable to justify a cartel.

In *HT Media Limited vs. Super Cassettes Industries Limited*<sup>iv</sup>, the information was filed by HT Media Ltd. against the Super Cassettes Industries Ltd. (“T-Series” brand) alleging abuse of dominance by Super Cassettes Industries Ltd. (T-Series), the holder of copyrights over the largest number of Bollywood film songs. The CCI observed that HT Media’s complaint was much more than just unreasonable licence fees being demanded by T-Series and that only the CCI would have the jurisdiction to investigate these claims. As a result the CCI in its final order held that M/s Super Cassettes Industries Limited was in contravention of the provisions of section 4(2)(a)(i) of the Act by imposing unfair condition of minimum commitment charges (‘MCC’) on private FM radio stations.

In *Aamir Khan Production vs. Union of India*<sup>v</sup>, the Hon’ble Bombay High Court observed that CCI has the jurisdiction to deal with matters when the matters relating to IPR are in direct contravention of the Competition Act then the CCI has jurisdiction. The Hon'ble High Court observed that unless the statute establishing the tribunal provides otherwise, every tribunal has the jurisdiction to determine the existence or otherwise of the jurisdictional fact.

In *Telefonaktiebolaget LM Ericsson v. Competition Commission of India*<sup>vi</sup>, the Hon’ble High Court of Delhi in its judgment held that there exists no ‘*irreconcilable conflict*’ between the

Competition Act and the Patents Act, and that the Competition Act does not supersede the Patents Act, and *vice versa*. In the facts of that case, the Hon'ble Delhi HC took the view that the jurisdiction of the CCI is not ousted, even if the complaint relates to abuse of dominance by the patent holder. In considerable measure, the Hon'ble Delhi HC took note of the fact that an 'aggrieved party' may simultaneously seek the grant of a '*compulsory license*' under the Patents Act and invoke the remedies as otherwise available to it under Section 27 of the Competition Act. The Hon'ble Delhi HC also took into consideration that it is open to the CCI to consult another statutory authority prior to or after taking a decision, and *vice-versa*. In this case, the Hon'ble High Court held that only the CCI is empowered to determine whether the '*safe harbour*', as provided for under Section 3(5) of the Competition Act, is attracted or not, and that the same cannot, in any case, be determined by the Controller of Patents.

In *Vifor International Limited v. Competition Commission of India*, the Hon'ble High Court of Delhi on 28 July 2022 declined to exercise its jurisdiction under Article 226 of the Constitution of India. The Hon'ble High Court concluded that Vifor International A.G. (**Vifor**), the patent holder against which the CCI had already directed an investigation, had approached the CCI at a '*pre-mature*' stage. Further, the Hon'ble High Court opined that CCI's jurisdiction is not completely excluded, even if the subject-matter of complaint/information relates to patents.

## **STANDARDIZATION AND LICENSING OF STANDARD ESSENTIAL PATENTS ('SEPS')**

Next issue in line is that of standardization. Many potential competition issues surround the standardization process. Standards create economies of scale, scope, ensure interoperability and therefore are generally beneficial for technology markets. At the same time ownership of IPRs essential to standards, which we commonly call the standard essential patents, confer market power, which can be abused exploitatively. FRAND commitments, which are designed to ensure that SEPs are accessible to the users on fair, reasonable and non-discriminatory terms assume particular significance in this context. Determination of such terms leaves a vast scope for disagreement between the licensor and licensees, often causing antitrust litigations.

In three separate cases before CCI, Micromax, Intex and Best IT alleged that Ericsson abused its dominant position in SEPs for 2G, 3G and 4G technologies. They alleged that Ericsson had imposed excessive royalties, breached FRAND commitments, tied non-essential patents with SEPs and sought an injunction against a willing licensee. The CCI, after hearing the parties, formed a *prima facie* view that Ericsson had abused its dominance by imposing royalty rates that had no linkage to the patented product and by discriminating amongst similarly placed licensees. Ericsson challenged the CCI's *prima facie* order as well as CCI jurisdiction to decide on the SEP dispute between the parties in a Writ Petition filed before the Hon'ble High Court of Delhi. The Hon'ble High Court, in its judgement held that the Patents Act is a special act *vis-à-vis* the Competition Act and would prevail over the Competition Act only in case of irreconcilable differences between the two. In the Ericsson case, there was no irreconcilable conflict between the Competition Act and the Patents Act. It was further held that the issue of abuse of dominance lied exclusively with the CCI. The Hon'ble High Court was in agreement with the CCI's *prima facie* order that Ericsson held a dominant position and that seeking injunctive relief by an SEP holder in certain circumstances might amount to abuse of dominant position.

While concluding, we perceive the union of IPRs and the Competition Act in India not as a clash, but as a harmonious convergence. Protecting intellectual property rights facilitates creativity and rewards innovation, while a robust competition regime drives economic growth and consumer welfare. By fostering collaboration, addressing legal complexities, and embracing the digital era, India can achieve a dynamic legal landscape that propels both creativity and fair play. Mutual co-existence is a must for striking a balance between the two. In fact, the Competition Act has an enabling provision for mutual consultation between authorities. In cases relating to IPRs, the CCI may make reference to the concerned IP authority to obtain and consider its opinion before issuing an order. Concomitantly, the IP authorities may also seek CCI's opinion during the course of their proceedings.

## ENDNOTES

<sup>i</sup> <https://www.cci.gov.in/images/legalframeworkact/en/the-competition-act-20021652103427.pdf>

<sup>ii</sup> <https://www.cci.gov.in/antitrust/orders/details/848/0>

<sup>iii</sup> <https://www.cci.gov.in/antitrust/orders/details/938/0>

<sup>iv</sup> <https://www.cci.gov.in/antitrust/orders/details/748/0>

<sup>v</sup> <https://bombayhighcourt.nic.in/generatenewauth.php?bhcpair=cGF0aD0uL3dyaXRlcmVhZGRhdGEvZGF0YS9vcmlnaW5hbC8yMDEwLyZmbmFtZT1XUDI2MDEwMTgwODEwLnBkZiZzbWZsYWc9TiZyanVkZGF0ZT0mdXBsb2FkZHQ9JnNwYXNzcGhyYXNlPTEzMDkyMzE4NDUwMCZuY2I0YXRpb249JnNtY2I0YXRpb249JmRpZ2NlcnRmbGc9TiZpbmRlcmZhY2U9>

<sup>vi</sup> <http://164.100.69.66/jupload/dhc/VIB/judgement/30-03-2016/VIB30032016CW4642014.pdf>

