

ANTI-TRUST AND INTELLECTUAL PROPERTY RIGHTS: ANALYZING THE LEGAL INTERFACE

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Abstract: Prima facie, anti-trust, and Intellectual property law seem to be non-congruent domains, but a closer look reveals that they possess a certain degree of overlap. Both the legal frameworks have a shared objective of promoting consumer welfare, but radically polar means of achieving the same. IPR grants exclusive rights concerning production, transformation, and utilization to the owner of the IPR, thus creating Monopolies. Anti-Trust in most of the countries though not against establishing monopolies, is against its abuse. This potential for abuse of monopolistic dominance by IPR holders necessitates intervention by competition law. Internationally the two spheres of law interact through international principles such as Standard Essential Patents and FRAND standard, which are equivalents of compulsory licenses in India. SEPs are patented standards that are necessary for maintaining interoperability amongst technologies of a singular class and FRAND is a standard for provisioning SEPs in a reasonable and non-discriminatory fashion. Throughout various jurisdictions such as the US, EU, and even China, the intersectionality of competition law and IPR is thoroughly mulled over by the respective courts. The EU and the US follow the principle of essential facilities in which the government takes a non-interfering stance towards the market and intervenes only when some entity withholds information concerning some essential facility, China on the same lines interferes when an entity guards essential information facilitating interoperability. India also has legislative provisions addressing the intersectionality of competition law and IPR. Section 3 of the Competition Act, 2002 allows the agreement to create IPR monopolies, on the other hand IPR framework has provisions for compulsory licensing in case of abuse of IPR monopolies. Despite such legislative measures, India lags behind the developed countries as judicial activism and jurisprudence on intersectionality are still at a nascent stage. Moving forward India shall utilize the lessons

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from the developed nation to develop and vibrant framework around overlaps of competition law with IPR.

Keywords: *IPR, Competition Law, Compulsory Licenses, SEPs, FRAND.*

I. INTRODUCTION

Innovation is a pivotal determinant for ascertaining a country's rate of development, whether it be socio-cultural or economic.¹ Innovation correlates positively with human development, GDP per capita, education, IQ, democracy, and military expenditure per capita, while negatively with inequality and war. Consequently, countries shape their policies and legal framework to promote innovation. Laws relating to Antitrust and Intellectual property form a significant constituent of such a framework. Intellectual property rights of any sort, whether it be patents, copyrights, trademarks, or trade secrets, recognize and reward the inventor or the creator for the creation of a commercially successful product, such as media forms or machines. One such reward is the ability to monetize their creations; intellectual property rights also provide the creator with protection against unauthorized reproductions and misappropriation of their creation. Therefore, by enabling the creators of commercialization and by protecting them against abuse of their creation, intellectual property rights incentivize innovation.²

The law dealing with anti-trust strives to promote competition in the market, as in a setting of healthy competition, the players are compelled to adopt various strategies to attract the consumers,³ which results in better quality of products, more choice to the consumer, and regulation of price. A lack of competition results in the decline of the product or service quality and variety, consequently resulting in a stagnation of innovation.⁴ Anti-trust and Intellectual Property Rights with their idiosyncratic approaches, deliver on the congruent goal of promoting innovation. Notwithstanding, such a congruent goal, both the spheres of law have their points of conflict. Intellectual property rights tend to create monopolies, by giving the sole right of reproduction to the owner of such intellectual property, creating dominant positions, which carry a potential for abuse. Whereas, Anti-trust strives to eliminate any sort of abuse of a dominant position.⁵

¹ Kjell Hausken, John F. Moxnes, 'Innovation, Development and National Indices', (2019) 141 Springer, 1135

² 'Innovation and Intellectual Property' (WIPO) <https://www.wipo.int/ipoutreach/en/ipday/2017/innovation_and_intellectual_property.html#:~:text=Patents%20recognize%20and%20reward%20inventors,invested%20in%20developing%20a%20technology> accessed 20 December, 2023

