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# Intellectual Property Laws vis-a-vis Competition Law

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## ABSTRACT

*Competition and innovation are two major components of any market economy. They are the pillars on which growth; development and efficiency are built, generated and enhanced. Competition Law and Intellectual Property Rights (IPR) are both founded with the purpose of achieving economic development, technological advancement and consumer welfare. Intellectual property covers a bundle of rights such as patents, trademarks or copyrights, each of them different in scope and duration with a different purpose and effect. Intellectual property law subjects intellectual assets to the exclusive control of the owners, assignees and licensees. In other words, intellectual property laws are monopolistic in nature as they guarantee exclusive rights to the creators and owners of work and prevent commercial exploitation of innovation by others. Competition law on the other hand, seeks to promote competition, increase access to market and benefit consumers by ensuring that the manufacturers and suppliers of goods, services and technologies effectively compete against each other. The main objective of competition law is to regulate the behavior that might harm the competitive process. Competition policy is of vital importance for the efficient functioning of market economies.*

## I. INTRODUCTION

Competition and innovation are two major components of any market economy. They are the pillars on which growth; development and efficiency are built, generated and enhanced. Competition Law and Intellectual Property Rights (IPR) are both founded with the purpose of achieving economic development, technological advancement and consumer welfare. Intellectual property covers a bundle of rights such as patents, trademarks or copyrights, each of them different in scope and duration with a different purpose and effect. Intellectual property law subjects intellectual assets to the exclusive control of the owners, assignees and licensees. In other words, intellectual property laws are monopolistic in nature as they guarantee exclusive rights to the creators and owners of work and prevent commercial exploitation of innovation by others. Competition law on the other hand, seeks to promote

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competition, increase access to market and benefit consumers by ensuring that the manufacturers and suppliers of goods, services and technologies effectively compete against each other. The main objective of competition law is to regulate the behavior that might harm the competitive process. Competition policy is of vital importance for the efficient functioning of market economies.

Competition law and IPRs are often considered to be conflicting with each other. It has been commonly believed and opined that there is an inherent conflict between the two and it is difficult for both the realms of law to co-exist with each other. On the first blush, IPRs appear to be against the principles of market access and level playing fields which are the very basis of competition policy and law. IPRs are known to designate boundaries within which competitors may exercise monopoly over their innovation by way of horizontal and vertical restraints. Market power may result from the granted of these rights and the detrimental effects caused by the alleged anti-competitive nature of IPRs, which are the principal concerns of competition law in the relationship between intellectual property. By price-setting higher prices than necessary for cost-effective production, Market power may harm consumers. The relationship of these two law fields poses a challenge to policymaker, especially in developing countries such as India, where the provisions of the Competition Act of 2002 forbid the IPR's holders from exercising anti-competing agreements because they run counter to competition policies.

However, the conflict between the two spheres has often been overplayed and it is conveniently ignored that on the touchstone of the common objective towards promoting innovation, consumer welfare and the overall economic development, both competition and intellectual property are also complementary to each other and co-exist on several fronts. Enforcement of monopoly rights in the IPR regime cannot per se be characterized as an anti-competitive practice. It is only when the enforcement aims at resulting in unlawful gains to the innovator through anti-competitive practices can such acts be held to be violative of competition law. Even though overlapping does take place in some degree, both branches of law operate in different areas with differing scopes. They do provide scope of interaction among conflicting objectives and convergence on the common goal of enhancing healthy competition. The Competition Act incorporates an exception for IPRs under Section 3(5) based on the rationale that IPRs are meant to be protected and a failure to do so is likely to affect innovation and competition. The Competition authorities have to ensure co-existence of competition policy and IPRs because it is the balance between both the branches of law which is vital for promoting competition, consumer welfare and the overall economic

development of the country.

