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Contextual vs Implementation: Nexus between IPR and Competition Law with special reference to IT Sector

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ABSTRACT

IPRs and Competition law are both founded with the purpose of achieving economic development, technological advancement, and consumer welfare. Instead of a common objective, both the laws at some point are interacting with each other. IPRs is an exemption under section 3(5) of the Competition Act, 2002. The exception is only on the basis of reasonableness, but the limits of reasonableness are not defined anywhere in the Act. The main objective of this study is to identify the interface between Intellectual Property laws and Competition laws in the field of IT sector by analysing the working of the CCI and cases decided in IPRs and Competition laws with special reference to IT sector. The present study is based on the doctrinal method of research. Data has been collected from both primary and secondary resources like the texts of MRTP Act, Competition Act, Westlaw, Reports, Research paper form online and offline resources. The major findings in reference to issue related to IPRs and Competition law is that the CCI is using discretionary power in absence of concept of abuse of IPRs under the act and any guidelines relating to interplay between IPRs and Competition law. The study suggested that CCI should adopt the doctrines and guidelines which are well-established in EU and US, the exemption based on research and development, adoption of specific guidelines to tackle the solution of abuse of intellectual property.

Keywords: Reasonableness, intellect, innovation, R&D.

I. INTRODUCTION

IP is the human intellect's creative work. Its main goal is to develop advances in science and technology, literature, arts, and other creative works, and to promote and reward creativity. A country's economic and technological development will come to a halt unless IPRs granted no protection. IP's contribution is, therefore, a sine qua non to a country's industrial and economic growth. The critical feature of IP which differentiates it from other types of property is its

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intangibility. According to Brad Sherman and Lionel Bently, while there are several main contrasts between the different IP categories. One element they share in the similarity is that IP establishes the protection of property over intangible things, such as the invention of ideas, signs, and information, while there is a deep and adjacent relation between tangible property and the intangible property in which both belong.³

The role of IP rights in fostering innovation: IPRs such as Patents, Copyrights, Registered Trademarks, etc., play an essential role in fostering innovation and economic growth. These rights enable their owners to exclude other parties from the benefits of new knowledge and, more specifically, from the commercial use of innovative products and processes based on that new knowledge for a limited period of time. The capacity to momentarily prevent others from enjoying the prospective advantages of entrepreneurship provide opportunities for people and businesses to allocate economic and human capital in studies and growth (R&D) and other expensive operations to construct fresh findings, innovators Products, and manufacturing procedures. In the non-existence of the law-established protection for IPRs, rival firms and firms would be entitled to free-ride on the successful results of R&D investments and thus resemble and exploit commercially new inventions. IPRs also lead to the promotion of the dissemination and commercial implementation of IP.⁴ In reality, companies can be anticipated to be more inclined to move fresh techniques and innovations when a reasonable degree of legal assurance concerning the profits from exchanging valuable creative thoughts is assured. However, even in the absence of IPRs, companies may still be prepared to exclude competing companies from approaching their inventions. In these cases, IPRs would not be necessary to recover the investment incurred.⁵

II. NATURE OF COMPETITION LAW

The competition legislation relates to legislative laws, judges' decisions, and laws specifically intended to prevent concentration and misuse of market authority.⁶ Competition policy is a broad word that includes all the specifics of public behavior that affect the circumstances under which businesses or businesses operate in a particular industry. Competition legislation has

³ Justus Haucap & Ulrich Heimeshoff, *Google, Facebook, Amazon, eBay: Is the Internet driving competition or market monopolization?*, INT. ECON. ECON. POLICY (2014).

⁴ Christoffer Green-Pedersen, *The growing importance of issue competition: The changing nature of party competition in Western Europe*, POLIT. STUD. (2007).

⁵ *Id.*

⁶ Yogesh Pai, *Comments on the DIPP Discussion Paper on Standard-Essential Patents and Their Availability on FRAND Terms*, SSRN ELECTRON. J. (2016).

become an issue in big portion because export businesses in high-income advanced countries claim that anti-competitive competitor methods in overseas markets hamper their capacity to enter those markets. Such activities can be mostly private in nature and could be supported by the absence or poor application of local competition legislation.⁷ Competition law's primary goal is to safeguard the procedures that are crucial for the effective and positive running of the economies. Markets are highly vibrant in nature and experience the emergence of fresh businesses and goods, the loss of inefficient businesses and outdated goods, and the natural extension, contraction, and restructuring of businesses. Competition legislation also acknowledges that businesses operate in both static and vibrant conditions, which needs an accurate equilibrium between guaranteeing competitive access and promoting innovation.⁸

