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CCI v. SWAPAN DEY: DRAWING THE LINE BETWEEN PATENT EXCLUSIVITY AND ANTICOMPETITIVE EXCLUSION

AUTHORED BY - NIKHIL RANJAN, ARNAV KALBHOR & ARINDAM GUPTA

INTRODUCTION

On February 2, 2026, the Supreme Court of India **("SC")** stayed critical portions of a National Company Law Appellate Tribunal **("NCLAT")** order that had ousted the Competition Commission of India's **("Competition Commission of India")** jurisdiction over disputes involving patent rights. In *Competition Commission of India v. Swapan Dey & Another*[1], a Bench of Justices J.B. Pardiwala and Vijay Bishnoi issued notice and stayed the operation of paragraphs 8-10 of the NCLAT's October 2025 judgment, making it clear that the Court will hear the parties "only on the issue of jurisdiction." With this order, the Supreme Court has reopened one of the most consequential debates in Indian antitrust jurisprudence: when does the exercise of patent rights cross the line from legitimate exclusivity into unlawful exclusion, and who decides?

At its core, this case presents a fundamental tension between two competing policy objectives. On one hand, patent law grants inventors temporary monopolies as a reward for innovation, enabling them to exclude others from making, using, or selling their inventions for a limited period. The Patents Act, 1970, through its comprehensive scheme including Chapter XVI on compulsory licensing, provides mechanisms to address concerns about abuse of patent rights. On the other hand, competition law, embodied in the Competition Act, 2002, seeks to prevent abuse of market power that harms competition and consumer welfare. Section 4[2] of the Competition Act prohibits abuse of dominant position, while Section 3[3] prohibits anti-competitive agreements.

The conflict arises at their intersection. When a patentee licenses its technology, imposing conditions on licensees, does this conduct fall exclusively within the domain of patent law, to

[1] *Competition Commission of India v Swapan Dey & Anr*, Civil Appeal No 519/2026 (SC, order dated 02 February 2026).
[2] The Competition Act, 2002 (12 of 2003), s 4.
[3] The Competition Act, 2002 (12 of 2003), s 3.

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be examined by the Controller of Patents through the lens of compulsory licensing provisions? Or does the CCI retain concurrent jurisdiction to examine whether such conduct has an Appreciable Adverse Effect on Competition **("AAEC")** under Sections 3 and 4 of the Competition Act? The answer to this question has profound implications for innovation, market competition, and consumer welfare across patent-intensive industries including pharmaceuticals, telecommunications, and biotechnology.

The Swapan Dey case brings this question into sharp focus. The dispute originated from a complaint against Swiss pharmaceutical company Vifor International AG concerning its patented drug Ferric Carboxymaltose **("FCM")**, used to treat Iron Deficiency Anaemia in dialysis patients. While the CCI had closed the case on merits in 2022, the NCLAT went further and held that the CCI lacked jurisdiction altogether, reasoning that the Patents Act is a special statute that prevails over the Competition Act in matters involving the exercise of patent rights. In reaching this conclusion, the NCLAT relied on a 2023 Division Bench ruling of the Delhi High Court in the Ericsson-Monsanto line of cases, which had held that Chapter XVI of the Patents Act is a "complete code" for dealing with issues of unreasonable licensing conditions and abuse of patentee status[4].

However, the legal landscape is far from settled. The Supreme Court had previously declined to interfere with the Ericsson Division Bench judgment while keeping questions of law open. A single judge of the Delhi High Court in the *Monsanto*[5] case had taken a contrary view, holding that there is no irreconcilable conflict between the two statutes and that CCI's jurisdiction is not ousted. The Competition Act itself contains provisions that point in different directions: Section 3(5)[6] provides a safe harbour for "reasonable conditions" imposed to protect patent rights, while Section 62[7] states that the Act operates "in addition to, and not in derogation of" other laws.

This article examines the Swapan Dey case and the larger debate and traces the background, competing arguments. It also looks at the tools available to resolve the tension and considers what's at stake while speculating on how the Court might rule.

[4] Telefonaktiebolaget LM Ericsson (PUBL) v CCI*, LPA 247/2016 (Delhi HC, 13 July 2023).
[5] Monsanto Holdings Pvt Ltd v CCI*, W.P.(C) 1776/2016 (Delhi HC, 20 May 2020).
[6] The Competition Act, 2002 (12 of 2003), s 3(5).
[7] The Competition Act, 2002 (12 of 2003), s 62.

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BACKGROUND

The dispute traces its origins to a complaint filed before the Competition Commission of India (CCI) concerning the pricing and licensing of a patented pharmaceutical product.

The Underlying Dispute: Swapan Dey v. Vifor International

On January 12, 2022, Swapan Dey, the Chief Executive Officer of a hospital providing free dialysis services under the Pradhan Mantri National Dialysis Programme, filed information before the CCI against Vifor International AG, a Swiss pharmaceutical company. The information alleged that Vifor had engaged in anti-competitive conduct with respect to its patented drug, FCM, used in the treatment of Iron Deficiency Anaemia.