## II. COMPETITION LAW AND INTELLECTUAL PROPERTY: THE INDIAN PERSPECTIVE

Since the enactment of Competition Act, the nexus between IP and competition, be it divergence or convergence, has been a subject of continuous debate among the experts. In light of global developments such as obligations under the TRIPS Agreement and the subsequent amendments to the intellectual property laws in India, the relevance of legal regime on competition and its ability to deal with market power in the face of IPRs has assumed grown in leaps and bounds. It is pertinent to make mention of the Statement of Objects and Reasons which unequivocally states that the Competition Act is enacted to prevent practices which have an adverse effect on competition and to promote and sustain competition in the markets. While doing so, it is important for the Act to take into stride the intellectual property factor without which the stated objectives cannot be attained.

The Competition Commission of India (CCI) shall promote and ensure fair competition and freedom of trade and prohibit anti-competitive and unfair trade practices. In so far as IPRs are concerned, the Competition Act makes an exception. Section 3(5)<sup>2</sup> of the Act preserves the rights of the intellectual property holders and allows them prevent infringement and protect their rights so long as the restrictions imposed by the agreement are reasonable. The Act does not define the expression “reasonable conditions”. In other words, the exception in Section 3(5) ensures that competition policy does not interfere with the reasonable use of IPRs and the IPRs are not frustrated. It does not permit unreasonable conditions to be passed off under the guise of protecting intellectual property. Since IPR is primarily based on licensing agreements/arrangements that generally adversely affect prices, quantities, qualities or varieties of goods and service, they may fall foul of competition laws if they are not reasonable. Licensing agreements, therefore, must be tested against reasonableness, particularly, arrangements such as, patent-pooling, tie-in- arrangements, royalty issues, research and development prohibitions, price-fixation, etc. The exercise of exemption of

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<sup>2</sup> “S. 3(5), Competition Act 2002: Nothing contained in this section shall restrict—

(i) the right of any person to restrain any infringement of, or to impose reasonable conditions, as may be necessary for protecting any of his rights which have been or may be conferred upon him under—

- (a) the Copyright Act, 1957 (14 of 1957);
- (b) the Patents Act, 1970 (39 of 1970);”
- (c) “the Trade and Merchandise Marks Act, 1958 (43 of 1958) or the Trade Marks Act, 1999 (47 of 1999);
- (d) the Geographical Indications of Goods (Registration and Protection) Act, 1999 (48 of 1999);
- (e) the Designs Act, 2000 (16 of 2000);
- (f) the Semi-conductor Integrated Circuits Layout-Design Act, 2000 (37 of 2000);

(ii) the right of any person to export goods from India to the extent to which the agreement relates exclusively to the production, supply, distribution or control of goods or provision of services for such export.”

IPR is largely dependent on the conditions attached to the licensing agreement. It is, however, pertinent to note that intellectual property protection is available to IPR holders only in respect of the rights recognized in the following legislations:

- “Copyright Act, 1957
- Patents Act, 1970
- Trade Marks Act, 1999
- Geographical Indications of Goods (Registration and Protection) Act, 1999
- Designs Act, 2000
- Semi-conductor Integrated Circuits Layout-Design Act, 2000”

IPRs not expressly recognized by Section 3(5) are not eligible to protection under Competition Act. The Competition Commission is empowered to inquire into unreasonable conditions imposed by way of licensing agreements or otherwise and impose penalty upon such right holders or enterprises which are parties to such agreements, which shall not exceed 10% of the average turnover for the last three preceding financial years. In this context, it is noteworthy that the term “reasonable conditions” is nowhere defined in the Act. However, unreasonable conditions imposed by IPR holders as recognized by the intellectual property laws and the courts would also apply to anti-competitive agreements enumerated in Section 3(3)<sup>3</sup> and 3(4)<sup>4</sup> of the Act.

