Best IT World (India) Pvt. Ltd. (iBall) vs. Telefonaktiebolaget LM Ericsson (Publ) and Ericsson India Pvt. Ltd.

Through this publication, CUTS International intends to undertake independent examination of relevant competition cases in India (on-going as well as decided). The objective is to provide a brief factual background of the facts of relevant cases, followed by an analysis of the predominant issues, therein. This publication will expectantly help readers to better comprehend the evolving jurisprudence of competition law in India.

The issues have been dealt in a simplistic, keeping in mind the broad range of viewership cutting across sectors and domains. The purpose of this publication is to put forward a well-informed and unbiased perspective for the benefit of consumers as well as other relevant stakeholders. Additionally, it seeks to encourage further discourse on the underlying pertinent competition issues in India.

Executive Summary

Presently, one of the most legally contested issues globally lies at the interface of Competition Law and Intellectual Property Rights (IPR), especially in the Information and Communications Technology (ICT) sector.[1]

The developed world has transitioned from manufacturing-based economies, to knowledge-based ones, thereby increasing the importance of standard setting. Most modern-day technology products, comprise of complicated combinations of components developed by multiple firms across the world, which must work at tandem to create a workable end product, i.e. interoperability standards form the core of the product design.[2]

A standard can be defined as a set of technical specifications that seeks to provide a common design for a product or process,[3] which are generally established by Standard Setting Organisations (SSOs) or through an industry consortium, in a collaborative and participative manner.[4]

However, the process of standard setting involves patented technologies, which sometimes widens the scope for anti-competitive actions.[5] As per European Telecommunications Standards Institute (ETSI), an 'essential' IPR is an IPR, which has been included within a standard, and where it would be impossible to implement the standard without making use of this IPR. The only way to avoid the violation of this IPR in respect of the implementation of the standard is therefore to request a licence from the owner.[6]

This often leads to confrontational negotiations, thereby raising the probability of abuse of dominant position on the part of the Standard Essential Patent (SEP) holder, or IP-infringement behaviour on part of the technology implementer. Although the SSO IPR policies generally mandates that the SEPs are licensed on Fair, Reasonable and Non-Discriminatory (FRAND) terms, but the diverse interpretation of FRAND in many instances leads to disagreement on patent licensing terms.

Such circumstances have led to several legal disputes in the global smartphone industry. Thus, this edition seeks to specifically analyse one such major dispute in India where an SEP holder was accused of engaging in anti-competitive behaviour. In

2015, iBall (entered the Indian mobile handset market as an importer and supplier in 2010) filed information with the Competition Commission of India (CCI) against Ericsson (collective of both the opposite parties), under Section 19(1)(a)[7] of the Competition Act alleging abuse of dominance vis-à-vis licensing of SEPs.[8] In the complaint, iBall raised allegations against Ericsson based on the possible anti-competitive effects caused by its licensing practices with regard to SEPs held by Ericsson in the ICT sector.

The Commission was of the opinion that considering the non-substitutability of the relevant product (SEPs), Ericsson is prima facie dominant in the relevant market of "Standard Essential Patents for 2G, 3G and 4G technologies in Global System for Mobile Communication (GSM) standard compliant mobile communication devices in India".

Furthermore, keeping in mind Ericsson's licensing practices (described in later sections), the Commission thought this to be a case worth investigating into, and accordingly ordered the Director General (DG) to investigate Ericsson under Section 4 of the Competition Act, 2002 (Act).

CCI's *Prima Facie* Opinion

Allegations by iBall

The information filed by iBall against Ericsson contained allegations of abuse of dominant position, which is prohibited under Section 4[9] of the Act, on the following grounds:

- Ericsson is one of the world's largest telecommunication companies with a global market share of 38 percent. It is also one of the largest holders of SEPs in the mobile phone and wireless industries with approximately 33,000 granted patents as of 2012, out of which 400 were granted in India.
- Ericsson demanded excessive royalties from iBall, which was alleged to be a contravention of its FRAND commitment, as they were based on the Net Selling Price (NSP) of the end product i.e. the mobile handset, instead of the cost of actual patented technology used, i.e. the Smallest Salable Patent-Practicing Unit (SSPPU).
- Ericsson requested iBall to execute a Global Patent Licensing Arrangement (GPLA), though it refused to specify/identify any patents, which were being infringed by the Informant's products, unless a Non-Disclosure Agreement

(NDA)[10] was executed between them, which would have enforced confidentiality for ten years. In addition, this GPLA was to cover not only future sales of iBall, but also its previous sales.