III. THE BROAD AREAS OF INTERFACE BETWEEN IPRS AND COMPETITION LAW

IPRs and Competition laws are strongly linked. The former grants complete freedoms within a specified industry to create and distribute a commodity, service, or technology resulting from some type of intellectual development that qualifies specific demands. These inventions, originations, and designs are shielded by patents, trademarks, copyrights, trade secrets, or distinctive types of privacy. Thus, IPRs define constraints within which rivals can use their privileges.⁹ Philip L Williams¹⁰ stated that IPRs are an important tool of a government strategy aimed at encouraging the effective output of artistic job in order to serve society rather than personal welfare objectives. The interface between the IP Laws and Competition Law can be found in the following fields:

- (a) Licensing Contracts: The function of competition strategy in tracking the unfair abuse of market force in regards to the use of IPRs is especially crucial in reviewing the anti-competitive impacts of permit contracts (which control the transfer of IPRs or the exchange of privileges over the use of IP) exclusivity or restrictive provisions. It is widely recognized that IP licensing usually has favorable impacts. It promotes the dissemination and exploitation of technological development and technical expertise by businesses that may have a more important relative benefit. Production

⁷ Keith E. Maskus & Mohamed Lahouel, *Competition policy and intellectual property rights in developing countries*, 23 *WORLD ECON.* 595–611 (2000).

⁸ Paul Nihoul & Thomas Lübbig, *The next big question in competition law: How do we treat buyer power?*, *JOURNAL OF EUROPEAN COMPETITION LAW AND PRACTICE* (2011).

⁹ Maskus and Lahouel, *supra* note 5.

¹⁰ Joshua S. Gans, Philip L. Williams & David Briggs, *Intellectual property rights: A grant of monopoly or an aid to competition?*, 37 *AUST. ECON. REV.* 436–445 (2004).

can be made more efficient, and the standard of the product can be improved when the technologies are used in a complementary way. In addition, the patented technology license can increase performance for holders of IPRs, which increases the incentives for companies to seek investments in R & D

- (b) **Technology Transfer:** Nevertheless, the transfer of patented innovation may require excessive and unnecessary constraints on rivalry, based on the particular contractual provisions and business circumstances. An overview of the pro-competitive and anti-competitive impacts of four commonly used kinds of contract constraints is mentioned from territorial exclusivities, exclusive transactions, tying regulations, and Grant-back conditions. They are often used as instruments to promote technology transition. In some conditions, however, they can also contribute to an undue limitation of competition.¹¹
- (c) **Patent Pools:** Patent pools are the collection of IPRs that are the topic of cross-licensing; whether they are transmitted straight to the licensee by the patent owner or by some channel or channel, such as a joint undertaking, specially formed to run the copyright pool.¹² Patent pools consist of anti-competitive and pro-competitive effects. The favorable advantages usually result from creating patented technology accessible to licensees by a licensor. Patent pools can have anti-competitive impacts when used to protect invalid patents or when they include patents that are not supplementary and would compete against each other.¹³ According to author Resnik,¹⁴ Pooling enables businesses to gain constant incomes, restore their assets, and decrease risks that could attract them on to further studies and development. In most countries, including the US, Canada, Japan, Germany, etc., patent pools are subject to the law per se.¹⁵
- (d) **Tying Agreements:** A 'tie-in' is a business agreement in which the vendor of one item, i.e., the connecting item, controls its offer on the buyer's purchase of a second

¹¹ Competition policy and exercise of IPRs, , <http://www.archivioceradi.luiss.it/documenti/archivioceradi/osservatori/intellettuale/Gangi1.pdf> (last visited Apr 28, 2019).

¹² Cross licensing and antitrust law, , http://www.usdoj.gov/atr/public_speeches/1123.html (last visited Apr 1, 2019).

¹³ KUMAR JAYANT AND ABIR ROY, *COMPETITION LAWS IN INDIA* (1st edn ed. 2008).

¹⁴ David B. Resnik, *A Biotechnology Patent Pool: An Idea Whose Time Has Come?*, 3 J. PHILOS. SCI. LAW 1–22 (2003).

¹⁵ Facilitating Assembly of and Access to Intellectual Property: Focus on Patent Pools and a Review of Other Mechanisms, , <http://www.iphandbook.org/handbook/ch02/p08/> (last visited Jan 15, 2020).

item, i.e., the attached item from a vendor or a specified third party. To determine its ability with competition law, a linking provision should be checked against the following variables: First of all, the attached object is a distinct product or service from the binding item. Furthermore, the real bond occurs and is not influenced by an insubstantial amount of trade. Tying agreements are regarded as one of the licensing firms' normal exercise. Tying is considered illegal per se or can be examined under the 'rule of reason' strategy.¹⁶