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<sup>3</sup>S.3(3): Any agreement entered into between enterprises or associations of enterprises or persons or associations of persons or between any person and enterprise or practice carried on, or decision taken by, any association of enterprises or association of persons, including cartels, engaged in identical or similar trade of goods or provision of services, which—

- (a) directly or indirectly determines purchase or sale prices;
- (b) limits or controls production, supply, markets, technical development, investment or provision of services;
- (c) shares the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or any other similar way;
- (d) directly or indirectly results in bid rigging or collusive bidding, shall be presumed to have an appreciable adverse effect on competition:

Provided that nothing contained in this sub-section shall apply to any agreement entered into by way of joint ventures if such agreement increases efficiency in production, supply, distribution, storage, acquisition or control of goods or provision of services.

Explanation.—For the purposes of this sub-section, bid rigging means any agreement, between enterprises or persons referred to in sub-section (3) engaged in identical or similar production or trading of goods or provision of services, which has the effect of eliminating or reducing competition for bids or adversely affecting or manipulating the process for bidding.

<sup>4</sup> S. 3(4): Any agreement amongst enterprises or persons at different stages or levels of the production chain in different markets, in respect of production, supply, distribution, storage, sale or price of, or trade in goods or provision of services, including—

- (a) tie-in arrangement;
- (b) exclusive supply agreement;

The following practices prevailing in IPR regime have been recognized as anti-competitive across various jurisdictions:

- **Patent Pooling-** “When the firms in a manufacturing industry decide to pool their patents and agree not to grant licenses to third parties and at the same time fix quotas and prices, they earn extra profits and keep the new entrants out of the market.” When the technology is locked in a few hands by a such kind of pooling agreement, it becomes difficult for outsiders to compete.
- **Royalty Payment after Expiry of Patents-** Agreement of this kind have clause(s) providing that royalty would continue to be paid even after the patent has expired.
- **Tie-in Arrangements-** Recognized as an anti-competitive practice under Section 3(4) of the Competition Act, tie-in arrangement is known to be a restrictive and unfair trade practice. A licensee may be required to acquire unpatented materials solely from the patentee, thereby foreclosing the opportunities of other producers. There could also be arrangement forbidding a licensee to compete, or to handle goods which compete with those of the patentee.
- **Prohibiting Licensee to use Rival Technology-** A license agreement may contain a clause restricting competition in R&D or prohibiting a licensee from using rival technology.
- **Prohibiting Licensee from Challenging Validity of IPR-** A license agreement may impose a condition on the licensee not to challenge the validity of intellectual property of the holder.
- **Restrictions as to Territory and Customers-** Restricting the right of licensee who is

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- (c) exclusive distribution agreement;
  - (d) refusal to deal;
  - (e) resale price maintenance,

shall be an agreement in contravention of sub-section (1) if such agreement causes or is likely to cause an appreciable adverse effect on competition in India.

Explanation.—For the purposes of this sub-section,—

- (a) tie-in arrangement includes any agreement requiring a purchaser of goods, as a condition of such purchase, to purchase some other goods;
- (b) exclusive supply agreement includes any agreement restricting in any manner the purchaser in the course of his trade from acquiring or otherwise dealing in any goods other than those of the seller or any other person;
- (c) exclusive distribution agreement includes any agreement to limit, restrict or withhold the output or supply of any goods or allocate any area or market for the disposal or sale of the goods;
- (d) refusal to deal includes any agreement which restricts, or is likely to restrict, by any method the persons or classes of persons to whom goods are sold or from whom goods are bought;
- (e) resale price maintenance includes any agreement to sell goods on condition that the prices to be charged on the resale by the purchaser shall be the prices stipulated by the seller unless it is clearly stated that prices lower than those prices may be charged.”

a party to an agreement relating to intellectual property, to a particular territory or to particular class of customers to the detriment of common public good may be regarded as anti-competitive agreement.