³ 'Why Competition Policy Is Important for Consumers' (European Commission) <https://competition-policy.ec.europa.eu/about/why-competition-policy-importantconsumers_en#:~:text=Better%20quality%3A%20Competition%20also%20encourages,or%20friendlier%20and%20better%20service.> accessed 20 December 2023

⁴ Arvey Leibenstein, 'Allocative Efficiency Vs. "X-Efficiency"', 1966 56 American Economic Review, 392-415

⁵ Tuire Anniina Väisänen, *Enforcement of FRAND Commitments under Article 102 TFEU* (Nomos) 27-32

In India, these laws work in overlapping spheres, though without a stringent demarcation of such overlap. To what extent the Intellectual property rights have immunity against competition law, or when competition laws intervene the intellectual property rights are murky waters. This paper is an attempt to outline the exact interface between competition law and intellectual property rights in India. Along with that, this paper will also lay out the scenarios wherein granting IPRs can result in anti-competitive practices and what measures are present to prevent the same. The paper would also analyze various judicial decisions (both national and international), to outline when and how the competition law can regulate the IPR.

II. COMPETITION AND IPR: THE INTERFACE

a. Jurisprudential analysis

As aforementioned, the entire legal framework of anti-trust is to prevent the abuse of a dominant position.⁶ Therefore, the sphere of anti-trust intervenes with intellectual property rights when there is an abuse of the monopolistic position as a consequence of intellectual property rights. Some examples of such scenarios wherein there might be an abuse of monopolistic position as a product of IPR can be:

Standard Essential Patents: A standard may be defined as a common layout (or blueprint),⁷ through which a multi-variate system operates, precisely, a standard is a common operating system for various machines. For example, all the television remotes in the country work on the AAA type battery, here the AAA battery is the standard for remote controls. Standards are created so that there is uniformity in the operation of the equipment, and to facilitate consumer efficiency in the utilization of the product. Sometimes, it might be the case that such standards are patented, such patented standards are referred to as Standard essential patents (or SEPs). This presence of SEPs generates scope for the abuse of a dominant position. The owner of the SEPs may charge very high licensing fees or they might grant preferential patents, or refuse to grant license to anyone altogether, generating anti-competitive forces in the market. Such practices are termed patent hold-ups.⁸ To avoid such patent hold-ups, the governments of various countries have made it mandatory

⁶ *Ibid.*

⁷Mark A. Lemley, Herbert Hovenkamp, Mark D. Janis, Christopher R. Leslie, 'IP and Antitrust: An Analysis of Antitrust Principles Applied to Intellectual Property Law' 2010 Austin: Aspen Publishers

⁸ Joseph Farrell et al., Standard Setting, Patents & Hold-up, 74 Antitrust Law Journal 603, 603-04 (2007)

to offer SEPs on a Free, Reasonable, and Non-Discriminatory (FRAND) basis,⁹ which means that the owner of SEPs shall provide a license to anyone in requirement at a reasonable rate. Nevertheless, players having significant control in the market tend to not disclose information on a FRAND basis. The following sections of this essay will provide various case studies wherein there was a violation of the FRAND agreement.

High pricing- Patent owners of such technologies which are essential for the manufacturing their competitor's products, might also fix high-licensing prices to hinder the production of their competitor's products. For example, let us assume that someone has a patent for the design of a filament used in a light bulb that is commonly used by the bulb manufacturers to produce bulbs, such patent holder might charge very high for granting the License to the filament to a certain bulb manufacturer while trying to set-up a competitive advantage for some other manufacturer.

b. The Indian interface

As far as the Indian legal landscape is concerned the Anti-trust laws are mainly governed by the Competition Act, of 2002; whereas the Intellectual Property rights are governed by the Synergistic functioning of various acts, such as The Patents Act of, 1970, the Copyright act, 1957 and the Trade Marks Act, 1999 etc. On examination of the aforementioned legislations, it can be conclusively said that the anti-trust and IPR laws in India have a collaborative interface.