- (e) Grant-Backs: Lot of companies require that their licensee return back any improvement that has been made on the topic. The outcome is that the impact of the refund provisions is that they tend to diminish the licensee's motivation to spend. The licensee shall transfer their enhancement to the licensor free of cost. Therefore, the permit holder chooses not to spend their funds for enhancement, which discourages innovation as it reduces the owner's motivation to enhance the technique. Therefore, the grant backs tend to restrict the owner's portion in any sort of technology enhancement as it must return any sort of item enhancement. This contributes to discouragement and therefore limits innovation and the development of technological methods.¹⁷
- (f) Cross-Licensing: The exchange of IPRs between two or more persons is a cross-license. It could be an obstacle to the competition if licensed technology is of a replacement rather than a supplementary nature. The anti-competitive impacts of cross-licensing are decreased innovation, greater rates and manufacturing reductions that are probable to happen when cross-licensing is produced between competing organizations and, in that situation, competing companies would not exist and could generate market authority. Nowadays, the connection between the two schemes is more defined by their housing than by their dispute. Both present a divergent route to the same objective.¹⁸

IV. WORKING OF CCI IN THE FIELD OF COMPETITION LAW AND IPRS

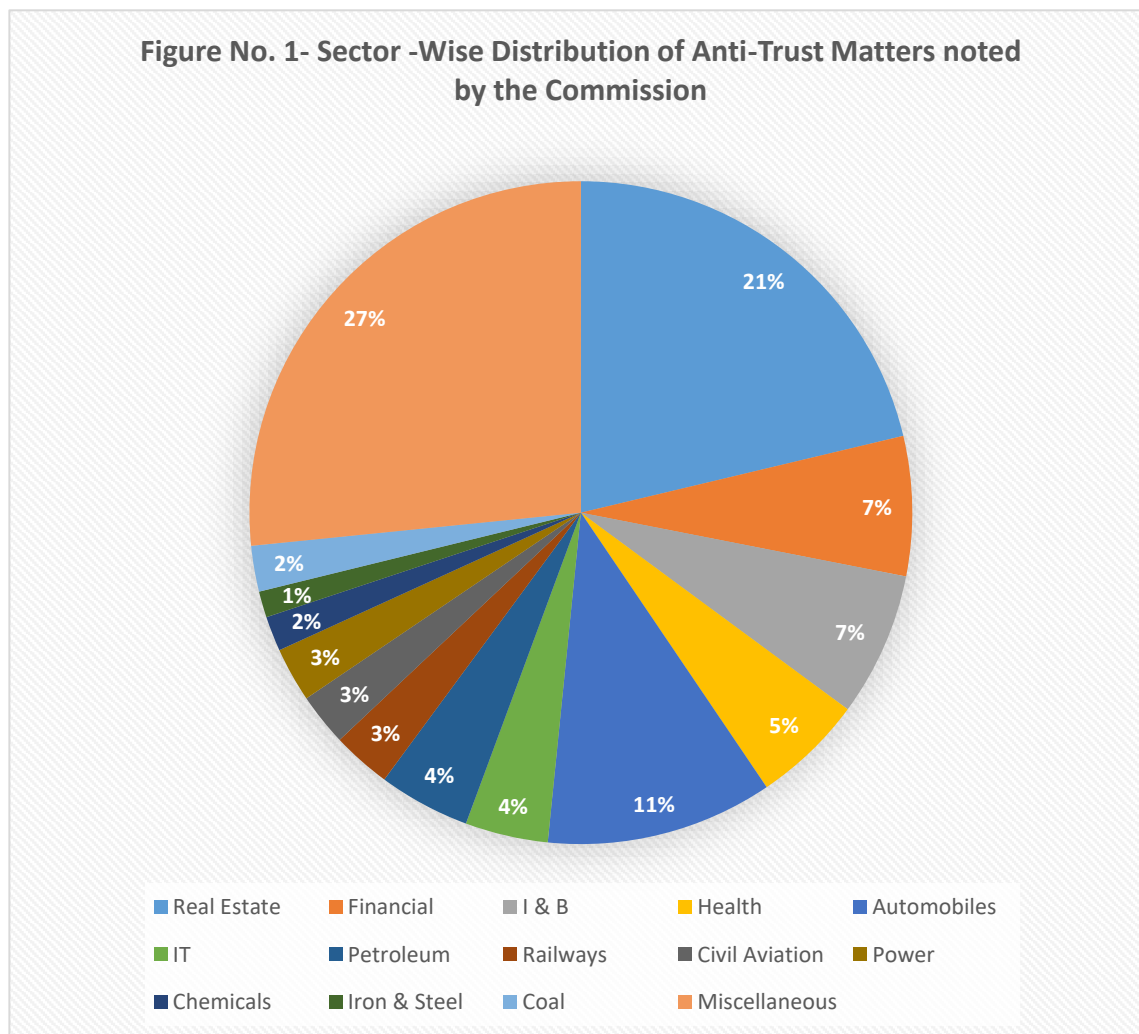
The CCI has been entrusted with various powers to curb the problem of abuse of dominant

¹⁶ Amit Singh, Tulip Suman & V. Thripura, *Interfaces and synergies between intellectual property rights and consumer protection law in India: An analysis*, J. INTELLECT. PROP. RIGHTS (2015).