- **Package Licensing-** If a licensor coerces the licensee to take numerous licenses as a part of intellectual property package even though the latter does not need all of them, such an agreement is known as package licensing and is anti-competitive to the extent of forcing those licenses on the licensee which he does not require.
- **Imposing Trademark use Requirement-** Imposing a trademark use requirement on the licensee may be prejudicial and detrimental to competition as it can restrict a licensee's freedom to select a trademark and in such a case, the licensee would be forced to adopt a trademark which it does not want to use.
- **Undue Restrictions on Licensee's Business-** Putting undue restrictions on the licensee's business through license agreement can be anti-competitive. For instance, a patented vaccine of a pandemic disease can be used for curing humans or animals but the agreement prohibits the licensee from using it for curing the animals and restricting the use of it only to humans.
- **Limiting the Maximum Amount of Use of the Invention-** Imposing restriction and prohibiting the licensee from making maximum and proper utilization of the patented invention may adversely affect competition in the market.

In a nutshell, the agreements or arrangements that interfere with competitive pricing, quantities or qualities of products fall within the ambit of anti-competitive agreements and are prohibited under the Act. The fact of the licensing agreements resulting in anti-competitive practices and unfair competition is expressly recognized by the TRIPS Agreement which provides that the members can adopt measures in conformity with the licensing practices recognized by national legislation. Article 40.1 of the TRIPS recognizes the existence of licensing practices pertaining to intellectual property rights which restrain competition and further lead to adverse effects on trade and impede the transfer and dissemination of technology'.

### **III. JUDICIAL PRONOUNCEMENTS BY INDIAN COURTS/TRIBUNALS**

Most cases involving both competition and IPR issues have landed in the High Courts and Supreme Court in pursuance of challenging the jurisdiction of CCI for adjudicating such matters. The provisions of the Act and the rulings of the Indian courts recognize the

jurisdiction of CCI to adjudicate and decide cases involving IPRs on the touchstone of competition related aspects. However, there is no blanket exemption provided to IPRs when such issues are raised before the CCI and the Commission must ensure that IPRs are not abused. Additionally, the courts have also recognized the relevance and importance of free and fair competition in some of the rulings wherein the issue pertaining to competition was either not raised or raised indirectly as secondary issue.

### **Leading Cases**

- **Telefonaktiebolaget LM Ericsson v. Competition Commission of India<sup>5</sup>**

“A petition was filed by Ericsson before the Hon’ble Delhi High Court challenging the jurisdiction of the CCI to pass orders in cases involving patents, in particular, Standard Essential Patents. It was alleged by the petitioner that the orders passed by the CCI were without jurisdiction as the CCI lacked jurisdiction to commence any proceeding in relation to a claim of royalty by a proprietor of a patent, which is covered by the Indian Patents Act, 1970.” The CCI had argued that both the Patents Act, 1970 as well as the Competition Act, 2002 operate independently without any repugnancy and that the power of the CCI to examine the acts in violation of Sections 3 and 4 remain independent of the powers of the Controller under the Patents Act. Concurring with the order passed by the CCI, it was opined and held by the Court that:

A) Ericsson, of course, has a broad patent portfolio and is involved in, inter alia, technological development and patent procurement. If patents are therefore deemed to be goods, it would be undoubtedly the term 'enterprise' within the meaning of Section 2(h) of the Competition Act that would be used by Ericsson since he is admittedly engaged in activities involving purchasing and patent control.

B) The nature of the patent rights, i.e. the right to exclude them without the right of use, in no way excludes the rights to a patent from the scope of goods in accordance with the 1930 Sales Act. All types of property (other than actionables, money and immovable property) are defined as "good" and include both intangible and intangible property such as patents.

C) No irreconcilable rejection or dispute exists between the Patent Act or the Act on Competition. The competence of CCI to make complaints about the abuse of patent rights cannot be ousted, in the absence of any irreconcilable conflict between the two legislations.

D) Where, with regard to anti-abuse provision, there are irreconcilable differences

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<sup>5</sup> 2016 (66) PTC 58 (Del).



between the Patents Act and the Competition Act, the Patents Act is a special act which does not prevail under section 60 of the Competition Act.