The complainant alleged that Vifor abused its dominant position under Section 4[8] of the Competition Act, 2002 by restricting the supply of FCM through exclusive licensing arrangements with only two Indian pharmaceutical companies, Emcure Pharmaceutical Ltd., which manufactured the drug locally and Lupin Ltd, which imported it. It was further alleged that this limited supply resulted in artificially high prices, making the drug unaffordable for patients, and that the same product was available at significantly lower prices in neighbouring countries such as Bangladesh[9].

Proceedings Before the CCI

The CCI examined the information and, on October 25, 2022, passed an order under Section 26(2) of the Competition Act closing the matter[10]. The Commission found no prima facie evidence of contravention under Sections 3 or 4 of the Act. It observed that the licensing agreements appeared reasonable, the patent was set to expire in October 2023, and there was no indication of market foreclosure or denial of access. The CCI also noted that Vifor, as a patent holder, retained the right to choose its trading partners.

Appeal Before the NCLAT

Aggrieved by the CCI's order, Swapan Dey filed an appeal before the NCLAT under Section 53B of the Competition Act. During the proceedings, Vifor raised a preliminary objection challenging the very jurisdiction of the CCI to entertain matters involving the exercise of patent

[8] The Competition Act, 2002 (12 of 2003), s 4.
[9] *Swapan Dey v Competition Commission of India*, Competition Appeal (AT) No 5 of 2023 (NCLAT, 30 October 2025).
[10] CCI, Case No 05 of 2022, order dated 25 October 2022.

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rights.

On October 30, 2025, the NCLAT delivered its judgment[11]. While the CCI had closed the case on merits, the NCLAT went further and held that the CCI lacked jurisdiction altogether. Relying on the Division Bench judgment of the Delhi High Court in *Telefonaktiebolaget LM Ericsson v. Competition Commission of India*[12],[the NCLAT reasoned that the Patents Act, 1970 is a special statute and a complete code for dealing with issues pertaining to unreasonable licensing conditions and abuse of patentee status. It held that Section 3(5) of the Competition Act, which protects the right of IP holders to impose reasonable conditions, further reinforced the primacy of the Patents Act. The appeal was dismissed.

The Monsanto Precedent and Conflicting High Court Views

The NCLAT's reliance on the Ericsson Division Bench judgment must be understood in the context of conflicting judicial opinions on this issue.

In *Monsanto Holdings Pvt. Ltd. v. Competition Commission of India*[13], a single judge of the Delhi High Court had taken a contrary view. Rejecting the argument that the Patents Act ousts the CCI's jurisdiction, the court held that Section 62 of the Competition Act, which provides that the Act operates "in addition to, and not in derogation of" other laws clearly indicates legislative intent that the Competition Act supplements, rather than supplants, existing legal frameworks. The court found no irreconcilable conflict between the two statutes and observed that the remedies available under the Patents Act (such as compulsory licensing) are materially different from those available under the Competition Act.

However, in 2023, a Division Bench of the Delhi High Court in *Ericsson v. CCI*[14] overruled the single judge view. Applying the maxim *generalia specialibus non derogant*, the Division Bench held that the Patents Act, being the special statute and subsequent legislation, prevails over the general Competition Act in matters concerning the exercise of patent rights. It characterised Chapter XVI of the Patents Act as a "complete code" for addressing licensing abuses and anti-competitive practices by patentees.

The Supreme Court's Intervention

The CCI challenged the Ericsson Division Bench judgment before the Supreme Court in SLP

[11] *Swapan Dey v Competition Commission of India*, Competition Appeal (AT) No 5 of 2023 (NCLAT, 30 October 2025).
[12] *Telefonaktiebolaget LM Ericsson (PUBL) v CCI*, LPA 247/2016 (Delhi HC, 13 July 2023).
[13] *Monsanto Holdings Pvt Ltd v CCI*, W.P.(C) 1776/2016 (Delhi HC, 20 May 2020).
[14] *Telefonaktiebolaget LM Ericsson (PUBL) v CCI*, LPA 247/2016 (Delhi HC, 13 July 2023).

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(Civil) No. 25026 of 2023. On September 2, 2025, the Supreme Court disposed of the petition, noting that the original complainants had settled their disputes with the patentee and had nothing further to say. Crucially, however, the Court kept all questions of law open to be agitated in an appropriate case.

That appropriate case arrived soon after. On February 2, 2026, the Supreme Court admitted the CCI's appeal against the NCLAT's Swapan Dey judgment. A Bench of Justices J.B. Pardiwala and Vijay Bishnoi issued notice returnable on February 23, 2026, and stayed the operation of paragraphs 8-10 of the NCLAT order, the very paragraphs that ousted the CCI's jurisdiction. The Court made it explicit: it will hear the parties only on the issue of jurisdiction[15].