¹⁷ *Id.*

¹⁸ Intellectual Property and Antitrust: Divergent Paths to the Same Goal, <http://www.ftc.gov/speeches/other/speech35.html> (last visited Mar 18, 2019).

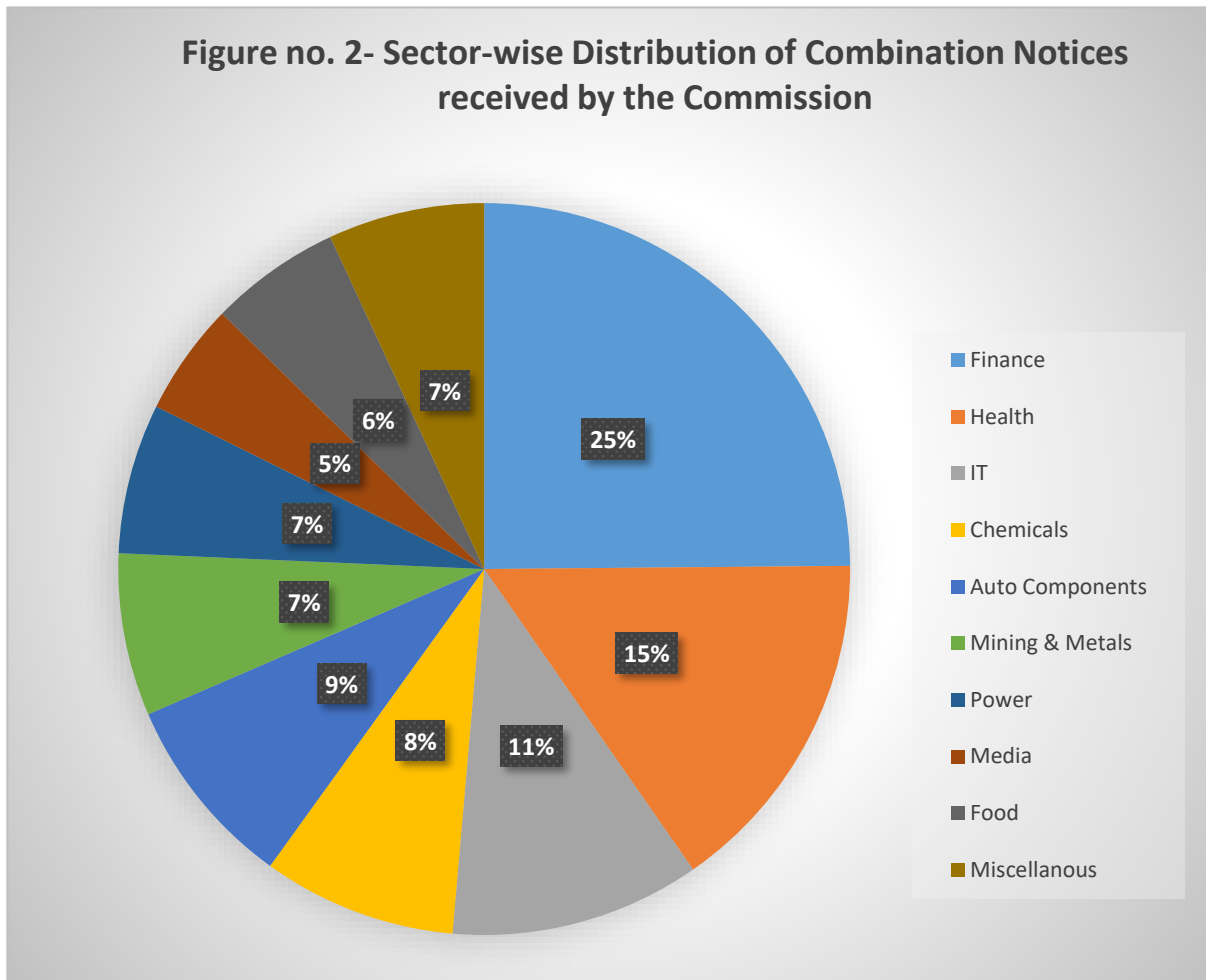
position. In case of contravention of provisions of section 4, the commission may institute an inquiry either *suo moto* or on the basis of information from any individual or reference by the central or state government. If the commission finds that the enterprise abuses its dominant position, then it may direct the enterprise to discontinue the practice or may impose a penalty.