IPR in competition: Section 3 of the Competition Act¹⁰ deals with the regulation of anti-competitive agreements, sub-section (5)(i) of the section creates an exception for the agreements that might possess anti-competitive elements, the sub-section specifically excludes any agreement formed to prevent the infringement of IPR, also agreements made under any sort of IPR- protective act operating within the country.

Section 4 of the Competition Act¹¹ also mentions that the act is operating to curtail the abuse of a dominant position, not mere formation of a dominant position, therefore the Competition Act would not prevent the creation of monopolies as a consequence of granting of IP rights.

Competition in IPR: A fact which has been well established herein is that the granting of intellectual property rights tends to create monopolies, this fact has been well recognized by the

⁹ Tuire Anniina Väisänen (n 5)

¹⁰ Competition Act, 2002, s 3

¹¹ Competition Act, 2002, s 4

intellectual property framework in India and the legal framework tries to accommodate the same. The Patents Act of, 1970¹² makes sure that no patent is granted just for someone to enjoy a monopoly in the market, rather the same is granted for the welfare of the society at large¹³. The Patents Act under section 3, clause (a) & (e)¹⁴ also prohibits evergreen patents in India¹⁵, as it might generate anti-competitive forces in the market.¹⁶

Furthermore, the patent regime in India has provisions for ¹⁷compulsory licensing, wherein, when the controller of the patents is satisfied that a patent is required for the welfare of the public, and the same is not available at a reasonable rate after three years of granting of such patent, may ¹⁸grant license at a reasonable rate, notwithstanding the patent owner's permission.

For example, in the case of *Bayer's Corporation v. Union of India* ¹⁹, Nacto Pharma brought the suit against Bayer's patented drug Nexavar, which was used to treat kidney stones. The court in this case held that the drug is not accessible to everyone and even for the people to whom it is accessible, it is not available at a reasonable price, and therefore, granted the compulsory License of the said drug.

India also follows the doctrine of fair use when it comes to the unauthorized use of copyrighted material, as per the doctrine, an unauthorized use of copyright material can be made if the same is done for fair criticism, reporting, observation, or study.²⁰

From the aforementioned it can be indubitably said that the interface of Anti-trust laws and IPR, in India is exquisitely harmonious, wherein the juridical infrastructure surrounding both allow space for the action of the other, yet when it comes to actual application the things might not be as synergistic as they appear on text. The sections following will enumerate how the Interface between Anti-trust and IPR works in actuality, internationally, and in India, through a case-study method.

¹² Patents Act 1970, s 82(b)

¹³ Patents Act, s 83(c)

¹⁴ Patents Act, s 3(a) and (e)

¹⁵ Ever-greening patents is a process wherein new patents are generated on the almost similar design or process, by tweaking it and making minor ineffective changes.

¹⁶ Pradeep S Mehta, Ujjwal Kumar, Parveer Singh Ghuman, 'Interface between Competition Policy Intellectual Property Rights: Select Case Studies from India', 2020 Sustainable Development Policy Institute.

¹⁷ Patents Act 1970, s 84

¹⁸ 'Compulsory Licensing of Pharmaceutical Patents' *Economic and Political Weekly*, (25th September 2010) 52 8.

¹⁹ *Bayer's Corporation v Union of India* W.P. No. 1323/2013

²⁰ Copyright Act 1957, s 52

III. ANTI-TRUST AND IPR: A COMPARATIVE CROSS JURISDICTIONAL ANALYSIS

This section will analyze how the interface between IPR and Anti-trust works in different jurisdictions, and also how the interface has been interpreted by the courts domestically.