E) Where patent law relates to the granting of rights which allow the patent proprietor to exclude others from exploiting the invention in a sense which promotes monopoly-like rights, competition law mainly aims at promoting competition and thus at opposing monopolies as well as at odds with unfair and anti-competitive practices.

F) The Parliament intended not to restrict, or reduce to the full extent of any other law in the adoption of the Competition Act and, consequently, it is expressly stated that it is not in derogation of any other law, but in addition.

G) While a Patent Rights Protection Agreement impose reasonable conditions, the safe havens of Section 3(5) of the Competition Act and Section 3 of the Competition act would not be granted and would be in agreement of Section 3 of the Competition Act.

H) Whether or not the condition imposed in the agreement is reasonable would constitute an issue that only the CCI can decide under the provisions of the Competition Act. Either the Patent Owner exercising his functions in accordance with the Patents Act or the Civil Court would not be competent to decide whether the agreement is incompatible with Section 3 of the Competition Act."Monsanto Holdings Pvt. Ltd. and Ors. v. Competition Commission of India<sup>6</sup>

The impugned order of the CCI was again challenged before the Hon'ble Delhi High Court alleging that it does not have any jurisdiction to examine the issues relating to the exercise of rights granted under the Patents Act and that the remedies against alleged abuse of any rights by the patentee would exclusively fall within the remedies as provided under Patents Act. The Court reiterated its earlier ruling in *Telefonaktiebolaget LM Ericsson v. Competition Commission of India*<sup>7</sup> and held that:

A. Section 3(5) recognizes that a person has a right to restrain infringement of IPR granted under the specified statutes and any agreement entered for the said purpose would fall outside the scope of Section 3 of the Competition Act. However, such rights are not unqualified. The exclusionary provision to restrain infringement cannot be read to mean a right to include unreasonable conditions that far exceed those that are necessary for the purpose of the provision.

B. The question whether an agreement is limited to restraining infringement of patents

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<sup>6</sup> MANU/DE/1078/2020.

<sup>7</sup> *Supra* note 4.

and includes reasonable conditions that may be necessary to protect such rights granted to a patentee, is required to be determined by the CCI. Section 3(5) does not mean that a patentee would be free to include onerous conditions under the guise of protecting its rights.

- **Toyota Kirloskar Motor Private Limited and Ors. vs. Competition Commission of India<sup>8</sup>**

The Companies Appellant- Toyota, Ford and Nissan brought an appeal to the COMPAT on the grounds that it had been in violation of Sections 3(4) and Section 4 of the Competition Act to maintain its distribution/sales agreements and practises. The appellants alleged that, in accordance with Section 3(5) of the Act, their intellectual property rights in relation to the manufacture of various replacement parts are required and reasonable under patents, trademarks, copyrights and designs.

a. The Competition Act recognises that the respective intellectual property laws are a saving provision i.e. when restrictions have been imposed because of intellectual property rights, these restrictions are considered reasonable. In accordance with CCI observations and findings the COMPAT inferred that: In many cases, the courts have applied the test of reasonableness in deciding whether a negative law is legally acceptable or not. A reading of Article 3(5) of the Act clearly indicates the exemptions conferred under the law or the reasonable condition necessary to protect one or more of the Rights that have or may be conferred under the five Acts described in the provision, based on the right of the statutory provisions of the law.

b. The original equipment manufacturers (OEMs) must establish that the stated parts on which restrictions were applied are accorded IPR as provided for in the relevant act for the purposes of exemption in accordance with Section 3(5)(i) of the Act. Although the appellants/OEMs could not substantiate this in the course of the investigation, they were given the opportunity. For exemptions under section 3(5)(i), OEMs must be subject to the strict proof of their possession of a valid IPR for each Part. In determining whether the agreements entered into between the OEM and the OESs would be covered by Section 3(5)(i) of the Act, the following, amongst other provisions, must be considered:

- whether the right to be presented is appropriately described as protecting intellectual property; and
- whether the requirements of the law granting the IPRs are indeed applicable

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<sup>8</sup> MANU/TA/0062/2016.

c. As far as copyrights are concerned, the Appellants have not been able to prove that they had the benefit of copyrights all through the period when they were using these drawings. As far as designs are concerned, the Appellants have not been able to show evidence for establishing their analogy of all designs claimed by them.

d. Most of the OEMs do not have registration under the intellectual property laws as mentioned in Section 3(5)(i) of the Act. Although some of the OEMs have furnished details of certain rights in the form of patents, designs and trademark registered in India, however, the specific parts to which these correspond have not been furnished. Therefore, the extent of coverage of rights claimed under intellectual property laws over the entire range of spare parts on which restrictions are applicable is not known.

e. Unlike Section 3(5) of the Act, there is no exception to Section 4(2) of the Act. Therefore, if an enterprise is found to be dominant pursuant to Section 4(2) and indulges in practices that amount to denial of market access to customers in the relevant market; it is no defense to suggest that such exclusionary conduct is within the scope of intellectual property rights of the OEMs.

f. The OEMs placed reliance on the technology transfer agreements entered by the OEMs with their parent companies for justifying restrictions on the OEMs. During the investigation these technology transfer agreements were obtained and perused. However, these agreements do not contain any specific details of IPRs other than trademark which are being assigned to the OEMs. Therefore, the IPRs claimed on the basis of these agreements could not be verified.

g. OEMs could not establish that they possess valid rights under intellectual property laws in India in terms of the provisions of various intellectual property Acts mentioned under Section 3(5)(i) of the Act, with respect to all spare parts for which restrictions are being imposed on OEM. In view of the above, claim of OEMs of exemption under Section 3(5)(i) of the Act has not been found to be fully tenable."

h. On the patent issue, it was claimed that there had been provisions in technology transfer agreements that showed that patents were issued/licensed to the OEMs. However, there were no such evidence that either the registration or the allocation or licencing of these patents to Indian subsidiaries, i.e. OEMs in India, would have demonstrated. The claims of the OEM are not tolerable in such situations.

i. In order to protect intellectual property, the restrictions were requested not to be released on the market with a fear of copying it. J. It cannot by itself be considered as a

reasonable condition for the Protection of intellectual property. Restrictions imposed by the Appellants are not reasonable and necessary because contractual methods and common law remedies can be used to protect IPRs.

- **Eastern Book Company v. D.B. Modak**<sup>9</sup>

The Hon'ble Supreme Court in this landmark judgment indirectly advocated the relevance of competition as against creating monopoly by holding that the primary objective of copyright is not to reward the labour of authors, but to promote the progress of science and useful arts. The Court further went on to hold as under:

*“[O]nly the compiler's selection and arrangement may be protected; however, the raw facts may be copied at will. Protection for the fruits of such research may, in certain circumstances, be available under the theory of unfair competition. But to accord copyright protection on that basis alone distorts basic copyright principles in that it creates a monopoly in public domain materials without the necessary justification of protecting and encouraging the creation of writings by authors. There will be some fact-based works in which the selection, coordination, and arrangement are not sufficiently original to trigger copyright protection.”*

- **Entertainment Network (India) Limited v. Super Cassette Industries Limited**<sup>10</sup>

Recognizing the protection of copyright as a social requirement in the public interest, the Hon'ble Supreme Court of India held that the protection of copyright, along with other intellectual property rights, is considered as a form of property worthy of special protection because it is seen as benefiting society as a whole and stimulating further creative activity and competition in the public interest.