Source: Annual Report of CCI 2017-18

According to Figure no. 1, regarding violations of anti-trust matters, the real estate sector tops the list every year since the law came into force. The maximum no. of cases of real estate sector was filled in the year 2014-15. Other prominent sectors with a high incidence of alleged anti-trust conduct are the automobile sector, financial sector, entertainment, pharmaceuticals, and health care. All the sectors except real estate and automobile have cases below 60, which are approximately 3 times lesser than the real estate sector. The maximum no. of cases in respect of I & B sector was filled in CCI in the year 2010-11. The no. of cases filled in the financial sector has been continuously decreasing since 2013. Iron and Steel sector has very less no. of

cases, even in the last two years not a single case has been filled. The no. of cases filled in the CCI has been continuously increasing since 2009. In 2016-17 the maximum no. of cases had been filled in CCI under section 3 and 4.



Source: Annual Report of CCI 2017-18

The above figure describes the status of cases filed under Combination, which is defined under sec.5 of the Act, 2002. In the IT sector, only 40 cases out of 523 are filled from 2009-18, which consist of 12% of total no cases. It shows the lack of cases filled in this field. Nowadays IT sector is the main dominating markets of the society, but still, the no cases filled in this area is very low. In the IT sector, there is an increase in no of cases filled in Combination as compare to sec 3 and 4 of the Act, 2002 which clearly indicates about the tying of agreements between the firms which is against the competition in the market.

V. ANALYSIS OF CASES OF ANTI-TRUST IN IT SECTOR FROM 2009-2018

1. Multiplex Association of India, New Delhi v United Producers/Distributors Forum, Mumbai and others¹⁹

The complaint was filed by the Multiplex Association of India against the producers and distributors of filmmakers and composers. In early 2009, a dispute arose between several producers / distributors of Bollywood films and owners of multiplexes, which stopped the release of several of their films until their demands were met. The dispute depended on the producers' demands for more meaningful participation in the revenue collection made by the multiplexes. The multiplex owners, on the other hand, claimed that the producers and their lobbyists were unfairly alliance against them, causing apparent antitrust problems. In respect of the arguments advanced by the producers and distributors that their actions were permitted in view of the rights conferred by the Copyright Act, 1957 and the exemption created in the Competition Act, 2002 for copyright owners to impose reasonable conditions to protect their rights, the Commission in rejecting the same, made the observations such as Copyright is a statutory right subject to the provisions of the Copyright Act, 1957 and as such, is not an absolute right. Any action for the profit of multiplex owners to claim as a matter of right that the producers should exhibit the film through them will be equivalent to compulsory licensing of the film and, so the Commission would not have the jurisdiction over such issues. However, since there was no question of infringement of copyright, in this case, there can be no reliance placed on the imposition of 'reasonable conditions' (as set out in S.3(5) of the Act) as being permissible. The producers / distributors, based on the evidence, joined together to determine the proportions of revenue sharing with the multiplex owners and the controlled supply of films for them, which amounts to a violation of the Law of Sec3 (a), (b). The owners of multiplex were simply facilitating the exercise of the rights conferred on the producers and not arrogating them or infringing them in any way. Finally, they emphasized on the fact that IP laws have no overriding effect over competition law, despite such an interpretation of Sec.3 (5) of the Competition Act by the producers. Most importantly, the producers failed to indicate that their actions were 'reasonable' and hence, no dependence could be placed on the exemption provided in Sec.3 (5).

In this case, the producers combined together to not give their production to the multiplex owner

¹⁹ 2011 Indlaw CCI 18.

by accessing their IPRs. But they fail to justify their access as of IPRs as reasonable. Due to that commission held such right as anti-competitive agreement. But again the question of reasonableness is on the discretion of the commission.

2. K. C. Marketing, Maharashtra v OPPO Mobiles MU Private Limited, represented by Eric Deng (director), Maharashtra²⁰

The complaint was filed by M/s K.C. Marketing (the Informant), a proprietorship firm in Pune, under Section 19 (1) (a) of the Competition Act, 2002 (the Act), against OPPO Mobile MU Private Limited (Opposite Party/OP), a private limited company inscribed under the Companies Act, 2013, alleging infringement of the provisions of Sections 3 and 4 of the Act. It is stated that the OP is the Super Distributor of the company OPPO Mobiles India Private Limited in India and is engaged in the business of trade and distribution of mobile phones and their accessories under the "OPPO" brand in India. The informant entered into a Super Mobile Super Distribution Agreement dated 01.07.2016 with the OP through which he was designated as the exclusive distributor of Super Mobile OPPO in Central and South Maharashtra. The Informant alleged that since 30.11.2017, the OP has unilaterally stopped supplying the products/mobile phones and accessories for the informant to sell as the OP seeks to rescind the Sub-Super Distributorship Agreement of the Informant. With respect to the restriction on online sales, the expert counsel for the OP has argued that the same also does not cause any appreciable adverse effect on competition in India. Such prohibition is imposed on all Sub-Super Distributors pan India without any discrimination because the OP makes online sales of its products on its own. This, the OP is qualified to do as being the IP holder of OPPO products; it is free to utilize its IP in any way it pleases. Though the Commission doesn't find merit in the IP statement put forth by the expert counsel for the OP to be a valid justification for imposition of such prohibition, yet it notes that OPPO smartphones are freely accessible in the market at competitive values and are also readily available for purchase online on all major websites like Flipkart, snapdeal, Amazon, paytmall, etc. at discounted rates. Also, as noted above, by such prohibition, no inter-brand or intra-brand competition has been prohibited. The Informant has already converted over his business to another smartphone brand. Thus, in such view, Clause 8 of the Sub-Super Distributorship Agreement also can't be held to an infringement of Section 3 (4) of the Act.