- Another area of concern for iBall was the tying and bundling of the patents, which were irrelevant to their range of products.
- A dispute resolution clause was also being insisted by Ericsson, which mandated any dispute between the parties be settled through arbitration in Stockholm, Sweden.
- Ericsson was using a threat of initiating patent infringement proceedings against iBall as a tactic to coax it to enter into a one-sided and onerous NDA.

CCI's Observations

Before delving into the observations of CCI, it is important to note that the DG investigation report is still awaited. The observation mentioned below are preliminary in nature, which formed the basis of directing a DG enquiry into the merits of the case.

Relevant Market

First and foremost, the CCI had to identify the relevant market in the present case. Considering the product in question, the Commission held the relevant product market to be "Standard Essential Patents for 2G, 3G and 4G technologies in GSM standard compliant mobile communication device". Further, considering the pan India presence of Ericsson, the relevant geographic market was held to be 'India'. Accordingly, the relevant market was held to be "Standard Essential Patents for 2G, 3G and 4G technologies in GSM standard compliant mobile communication devices in India".

Dominant Position

Furthermore, the Commission was to assess the dominant position of Ericsson in the defined relevant market. Considering the facts brought forth by the informant with regard to the global presence and large patent portfolio of Ericsson, CCI concluded that the lack of substitutability of the relevant product makes Ericsson dominant in the relevant market (*prima facie*).

Other factors noted by the Commission comprise:

- Ericsson is a member of a Standard Setting Organisation namely, European Telecommunications Standards Institute (ETSI)[11], which produces globally applicable standards for ICTs, some of which are covered by patents held by ETSI or ETSI members like Ericsson.

- Once a patent is declared as SEP, it faces no competition from other patents until that patent becomes obsolete due to new technology/inventions.
- Attention was also given to Clause 6[12] of ETSI's IPR policy, and to Ericsson's undertaking/declaration, which required it to offer and conclude licenses with patent seekers on FRAND terms.
- Ericsson's patents have also been accepted by the Department of Telecommunication, India (DoT) and every telecom service provider in India is required to enter into a Unified Access Service Licence (UASL) Agreement with DoT. Further, DoT had directed that all GSM/Code Division Multiple Access (CDMA) network equipment imported into India, should meet the standards of international telecommunication technology as defined by International Standardisation bodies, such as ETSI.

Abuse of Dominance

In its investigation order, the CCI stated, "forcing a party to execute an NDA and imposing excessive and unfair royalty rates" indicates *prima facie* abuse of dominance and violation of Section 4 of the Indian Competition Act. It accordingly directed the DG to conduct an investigation through an order under Section 26(1)[13] of the Act. The rationale behind such an opinion has been mentioned below:

- The practices adopted by Ericsson concerning the royalty rates, appear to be discriminatory as well as contrary to FRAND terms, since the royalty rate being charged has no linkage to the functionality of the patented product. Rather, it has linkage to the final price of the manufactured product in which the patent is being used. Further, charging of two different licence fees per phone for use of the same technology, *prima facie*, appears to be discriminatory. The CCI seemed to be in favour of the fixing royalty based on the SSPPU, i.e. the chipset.
- The terms of the NDA is contrary to the spirit of applying FRAND terms fairly and uniformly to similarly placed players. Forcing a party to execute an NDA, *prima facie*, amounts to Abuse of Dominant position. The scope and timing of the NDA needs to be fair, and not onerous.
- In addition, imposing a jurisdiction clause debarring the Informant from getting the disputes adjudicated in the country where both the parties are engaged in doing business and vesting the jurisdiction in a foreign land, *prima facie*, appears to be unfair.