*a. Microsoft Corp v. The Commission: The European Perspective*²¹

Microsoft was facing various accusations, concerning its adoption of anti-competitive behavior towards its competitors. In 1993, a company by the name of Novell raised the pertinent issue; herein Microsoft was taking royalty from suppliers of the Microsoft Operating system based on per unit sold, whether or not the unit contained the Windows operating system, in this case, a mutual settlement was established that the royalties would be collected on the per processor basis.²²

The case that is relevant to this section was filed by Sun Microsystem in the year 1988, with regards to the non-availability of the necessary information which was indispensable for maintaining interoperability (Interoperability is the ability of different computerized systems to exchange information effectively and efficiently) between Microsoft and the operating system of Sun Microsystem named Solaris.²³ The case persisted for 5 years, in 2003 the commission gave a judgment against Microsoft while directing Microsoft to share all the necessary information required to maintain interoperability between Microsoft and other operating systems and also to produce versions of Microsoft's operating system without Windows Media Player.²⁴ Apart from this the commission also imposed a hefty fine of €497 million, the biggest fine which had been ever imposed by the commission. The commission also set an ultimatum to action for this order. The necessary information was to be supplied within 120 days and a version without the Windows media player was to be supplied within 90 days. Microsoft did release information with regards to

²¹ *Microsoft Corp v The Commission* (Case T-201/04) Commission Decision 2007/53/EC [2007]

²² Abu-Haidar, Lamia, 'Microsoft investigated in Europe' (*CNET 18 October 1997*) <<https://www.cnet.com/tech/services-and-software/microsoft-investigated-in-europe/>> accessed 30 December 2023

²³ 'Interoperability' (*HEAVY.AI*)

<<https://www.heavy.ai/technicalglossary/interoperability#:~:text=Interoperability%20refers%20to%20the%20basic,i mplementation%20or%20access%2C%20without%20restriction.>> accessed 30 December 2024

²⁴ Anneleen Straetemens, 'The Microsoft Case – Not As Soft A Case' 2007-08 44 4 Jura Falconi 563

the source code²⁵ but did not release it in the manner specified by the commission, after the said order Microsoft went into appeal.

In 2006, the EU fined Microsoft an additional €280.5 million, with a rate of €1.5 million per day from 16 December 2005 to 20 June 2006. In 2007, Microsoft finally lost its appeal and was fined € 497 million, and was also ordered by the commission to bear 80 percent of the cost borne by the commission in this case.²⁶

The judgement was based on the *doctrine of essential facilities*, wherein in ²⁷certain exceptional circumstances, a refusal to supply a potential competitor with an essential facility can amount to a breach of Article 82 of the EC Treaty.²⁸ The Exceptional Circumstances laid in this case were, that the essential facility provider must refuse to give access, and other providers of the product must face denial of market access due to such refusal, such a refusal should not have a valid reason and objective justification. To put it concisely, the EU tends to keep its intervention in the matter with regards to dominance created by intellectual property rights to its minimum and only intervenes in exceptional circumstances, where the intervention is unavoidable to keep intact the integrity of the market.

*b. MCI Comm. Corp. v. AT&T: The American Perspective*²⁹

This case was initiated by MCI communication against AT&T, both arch-rivals in the long-distance communication market. MCI accused AT&T that the company was involved in monopolistic and exclusionary practices, MCI was trying to create a monopoly by denying information to its competitors with regards to the bell communication system that AT&T utilized for long-distance communications, which was essential for its competitors to operate. AT&T was also accused of setting-up predatory prices to eliminate competition. Though a clean slate was supplied to AT&T³⁰

²⁵ Microsoft released the source code with respect to the server information requirement, but not the specifications to the Windows Server 2003 Service Pack 1 (SP1) to members of its Work Group Server Protocol Program (WSPP) on the scheduled date of the original deadline

²⁶ Pradeep Mehta (n 16)

²⁷ James Turney, 'Defining the Limits of the EU Essential Facilities Doctrine on Intellectual Property Rights: The Primacy of Securing Optimal Innovation' (2005) 3 Northwestern journal on Technology and IP 179-202.