²⁰ 2018 Indlaw CCI 66.

The learned counsel of OP argued that OP has IPRs over their products, and they can freely distribute as they desired. The commission doesn't find any merit in the intellectual property argument put forth by the learned counsel for the OP to be a valid justification for the imposition of such restriction. The commission further stated that the promotion of public welfare is the main goal of both IP law and Competition law. If by IPRs the public welfare is demoted, then on a fair and reasonable basis, then competition law can prevail.

3. Micromax Informatics Ltd v Telefonaktiebolaget LM Ericsson²¹

Micromax Informatics Limited ("Micromax") in its complaint against Telefonaktiebolaget LM Ericsson ("Ericsson") argued Ericsson's demand of unfair, discriminatory and exorbitant royalty for its patents compared to royalties charged by other patent proprietors for patents similar to or comparable to patents regarding GSM technology represented abuse of dominant position and anti-competitive practice. Micromax further argued that Ericsson had misused its dominant position by charging exorbitant royalty as there was no other technology available and Ericsson was the only licensor for the SEPs definitely implemented in 2G and 3G Wireless Telecommunication Standards. Micromax to justify its claim of Ericsson's exorbitant royalty claimed that the royalty was not charged on the basis of the cost of the licensed product, but that it was charged based on the value of the phone on which the Ericsson product was used and that Micromax had to pay a percentage of the cost of the phone as a royalty. In deciding on the matter, CCI noted that the FRAND licenses are mainly intended to prevent the Patent Hold-up and Royalty Stacking. When examining the recorded evidence, CCI noted that Ericsson enjoyed full ownership of its current and potential licensees in the relevant product market. He also expressed the view that the royalty rate practices adopted by Ericsson were discriminatory and opposite to FRAND conditions. Charging two distinct permit charges per mobile device for the use of the same prima facie technology is discriminatory and also represents an unnecessary cost relative to high-cost devices. The CCI, therefore, found that the royalty charges paid by Ericsson had no connection to the patented item, contrary to what is anticipated of a patent proprietor holding permits under the FRAND conditions. The commission ruled that it was an appropriate case for further investigation and ordered an investigation into the matter by the Director-General. In this case, on the basis of Doctrine of FRAND, the Ericsson company is found guilty and directed to give their technology to Micromax company. CCI also states that

²¹2014 Indlaw CCI 15.

Ericsson is a dominant company in the market, and by using such dominance, the Ericsson contravenes the provisions of section 4.

4. Best IT World (India) Private Ltd. v Telefonaktiebolaget LM Ericsson²²

Another case filed against Ericsson for abuse of domain under the FRAND terms involving their SEPs had the same fate as the previous two cases. In this suit, Best IT World (India) Private Ltd alleged that Ericsson was persuading Best IT World (India) Private Ltd to participate in a unilateral and onerous NDA; demanding excessively high royalties by means of a particular percentage value of the telephone compared to the cost of the actual patent technology used, etc. which clearly demonstrates Ericsson's abuse of a dominant position. The Commission concluding all the material available on record and according to the arguments advanced observed that, Since no other technology was available for Ericsson's patents in the 2G, 3G and 4G requirements, Ericsson experienced complete dominance over its current and potential licensees in the appropriate industry. The CCI is of the perspective that the exercise of requiring a party to perform non-discriminatory and, prima facie, enforcing unreasonable and unfair royalty prices amounted to an exercise of dominance. Further, it concluded that as the assertions brought forward by Best IT World (India) Private Ltd was the same as the previous cases i.e., Case No. 50 of 2013 [Micromax Informatics Limited V. Telefonaktiebolaget LM Ericsson (Publ)] and Case No. 76 of 2013 [Intex Technologies (India) Limited V. Telefonaktiebolaget LM Ericsson (Publ)] against Ericsson wherein the Commission was of the prima facie view that the conduct of Ericsson amounted to abuse of dominant position, CCI found this case similar and fit for an, ordered an investigation into the matter. However, Ericson filed an appeal against the order of CCI in the Hon'ble High Court of Delhi. In response to which the Hon'ble Court stated that the petitioner might supply information as requisitioned by the DG, but neither would the DG submit a final report, nor would the CCI pass a final order in the matter. Judicial decisions based on FRAND has become a safe harbor arrangement for SEP holders, which could result in a fight against competitiveness and a negative result, as seen in the Motorola Case. In India, SEP holders have used the Court Order to enforce their right over SEPs.