- The CCI also noted that, similar allegations were also brought forward in previous cases i.e. *Micromax Informatics Limited vs. Telefonaktiebolaget LM Ericsson (Publ)*[14] and *Intex Technologies (India) Limited vs. Telefonaktiebolaget LM Ericsson (Publ).*[15]

Analysis by CUTS

Ericsson vs. iBall and the Global Patent Wars

This Indian dispute between a cell phone manufacturer (iBall) and a SEP holder (Ericsson) is a mere battle in the larger patent war being fought in the ICT sector between SEP implementers and SEP holders across the globe. This had already been described in detail in our previous analysis of the case filed by Micromax against Ericsson on similar grounds.[16]

The underlying dispute in such cases apparently lies at the unique interface of two laws i.e. patent law and competition law. Evidently, the inclusion of patents in standards leads to a unique situation where technological patents become essential to the manufacturing and production of a product, especially in the ICT sector.

Possible Inconsistency between Patents Act and Competition Act

Earlier, competition and IP laws were believed to be like poles of a magnet, which repel each other. However, in the long run, both aim at increasing efficiency in the market, and consumer welfare, as they complement each other. In the case of IP goods, the marginal cost of production is very low, and the main cost incurred by the innovators, is on research and development of the invention added with the expenditure incurred in introducing that product in the market.

Absence of monopoly, will prevent the inventor to fully recover the cost of its R&D, resulting in a discouragement for investors, to invest in newer inventions in future. Therefore, the IP regime is considered to be pro-competitive and pro-innovation, whereas competition law is primarily concerned with increasing and protecting competition in the product markets, which again promotes innovation. Hence, both are divergent paths to the same goal.[17]

The dispute where the CCI adjudicated on issues relating to SEPs goes to the very heart of the apparent conflict between patent law and competition law. Both offer their own set of remedies to resolve the issues raised through SEP litigation.[18] This leads to the question of examining CCI's jurisdiction in addressing SEP related disputes.

CCI's Jurisdiction

As opposed to SEP litigation in other jurisdictions, the Indian SEP litigation is characterised with large SEP holders litigating against small manufacturers/implementers. Considering such a market dynamic, it has been argued that CCI's intervention and competition law is essential for the survival of the low cost mobile device market in India.[19]

However, a counter argument divergent from the friction between IP and competition laws has also emerged. Since FRAND commitments are essentially a contract, failure to perform such a contract may provide remedies under contract law as well. Therefore, the competition authorities may not have jurisdiction here. Questions arise regarding the relationship between the High Court and the CCI.

To answer this, recently, the Delhi High Court ruled in a 161-page decision that the CCI had the jurisdiction to review the FRAND cases. Justice Bakhru found no conflict between competition and IP laws. Since Ericsson appeared dominant, Justice Bakhru found CCI's investigation justified.[20] The judgement has been previously analysed in previous analysis of the case filed by Micromax against Ericsson on similar grounds.[21]

Dominant Position of Ericsson

Considering Ericsson's portfolio of SEPs and iBall's allegation against Ericsson of abuse of dominance in the Indian market, the Commission rightly opined, that owing to the non-substitutability of the large number of SEPs owned by Ericsson, the company was *prima facie* dominant in the relevant market.

Ericsson's Possible Abuse of Dominant Position

Since the issue of identifying the appropriate royalty base for calculating FRAND licensing rates has already been discussed in the previous analysis of the case filed by Micromax against Ericsson on similar grounds,[22] the current issue will focus on tying of patents and Non-disclosure Agreements (NDAs).