²⁸ Treaty Establishing the European Communities, art 82

²⁹ *MCI Comm. Corp. v AT&T: The American Perspective* No. 93-356

³⁰ Spencer Weber Waller, 'The New Law of Monopolization: An Examination of MCI Communications Corp. v. American Telephone & (and) Telegraph Co.' (1983) 32 DePaul L Rev 595

about the accusations of predatory prices, AT&T's retaining of essential information was held to be anti-competitive.

The 7th Circuit Court also applied to the *doctrine of the essential facility* to deliver its judgment, the court while showing reluctance to intervene in IPR-related market dominance, held that the court shall intervene in such practices when there is a denial of access to an essential facility. The court also laid down the conditions for what would constitute a denial of an essential facility.³¹ The court held the same to be when an essential facility is controlled by the monopolist, the competitor is unable to feasibly duplicate the essential facility, there is a denial of the facility to a competitor, and practicability and feasibility of providing the facility.

Therefore, both European and American approaches to treating the monopoly created by IPR are rather similar, both, while considering withholding essential information as an anti-competitive practice, intervene only in exceptional circumstances.

c. Huawei v. InterDigital: The Chinese Perspective

This is a preeminent case when it comes to cross-border antitrust suits. The case was brought against InterDigital by Huawei (the biggest handset producer in the world³²) at the People's Intermediate Court in Shenzhen district. Huawei filed two complaints against InterDigital, one pertaining high level of royalties charged by InterDigital³³ and the other with regards to abuse of the Dominant position by InterDigital. InterDigital is a company operating out of Delaware (USA), which has more than 500 patents, most of which are SEPs. InterDigital used to license some of its SEPs relating to Long-distance communication to Huawei.³⁴

Both Huawei and InterDigital are members of the European Telecommunication Standardization Institute, according to which, as soon as someone gets a SEP, they are supposed to ³⁵share the same on FRAND standards, which InterDigital was accused of not doing so, along with which

³¹ The condition laid down in this case are non-exhaustive.

³² Annual Report of Huawei, (Huawei) <<http://www.huawei.com/en/about-huawei/annual-report/2016/foreword>.> accessed 30 December 2024

³³ Shen Zhong Fa Zhi Min Chu Zi No. 857 [2011], 深中法知民初字第 857 号

³⁴ Shen Zhong Fa Zhi Min Chu Zi No. 858 [2011], 深中法知民初字第 858 号

³⁵ ETSI Intellectual Property Rights Policy [2022]

InterDigital was accused of not following various components of Chinese Anti-Monopoly Law (AML).

The Chinese Intermediate Court Decided the case against Intergidital, the decision was made in a twofold manner, firstly the court verified the dominant position held by InterDigital. As per Chinese AML, a mere Dominant Position is not enough to establish liability. Therefore, Secondly, the abuse of dominant position by Huawei was established.

The Intermediate Court held that InterDigital was operating in a monopoly, as the SEPs that it shared with Huawei were unique and non-substitutable when it came to certain standards of 3G technology.³⁶ The intermediate court also established the abuse of power by InterDigital based on grounds,³⁷ the seeking of injunctive relief before the US District Court of Delaware and the ITC during the negotiations with Huawei and thereby breaching the FRAND commitment, the requirement for Huawei to pay much higher royalties than those paid by Apple and Samsung and the amalgamation of its SEPs with non-SEPs during licensing negotiations.³⁸ Therefore, for violating the provisions of AML, the court fined InterDigital with 20 million Renminbi. InterDigital appealed both complaints at the Higher Court of Guangdong, where the appeal was rejected. Therefore, the Chinese approach also prohibits the withholding of information about SEPs.

IV. INTERFACE BETWEEN ANTI-TRUST AND IPR: THE INDIAN JUDICIAL INTERPRETATION

The aforementioned section analyzed the Judicial Interpretation of the interface between IPR and Anti-trust between various international jurisdictions, this section would analyze the interpretation of the same in the domestic milieu.