5. Tamil Nadu Consumer Products Distributors Association, Chennai v Fangs Technology Private Limited, Chennai and another²³

²² 2015 Indlaw CCI 29.

²³ 2018 Indlaw CCI 63.

The present complaint has been registered by Tamil Nadu Consumer Products Distributors Association ('Informant') under Section 19(1) (a) of the Competition Act, 2002 (the 'Act') claiming infringement of the provisions of Sections 3 and 4 of the Act by Fangs Technology Private Limited and Vivo Communication Technology Company (collectively referred to as the 'OPs'). The Informant is a corporation registered under the Tamil Nadu Society Registration Act, 1975. Its stated aim is to protect the interest of the distributors' interest in unfair commercial practices and the strict conditions imposed by the manufacturers of consumer products. OP is participating in the business of trade and distribution of mobile phones with the brand tag 'VIVO' and also supply marketing support to promote their products. Vivo Communication is a leading Chinese company that develops, designs, and manufactures smartphones, accessories for smartphone and software connected with it. It has been averred in the information that the majority of the shares, i.e. (99%) of OP is held by Vivo Communication. The Informant has stated that the OP entered into a VIVO Distributorship Agreement ('Distributorship Agreement') dated 01.04.2017 with its distributors, who are members of the Informant. CCI observes that the opponent is not a dominant firm as there are also other firms which are more dominating in the relevant market. And the opponent's product is also easily available in the market, whether online or nearby relevant market. So the opponent is not held to be liable, and there is no question of abuse of IPRs rise on the first instance because the same IP is also available to other firms on a reasonable basis.

6. Shamsher Kataria v Honda Siel Cars India Limited and others²⁴

In January 2011, Shamsher Kataria ("Informant") lodged a claim against Honda Siel Cars India Ltd, Volkswagen India Pvt, pursuant to Section 19(1)(a)4 of the Act. Ltd. and Fiat India Automobile Pvt. Ltd. were alleging anti-competitive methods concerning the purchase of these companies' spare components. Based on methods in the European Union ("EU") and the United States of America ("the United States"), Informant stated that vehicle manufacturers in India charged greater rates for components and maintenance facilities than their counterparts overseas. Further, there was a complete restriction on the availability of diagnostic tools, technological information, and software programs necessary for the service and repair of automobiles to independent repair shops. CCI rejected the contravention of jurisdiction and stated that it had the power to add additional parties in view of the scheme of the Competition

²⁴ 2014 Indlaw CCI 50.

Act and duties of the CCI as provided in Section 18 of the Act.²⁵ CCI also rejected the contention of the "unified systems market" and rejected the claim that consumers were involved in the analysis of the cost of a lifetime. CCI coincided substantially with the DG that the relevant market would be related to spare parts. CCI argued that in order to perform a cost of living analysis, it was crucial that data for the cost of living analysis be available with the producer and, At the time of purchase of the product in the primary market, consumers can calculate the cost in which the useful life of the product will be incurred. CCI concluded that OEMs could not demonstrate that they could, or that consumers could calculate lifetime costs and, therefore, rejected the containment of the systems market. Each OEM was the sole seller of its spare parts and diagnostic tools, and those OEMs stopped approved distributors from creating purchases on the open market. CCI also concluded that original equipment manufacturers created barriers to entry for independent repair shops, although it has not been established how restrictions or the nature of limitations have been established. CCI has also relied on individual letters from independent workshops to conclude that spare parts were not provided in the open market. However, these letters do not appear to have been shown to OEMs, and no response has been obtained from OEMs. In this case, the OEMs supplied spare parts of the cars by their authorized distributors only and charged a heavy surplus price for such as compare to the relevant market. OEMs plead that distribution of spares parts is on the basis of IPRs and is not anti-competitive. CCI held that sale by such authorized dealers is not reasonable under Section 3(5) of the Act.

7. Mahendra Kumar Rathore S/o Nand Kishore Rathore v Super Cassettes Industries Private Limited, New Delhi²⁶

In this case sale of the cassette protect by the IPRs is done by the opponent after the termination of the agreement between them. The letter of infringement of copyrights was sent to the informant, but that later was sent to the wrong address and hence never reached to the informant. CCI held that this is not the case of infringement it's a case of misunderstanding and thus the case is dismissed. CCI held that memorandum of understanding (MOU) served by Opposite Party to address of Informant and has found that it is primarily a copyright infringement notice, which is issued against violation of copyright and for protecting IPRs of the copyright holder. The informant has not submitted any convincing material that shows the existence of any

²⁵ Section 18 - Subject to the provisions of this Act, it shall be the duty of the Commission to eliminate practices having adverse effect on competition, promote and sustain competition, protect the interests of consumers and ensure freedom of trade carried, .