Tying of Patents

'Tying' refers to an act, in which a firm makes the sale of one product, only on the condition of the sale of another product. Typically, a tying arrangement occurs when, through a contractual or technological requirement, a seller conditions the sale or lease of a product or service on the customer's agreement to acquire a second product or service.[23]

Multiple IPRs might be collectively licensed as bundles or packages. Such licensing occurs when a patent-owner refuses to license a particular single patent, unless the licencee accepts an entire portfolio/package of patents (can be SEPs or include non-SEPs also), or where the patent holder's royalty scale has such effect'.[24]

'The issue of tying and bundling becomes, especially important high-end technology industries (like the ICT sector), since the norm in these industries is for patent holders to license their patents at a technology portfolio level, i.e. patent holders tend to license all their patents, on a given technology (3G in this case) through a single bundled licensing agreement. An arm's length licence agreement covering SEPs only, without the inclusion of at least some non-SEPs are a rarity.[25]

The question to be answered is whether a FRAND commitment creates an obligation on the SEP holder to license its SEPs on a stand-alone basis, i.e. without including any other non-SEP or Non-FRAND committed patents, if the licencee desires so. Moreover, in case FRAND commitments do allow for tied/bundled licensing, what licensing royalty fees might be charged for the entire portfolio?[26]

Bundling non-SEPs with FRAND obligated patents, and adding their value in the overall value of the bundle, for determining FRAND terms/rates for the portfolio, indicates that bundling has been used to circumvent the FRAND commitment. A FRAND rate is not a single magical number. However, it is a value which must be fair and reasonable to both the licensor and the licensee. However, a FRAND commitment does not boulder the patent holder's right to claim a stand-alone licence fee for a non-SEP, if it is being licensed separately.

However, it cannot force the implementer to pay such a licence fee, just to get access to a SEP, as it would amount to a violation of the FRAND commitment for not imposing an opportunistic license fee. In case the patent holder wishes to offer its entire patent portfolio in a bundled form only, then the price of the licence should be as if, it encompassed the FRAND-committed SEPs only, i.e. a patent holder has the right to include non-SEPs in its bundled patent licence, but for 'free', if it does not choose to offer a separate FRAND committed only licence for its SEP.[27]

Therefore, offering FRAND-committed patents in bundles only is not a problem *per se*, rather, the analysis should focus on the terms of such a bundled licence is offered. However, determining a FRAND rate is not a simple issue.

From the lens of competition law, the concern has been towards the distortion of a competitive market for a good when a seller with market power in the sale of that particular good mandates its customers to buy another good in conjunction with it.[28]

Although the requisite elements of *per se* tying violation have been expressed differently, courts generally require: (1) two separate products or services are involved; (2) the sale or agreement to sell one is conditioned on the purchase of the other; (3) the seller has sufficient economic power in the market for the tying product to enable it to restrain trade in the market for the tied product; (4) a not insubstantial amount of commerce in the tied product is affected; and (5) efficiency justifications for the arrangement do not outweigh the anti-competitive effects.[29]

The Competition Act has held 'tie-in arrangements' to be in contravention of 'Section 3(1)'[30] of the Act, in case such an arrangement results in an Appreciable Adverse Effect on Competition (AAEC) in India, which can be determined by looking into the factors, as laid down in 'Section 19(3)'[31]. Also, 'tying' may be in contravention of 'Section 4(2)(d)'[32] read along with 'Section 4(2)(c)'[33] of the Act, or 'Section 4(2)(e)'[34] read along with Section 4(2)(d) and 4(2)(c).

Non-Disclosure Agreements

A Non-Disclosure Agreement is a legal contract between two or more parties that signifies a confidential relationship exists between the parties involved. The confidential relationship often refers to information that is to be shared between the parties, but should not be made available to the general public. NDAs are also commonly referred to as a confidentiality agreement.[35]

As per the NDA used by the Centre for Development of Telematics (CDOT)[36], "in collaborative Research and Development arrangements and technology transfer deals, confidential information includes 'any information on design, fabrication and assembly drawings, knowhow, processes, product specifications, raw materials, trade secrets, market opportunities, or business or financial affairs or their customers, product samples, inventions, concepts and any other technical and/or commercial information".