*a. Telefonaktiebolaget LM Ericsson v. Competition Commission of India*³⁹

³⁶ Guangjie Li, *Revisiting China's Competition Law and Its Interaction with Intellectual Property Rights* (Nomos) 59-72

³⁷ Michael Han, Kexin Li, 'Huawei v. InterDigital: China the Crossroads of Antitrust and Intellectual Property, Competition and Innovation' *Competition Policy International* 1-9

³⁸ InterDigital brought a suit against Huawei, for non-payment of royalties. Such suit was contrary to the FRAND agreement

³⁹ *Telefonaktiebolaget LM Ericsson v Competition Commission of India* W.P.(C) 464/2014

This case is very relevant when it comes to ascertaining the jurisdiction of CCI in case of abuse of IPR, herein the case was filed against Ericsson by Microsoft at the Competition Commission of India, for withholding information for the GSM standard for which Ericsson had the SEP even though both the companies were the part of European Telecommunication Standardization Institute⁴⁰, and also of having an arbitrary standard of charging royalty.

Whilst the case was being adjudicated by the CCI, Ericsson moved the High Court of Delhi, challenging the Jurisdiction of CCI, arguing that the action of Ericsson was not in anti-competitive practice as the said technology was patented by Ericsson. Delhi High Court while Upholding the Jurisdiction of Competition Commission held that the remedies mentioned under Section 21 of the Competition Act, 2002⁴¹ and Section 82 of the Patents Act⁴² are not mutually exclusive and, whenever there is an abuse of dominance, the CCI can step in. Therefore, the High Court herein accepted the non-disclosure of SEP-related information as per the FRAND standard as an abuse of dominance.

This judgment was further upheld in the case of *Monsanto v. Nuziveedu Seeds*,⁴³ wherein a complaint was filed against Monsanto at CCI for delving into anti-competitive agreements and putting up entry barriers. It dominated the Bt Cotton market, as a consequence of owing patents to the majority of the gene-variety of Bt-cotton. Monsanto moved to the Supreme Court challenging the jurisdiction of CCI. The Supreme Court upheld the jurisdiction of CCI, relying on the ratio delivered in Ericsson's case.

*b. Nokia Technologies v. Gauandaong Oppo Mobile Telecommunication Corp Ltd*⁴⁴

This case gave a profound explanation of the workings of SEPs and FRAND in the Indian context. The case was adjudicated by the High Court of Delhi, where Nokia accused Oppo of non-payment of royalties on the SEPs that Nokia provided to Oppo. Both Nokia and Oppo are members of the European Telecommunication Standardization Institute (ETSI). Nokia had Three SEPs on 3G, 4G,

⁴⁰ ETSI (n 37)

⁴¹ Competition Act 2002, s 21

⁴² Patent Act 1970, s 82

⁴³ *Monsanto v Nuziveedu Seeds* [AIR 2019] 3 SCC 381

⁴⁴ *Nokia Technologies v Gauandaong Oppo Mobile Telecommunication Corp Ltd* CS (COMM) 303/2021

and 5G network communication, which were being employed by Oppo in its handsets. Nokia accused Oppo of non-payment of Royalties for the Utilization of the same.

The court herein went deep into the functioning of SEPs and FRAND internationally, while relying heavily on the case *Unwired Planet International Ltd. v. Huawei Technologies (UK) Company Ltd.*⁴⁵ The Hon'ble court elucidated that SEPs are put in place to prevent the abuse of Standards by the patent holders, though it also accepted that even with SEPs, the licensee has to pay royalty to the patent-holder on the FRAND standards. The court laid down the conditions according to which the patent-holder of a SEP can file a suit for infringement. The asserted patent shall be a SEP, (ii) the technology used by the defendant infringes the SEP, (iii) the royalty rate at which the plaintiff is willing to license its SEP is FRAND, and (iv) the defendant is unwilling to take the license at the said FRAND rate.