²⁶ 2016 Indlaw CCI 65.

arrangement /agreement between Opposite Party and Informant for availing copyrighted content provided by the Opposite Party. It appears to be a suit where Opposite Party has sent alleged notices, and MOU addressed to some 'BCN Cable Network' and not to Informant. The allegations presented in this case and the presentations made by the parties and the identification of the correct addressee do not pose any problem of competence and, therefore, do not justify the invocation of provisions of the Law. There is no problem of competition that is has discarded in the matter that justifies an investigation according to the Law. The informant can approach the appropriate forums against the supposed tactics of the pressure of the opposite Party. Informant, if desirous, can also seek clarification from Opposite Party about alleged wrong delivery of posts. There is no violation of ss. 3, 4 of Act. Accordingly, the matter is shut down under the provisions of Section 26(2) of the Act.

8. Telefonaktiebolaget LM Ericsson (PUBL) v Intex Technologies (India) Limited²⁷

Ericsson, as a member of the European Telecommunications Standards Institute (ETSI), a standardization organization had committed to granting irrevocable licenses with respect to its SEPs in 2G, 3G, and EDGE technology in FRAND terms. The informant Micromax Informatics Ltd. (Micromax) stated that Ericsson exploited its dominant role in the GSM innovation industry by requiring unnecessary credits depending on the sale price of the full computer instead of the value of the patented equipment used in the telephone. Submitting the court appeal and threatening to report Micromax's inability to pay a premium to India's Stock Exchange Board before it is included in the list. Ericsson's first complaint was the absence of CCI authority because the problem of infringement of patent privileges must be settled under the Patent Law. The decision of the CCI: The committee first stated the significance of FRAND conditions as a system to prevent the delay of the patent granted and the accumulation of royalties. It also rejected the jurisdictional challenge in a simplistic manner by emphasizing that this conflict consisted of issues linked to competition legislation that CCI had authority to review. The Commission described the appropriate industry as the ' SEP in GSM-compatible portable communications systems in India.' Ericsson was discovered to be prima facie dominant in the appropriate industry because it contains nearly 400 patents in GSM technology across India and no substitute was accessible for the normal implementers. A prima facie instance of abuse of property was fulfilled because the royalty paid by Ericsson was on the product's selling cost and

²⁷ 2015 Indlaw DEL 2132; 2015 (62) PTC 90.

not on the engineering rates supplied by the SEP. The Director-General was guided to explore the complaint on these grounds.

In the contemporary industry, IPRs and Competition have priority functions is of protecting customer safety. The main grey areas of the interplay between IPRs and Competition law is Tying agreements, Patent Pooling, Compulsory Licensing, Standard Essential Patents. In countries like US, EU, Australia, Canada, Japan, the guidelines related to the interplay between IPRs and Competition law is well framed. The Commission of developed countries playing an important role to tackle the interplay between IPRs and Competition law by establishing doctrine such as FRAND, Rule of Reason Approach and Block Booking, etc. In India, the CCI is adopting the doctrines established in the EU and US to decide the cases in the domain of interface of IPRs and Competition law.

VI. CONCLUSION

On the basis of the analysis of data regarding working of CCI and analyses of cases decided by CCI in information and technology sector Since 2009 only 38 cases Filed related to Information Technology sector which consist of only 4.04% of total no cases that has filled in CCI in regard to anti-trust matters. The conditions of abuse of Intellectual Property Rights and violation of Anti-trust laws like exclusive licensing agreements, patent pooling, duty to supply where access was essential, abuse of dominant position, block booking, royalty stacking and tie-ins should be defined clearly in order to punish the competition law violators. The approach of the United States of treating IPRs is same or equal to other property rights. This seems to be a practical option for India, since it lends simplicity to the application of Anti-trust laws. The recently announced National IPR Policy by the Department of Industrial Promotion and Policy, Government of India²⁸ has pointed out that it is the need of the hour to defend India's interest to hold a robust ground in the world of competition. The policy seeks to strengthen the existing laws and offers for an effective legal system for the protection, promotion and interface between IPRs and Competition laws. These broad objectives of the National IP Policy are in alignment with the researcher's concluding remarks in the thesis.

²⁸ Annual Report of The Office Of The Controller General Of Patents, Designs, Trade Marks And Geographical Indications, , http://www.ipindia.gov.in/writereaddata/Portal/IPOAnnualReport/1_94_1_1_79_1_Annual_Report-2016-17_English.pdf (last visited May 3, 2019).