- **Microfibres Inc. v. Girdhar & Co.**<sup>11</sup>

Recognizing the relevance of promoting competition through intellectual property in the form of designs, it was held by the Hon'ble Delhi High Court:

*“The mischief sought to be protected by the amendment in the Designs Act, 2000 is the larger protection period under the Copyright Act for a design which has been put into commercial production. Consequently, the mischief sought to be prevented is not the mischief of copying but of the larger monopoly claimed by the design proponent in spite of commercial production. The objects and reasons of the Designs Act clearly show that the legislature intended by virtue of Designs Act to promote design activity, competition and lessen the*

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<sup>9</sup> AIR 2008 SC 809.

<sup>10</sup> (2008) 13 SCC 30.

<sup>11</sup> 2009 (40) PTC 519 (Del).

*monopoly period.”*

- **FICCI - Multiplex Association of India vs. United Producers/Distributors Forum(UPDF)<sup>12</sup>**

The FICCI filed information alleging that that UPDF (Respondent) “had issued a notice instructing all its members not to release any films to the members of FICCI. The Respondent claimed that a feature film is the subject matter of copyright under the Copyright Act, 1957 which permits the owner of copyright to exploit such copyright in a manner as they deem fit. The Respondent relied on Section 3(5) of the Act to contend that the use of non-obstante clause excluded such rights from the purview of the Actand” therefore, the UPDF members were justified in imposing the reasonable restrictions. Rejecting the contentions of the Respondent, the CCI held as follows:

*“It may be mentioned that the intellectual property laws do not have any absolute overriding effect on the competition law. The extent of non-obstante clause in Section 3(5) of the Act is not absolute as is clear from the language used therein and it exempts the right holder from the rigours of competition law only to protect his rights from infringement. It further enables the right holder to impose reasonable conditions, as maybe necessary for protecting such rights.”*

#### IV. CONCLUSION

The law relating to interface of IPR and Competition Law is at a nascent stage. It is important for the competition authorities as well as the Central Government to ensure its due development. The competition authorities may endeavour to apprise the courts regarding the importance of the matters so that the matters can be decided at the earliest. This is in accordance with the observation of the Hon’ble Supreme Court in *Competition Commission of India v. Steel Authority of India Limited*<sup>13</sup> wherein it was observed that “keeping in view the nature of the controversies arising under the provisions of the Act and larger public interest, the matters should be dealt with and taken to the logical end of pronouncement of final orders without any undue delay. In the event of delay, the very purpose and object of the Act is likely to be frustrated and the possibility of great damage to the open market and resultantly, country's economy cannot be ruled out.” Writ proceedings relating to examination of constitutionality of orders must thus take place without long adjournments and without undue delay.

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<sup>12</sup> Case No. 1 of 2009. Available at [https://www.cci.gov.in/sites/default/files/FICCIOrder260511\\_0.pdf](https://www.cci.gov.in/sites/default/files/FICCIOrder260511_0.pdf).

<sup>13</sup> (2010) 10 SCC 744.

For ensuring convergence and interdependence between the two disciplines, an optimum balance has to be struck to attain common objectives as already stated above. It has been settled by the Courts as well as CCI that any IPR holder in the garb of protecting its rights cannot impose any conditions or restrictions and the conditions imposed have to be reasonable and pass the scrutiny test of Section 3(5) for availing exemptions provided thereunder. Exemption provided under Section 3(5) to IPRs is neither absolute nor a blanket protection. It is also noteworthy that the exemption under Section 3(5)(i) of the Act is limited only to anti-competitive agreements enumerated in Section 3 and do not explicitly apply to abuse of dominant position under Section 4 of the Act. The Central Government too must act with alacrity. The Government has rightly proposed the addition of Section 4 in pertaining to exemption of IPR through Competition (Amendment) Bill, 2020. Additionally, the Central Government may also issue a notification under Section 54 of the Competition Act to completely exempt application of Section 3 and 4 of the Competition Act to IPR holders for a limited period, say 3 years, from the date of grant (or entitlement) of the IPR. This would allow the inventor to reap profits from his investments, safe from the clutch of competition law.

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