Therefore, the two important element elements for the collection of royalties on SEP are the presence of SEP and FRAND rates. The same was not established by Nokia and the case was decided in the favor of Oppo. In this case, the Hon'ble Court recognized the role of SEPs and that they shall be treated only on a FRAND basis.

c. *Intex Technologies (India) Ltd. v. Telefonaktiebolaget L.M. Ericsson*⁴⁶

This case was an appeal by Intex in the High Court of Delhi, against the impugned judgment of a Single Judge bench, wherein it ordered Intex to pay royalties to Ericsson for the SEP of Ericsson which it implemented. Intex also moved a complaint against Ericsson in CCI, and the Hon'ble Court addressed the jurisdiction of CCI in adjudicating such matters. The single judge bench held that the SEPs held by Ericsson were granted to Intex based on FRAND standards and therefore, Intex is liable to pay royalties on SEP to Ericsson. The Hon'ble High Court while upholding the judgment given by the single Judge asserted the arrangement between Intex and Ericsson as per the conditions laid down in *Nokia Technologies v. Gauandaong Oppo Mobile Telecommunication Corp Ltd.*⁴⁷ therefore; Intex shall be paying Royalties to Erricson. The court also upheld the jurisdiction of CCI in Adjudicating such matters.

⁴⁵ *Unwired Planet International Ltd. v Huawei Technologies (UK) Company Ltd* UKSC 2018/0214

⁴⁶ *Intex Technologies (India) Ltd. v Telefonaktiebolaget L.M. Ericsson* [2023] 299 DLT 737 (DB)

⁴⁷ Nokia (n 44)

V. CONCLUSION: THE NEED FOR PATIENCE

This paper set out to lay down and analyze the interface between IPR and Anti-trust law, both internationally and domestically. One thing that can be conclusively said about the same is that the interface is murky, yet ever-evolving and dynamic. But, the intention of promoting consumer welfare is ever-convergent. Initially, the spheres of anti-trust were supposed to be incongruent and divergent, but then it was realized that dominance created by IPR might be misused and therefore, measures were put in place to keep the same in check.

Most of the developed countries around the world like the European Countries, the USA, and China have provisions like SEPs and FRAND to make sure that dominance created by grating of Intellectual Property Rights is not abused and whoever does so is held accountable, while keeping in mind that too much intervention into the same might hinder innovation. This is the reason why most countries work on the principles of *essential facility doctrine* and the *doctrine of exceptional use*.

Domestically, also the legislative interface has a vibrant framework, both the Anti-Trust and IPR legislative frameworks have enough space for each other to work efficiently and collaboratively. The competition law permits the formation of monopolistic agreements within the IPR framework, whereas the IPR has provisions like Compulsory licensing and Fair-used doctrine to ensure the Dominance created by the IPR is not misused, even parallels can be drawn between Compulsory licensing and FRANDs.

When it comes to judicial interpretation, India lacks behind in adventurism, though the apex court has upheld the jurisdiction of CCI in dealing with the abuse of Dominance with regards to IPR, the dealing of Indian courts in discussion concerning the implications of SEPs and FRAND standards are pretty limited, mostly to the high court. Therefore, what is necessitated or essential at this juncture for the Indian courts is to study, understand, and implement the international trends in local jurisprudence.

That being said, considering India to be lacking behind in the development of the interface between IPR and Anti-Trust would be no less than a misstatement, though India might not have inculcated the international trends well within its domestic jurisprudence, the gradual development towards

the same is undeniable. The National Intellectual Property Rights Policy, 2016,⁴⁸ presented by the Ministry of Commerce and Industry through its Department of Industrial Policy and Promotion, states the intention of the government to develop a synergistic framework between IPR and Other legal frameworks, which is inclusive of anti-trust laws.

So, it can be stated conclusively that India is forging forward on the path of developing a rampant interface between IPR and Anti-Trust law, all that remains is to remain patient and observe.

⁴⁸India IP policy, 2016, Ministry of Commerce and Industry
<https://www.meity.gov.in/writereaddata/files/National_IPR_Policy.pdf.> accessed 30 December 2024