Licensing agreements between patent holders and implementers for using the patented technology would ideally cover details relevant to underlying patents (granted or pending), along with a variety of business related financial and market information. While the latter concerns both parties, information regarding patents is crucial to the patent holder's business.[37]

Every company whether in the telecom industry or in any other industry, has its own trade secrets, and it is imperative to keep it confidential to ensure the survival of the company. SEPs fall in the same category. This is the reason most SEP holders, prefer a NDA in their License Agreement, while licensing such patents to mobile manufacturers.

Another argument in support of a NDA, is that unlike a physical product '(i.e. while negotiating over a physical product, the owner of the product can threaten to take back the product at any time in case of breach of contract), IP cannot be 'taken away', i.e. once an idea has been shared, it cannot be unlearned.

However, IP protection does provide a mechanism to sue for unauthorised use of the idea, along with offering a means to enforce the collection of licensing fees.[38] Such mechanisms allow knowledge/innovations to be freely 'tradable', and patents are particularly useful in this regard as they offer protection against reverse engineering of innovations, if disclosed.

The key point to consider here is the timing, scope and extent of such NDA. Since Indian companies are mostly licensees, there tends to be friction on this clause with the foreign licensors.

It seems unlikely that a disclosure requirement could be anti-competitive. However, such a requirement has an information-forcing effect, and might in some unusual circumstances interfere with an IP owner's trade secret rights. Only the existence and scope of the patent or patent application, not the technical know-how of the invention itself, must be disclosed to an implementer/proposed licensee.

While the very existence of a patent application might sometimes be a valuable secret in the context of a publicly adopted standard, the legitimate value of this secret does not seem to be extremely high. Moreover, the implementer has a presumptively legitimate reason for requiring the information: it wishes to ascertain for sure, the infringement of such a patent, validity of such a patent in India and also the remedies for the same.[39]

As per CCI, charging of two different license fees per unit phone for use of the same technology *prima facie* is discriminatory and also reflects excessive pricing *vis-a-vis* high cost phones.

Besides, CCI has noted transparency to be the hallmark of fairness, and Ericsson's use of NDAs "is contrary to the spirit of applying FRAND terms fairly and uniformly to similarly placed players".[40] The antitrust theory of harm relating to NDAs, is that their inclusion in licenses undermines the 'non-discriminatory' commitment in the FRAND licence".[41]

Conclusion

On the one hand, claims for non-FRAND licensing could be seen as negotiation posturing, with buyers attempting to lower the royalty rates for SEPs. On the other hand, these claims could also be indicative of patent holders attempting to exploit their dominant position to earn higher than what their SEPs are worth.[42]

Jurisprudence in India regarding SEP and competition law issues is still at a relatively nascent stage, compared to other jurisdictions like the European Union, the US and China. This places Indian courts and competition authorities in an advantageous position where they can learn from the experience of other jurisdictions.

Moreover, the final decision of the Commission will hold immense significance in promoting competition and innovation in the Indian ICT sector, which notably consists more of SEP implementers than SEP holders.

In addition to this, several questions still remain unanswered (which can be clarified as and when specific disputes arise) with respect to SEP licensing and competition law. For example, whether the threat of injunction made by the SEP holder and an arbitration clause requiring a settlement in a foreign jurisdiction would amount to abuse of dominance; and whether patent holdout and royalty stacking[43] could be possibly addressed through application of competition law in light of greater economic analysis.

Besides, the jurisprudential clarity which will come with time, the Commission can also explore the possibility of framing guidelines for licensing of SEPs, and clarify the Indian approach towards application of competition law *vis-à-vis* standardisation and licensing of SEPs.

Be that as it may, post investigation, the final order of the CCI will have significant impact on the mobile handset industry in India and will also help in bringing in much needed certainty for industry players *vis-à-vis* standardisation and SEP licensing procedures.

Endnotes

1 For details on possible anti-competitive conducts which may arise due to exercise of IP rights generally, see OECD, *Competition Policy and Intellectual Property Rights,* (1997), available at http://www.oecd.org/competition/abuse/1920398.pdf and for specific conduct related to Standard Essential Patent licensing see literature available at http://www.crai.ca/sites/default/files/publications/IP-Literature-Watch-September-2014.pdf

2 Anne Layne-Farrar, 'Business Models and The Standard Setting Process' (SSRN.com) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1718065>

3 Damien Geradin and Anne Layne Farrar, 'The Logic and Limits of Ex Ante Competition in A Standard-Setting Environment' (Competition Policy International) <https://www.competitionpolicyinternational.com/assets/0d358061e11f2708ad9d62634c6c40ad/GeradinLayne.pdf>

4 URŠKA PETROVČIČ, COMPETITION LAW AND STANDARD ESSENTIAL PATENTS: A TRANSATLANTIC PERSPECTIVE, INTERNATIONAL COMPETITION LAW SERIES, 3 (2014).

5 Mark. A. Lemley, *Antitrust, Intellectual Property Rights and Standard Setting Organizations*, 90 California Law Review 6, 1889 (2002).

6 'ETSI Guide on Intellectual Property Rights' <http://www.etsi.org/images/files/IPR/etsi-guide-on-ipr.pdf>

7 Competition Act 2002: The Commission may inquire into any alleged contravention of the provisions contained in subsection (1) of section 3 or sub-section (1) of section 4 either on its own motion or on— (a)[receipt of any information, in such manner and] accompanied by such fee as may be determined by regulations, from any person, consumer or their association or trade association.

8 Micromax Informatics Limited v. Telefonaktiebolaget LM Ericsson (Publ), Case No. 50/2013.

9 Competition Act 2002: Section 4(1) No enterprise or group shall abuse its dominant position. Available at http://www.cci.gov.in/sites/default/files/cci_pdf/competitionact2012.pdf

10 A nondisclosure agreement (NDA) is a legal contract between two or more parties that signifies a confidential relationship exists between the parties involved. The confidential relationship often refers to information that is to be shared between the parties but should not be made available to the general public. NDAs are also commonly referred to as a confidentiality agreement.

https://www.investopedia.com/terms/n/nda.asp accessed on 25.11.17

11 ETSI is a non-profit organization with more than 700 member organizations spread across 62 countries from 5 continents and is officially recognized by the European Union as a European Standards Organization.

12 Available at: http://www.etsi.org/images/files/IPR/etsi-ipr-policy.pdf

13 Competition Act 2002 - On receipt of a reference from the Central Government or a State Government or a statutory authority or on its own knowledge or information received under section 19, if the Commission is of the opinion that there exists a prima facie case, it shall direct the Director General to cause an investigation to be made into the matter.

14 CCI Case No. 50 of 2013, available at http://www.cci.gov.in/sites/default/files/502013_0.pdf?download=1

15 CCI Case No. 76 of 2013, available at http://www.cci.gov.in/sites/default/files/762013_0.pdf

16 http://www.cuts-ccier.org/pdf/Edition-4-Analysis_of_Competition_Cases_in_India.pdf

17 http://www.legalservicesindia.com/article/article/competition-law-vis-a-vis-ipr-rights-889-1.html

18 Anne Layne-Farrar, 'Business Models and The Standard Setting Process' (SSRN.com) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1718065>

19 Anne Layne-Farrar, 'Business Models and The Standard Setting Process' (SSRN.com) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1718065>

20 Ericsson versus CCI, Delhi High Court Case

21 http://www.cuts-ccier.org/pdf/Edition-4-Analysis_of_Competition_Cases_in_India.pdf

22 http://www.cuts-ccier.org/pdf/Edition-4-Analysis_of_Competition_Cases_in_India.pdf

23 'Chapter 5: Antitrust Issues in The Tying and Bundling of Intellectual Property Rights | ATR | Department of Justice' (Justice.gov, 2017) <https://www.justice.gov/atr/chapter-5-antitrust-issues-tying-and-bundling-intellectual-property-rights>

[24] 'Chapter 5: Antitrust Issues in The Tying and Bundling of Intellectual Property Rights | ATR | Department of Justice' (Justice.gov, 2017) <https://www.justice.gov/atr/chapter-5-antitrust-issues-tying-and-bundling-intellectual-property-rights>

[25]' The Policy Implications of Licensing Standard Essential FRAND committed Patents in Bundles' <https://poseidon01.ssrn.com/delivery.php?ID=558024120114000079083076008071125028033081036015093092028098101121122017094123022006001026024056060127015098120114071083074094049035005060074064077007066067065112060023019001078080098012093113017093110127102093088102007013125005076095097119090106072&EXT=pdf>

[26] https://link.springer.com/content/pdf/10.1007/978-981-10-6011-3_3.pdf

[27] https://link.springer.com/content/pdf/10.1007/978-981-10-6011-3_3.pdf

[28] Anne Layne-Farrar and Michael A. Salinger, 'The Policy Implications of Licensing Standard Essential FRAND committed Patents in Bundles' (2017).

[29] 'Chapter 5: Antitrust Issues in The Tying and Bundling of Intellectual Property Rights | ATR | Department of Justice' (Justice.gov, 2017) <https://www.justice.gov/atr/chapter-5-antitrust-issues-tying-and-bundling-intellectual-property-rights>

[30] No enterprise or association of enterprises or person or association of persons shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India.

[31] The Commission shall, while determining whether an agreement has an appreciable adverse effect on competition under section 3, have due regard to all or any of the following factors, namely: (a) creation of barriers to new entrants in the market; (b) driving existing competitors out of the market; (c) foreclosure of competition by hindering entry into the market; (d) accrual of benefits to consumers; (e) improvements in production or distribution of goods or provision of services; (f) promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services.

[32] There shall be an abuse of dominant position 4 [under sub-section (1), if an enterprise or a group]. — makes conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts

[33] There shall be an abuse of dominant position 4 [under sub-section (1), if an enterprise or a group]. — indulges in practice or practices resulting in denial of market access [in any manner]

[34] There shall be an abuse of dominant position 4 [under sub-section (1), if an enterprise or a group]. — uses its dominant position in one relevant market to enter into, or protect, other relevant market.

[35] http://www.investopedia.com/terms/n/nda.asp

[36] CDOT is a telecom technology development Centre of the government of India administered by the DoT

[37] 'Safeguarding Confidential Business Information Is Not Anti-Competitive - Tele-Talk by Dr Ashish Bharadwaj | ET Telecom' (ETTelecom.com, 2017) <http://telecom.economictimes.indiatimes.com/tele-talk/safeguarding-confidential-business-information-is-not-anti-competitive/1711>

[38] Anne Layne-Farrar, 'Business Models and The Standard Setting Process' (SSRN.com) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1718065>

[39] 'FRAND In India' (administrativestate.gmu.edu) <https://administrativestate.gmu.edu/wp-content/uploads/sites/27/2016/07/SSRN-id2821344-1.pdf>

[40] Intex versus Ericsson CCI Case No. 76 of 2013

[41] Nehaa Chaudhari, 'Standard Essential Patents on Low-Cost Mobile Phones in India: A Case to Strengthen Competition Regulation?' (http://cis-india.org) <http://cis-india.org/a2k/blogs/Standard-Essential-Patents-on-Low-Cost-Mobile-Phones-in-India-A-Case-to-Strengthen-Competition-Regulation.pdf>

[42] Anne Layne-Farrar, 'Business Models and The Standard Setting Process' (SSRN.com) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1718065>

[43] Royalty stacking refers to situations in which a single product potentially infringes on many patents, and thus may bear multiple royalty burdens. The term “royalty stacking” reflects the fact that, from the perspective of the firm making the product in question, all of the different claims for royalties must be added or “stacked” together to determine the total royalty burden borne by the product if the firm is to sell that product free of patent litigation. (http://faculty.haas.berkeley.edu/shapiro/stacking.pdf accessed on 25.11.17).

This edition was prepared by Sidharth Narayan, Research Associate, CUTS International (sid@cuts.org)

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