The stage is now set for the Supreme Court to definitively resolve whether the CCI can investigate anti-competitive conduct arising from the exercise of patent rights, or whether such matters fall exclusively within the domain of the Patents Act.

THE JURISDICTIONAL CONFLICT

The central question before the Supreme Court is whether the CCI possesses jurisdiction to investigate anti-competitive conduct arising from the exercise of patent rights. Two competing positions have emerged, each rooted in distinct interpretive approaches to the relationship between the Patents Act, 1970 and the Competition Act, 2002.

The Case for Patent Law Exclusivity

Proponents of patent law exclusivity argue that the Patents Act occupies the field entirely when it comes to matters concerning the exercise of patent rights. This position rests on several grounds.

First, the *lex specialis* principle dictates that a special statute prevails over a general statute. The Patents Act is undoubtedly a special legislation as it deals specifically with the grant, protection, and enforcement of patent rights. The Competition Act, by contrast, is a general law governing anti-competitive conduct across all sectors of the economy. Where the two intersect, the special statute must prevail.

Second, the Patents Act contains its own comprehensive mechanism for addressing concerns about licensing abuses. Chapter XVI provides for compulsory licences where the reasonable

[15] *Competition Commission of India v Swapan Dey & Anr*, Civil Appeal No 519/2026 (SC, order dated 02 February 2026).

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requirements of the public are not satisfied, the patented invention is not available at an affordable price, or the invention is not worked in India. Section 84(6)(iv) expressly empowers the Controller to consider whether the patentee has engaged in "anti-competitive practices" when examining compulsory licence applications. Section 90(1)(ix) further provides that where a licence is granted to remedy anti-competitive conduct, the licensee may be permitted to export the patented product. These provisions, it is argued, constitute a complete code for dealing with competition concerns in the patent context[16].

Third, Section 3(5) of the Competition Act itself provides a safe harbour for IP rights. It stipulates that nothing in Section 3 shall restrict the right of any person to restrain infringement of, or impose reasonable conditions necessary for protecting, rights conferred under the Patents Act. If the Competition Act exempts patent rights from its own provisions, the argument runs, it cannot simultaneously claim jurisdiction to scrutinise the exercise of those rights.

Fourth, Section 140 of the Patents Act specifically voids certain restrictive conditions in licensing agreements, conditions that would otherwise fall for consideration under competition law[17]. The retention of this provision despite the enactment of the Competition Act indicates legislative intent that such matters remain within the domain of patent law.

The Case for Concurrent CCI Jurisdiction

The counter-argument, advanced by the CCI and affirmed in the Monsanto single judge judgment, maintains that the two statutes can and must coexist harmoniously.

Section 62 of the Competition Act is pivotal to this position. It provides that the provisions of the Act "shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force." This language, it is argued, clearly indicates legislative intent that the Competition Act supplements existing legal frameworks rather than being supplanted by them. The CCI's jurisdiction is concurrent, not subordinate[18].

Section 60 of the Competition Act contains a non obstante clause, providing that the Act shall have effect "notwithstanding anything inconsistent therewith contained in any other law." While this provision must be reconciled with Section 62, it at minimum suggests that the Competition Act was intended to have significant operative effect.

The remedies available under the two statutes are qualitatively different. The Controller of Patents, acting under Chapter XVI, can grant compulsory licences, a remedy that operates *in*

[16] The Patents Act (39 of 1970), ss 83–90.
[17] The Patents Act (39 of 1970) s 140.
[18] The Competition Act, 2002 (12 of 2003) s 62.

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personam and is directed at ensuring access to the patented invention. The CCI, by contrast, can impose penalties, issue cease-and-desist orders, and direct structural remedies designed to restore competition in the market. These remedies serve distinct purposes and can coexist without conflict.

Moreover, Section 3(5) of the Competition Act is not an unlimited exemption. The safe harbour extends only to "reasonable conditions, as may be necessary" for protecting IP rights. The question of what constitutes "reasonable" necessarily requires examination and that examination, it is argued, falls within the CCI's domain. The *Monsanto*[19] judgment emphasised that reading Section 3(5) as a blanket exclusion would render the reasonability requirement meaningless.

Finally, the CCI possesses expertise in competition analysis, defining relevant markets, assessing dominance, evaluating appreciable adverse effect on competition that the Controller of Patents does not. The AAEC test under Section 19(3) of the Competition Act involves considerations of market structure, entry barriers, and consumer welfare that are distinct from the inquiries contemplated under the Patents Act[20]. Comparative analysis of other jurisdictions supports this concurrent approach.

The NCLAT's October 2025 Order

In *Swapan Dey v. CCI*, the NCLAT unequivocally endorsed the patent law exclusivity position. Delivering judgment on October 30, 2025, the Tribunal held that the CCI lacked jurisdiction to examine allegations against Vifor International concerning its patented drug FCM[21].

The NCLAT's reasoning proceeded in three steps. First, it observed that Section 3(5) of the Competition Act protects the right of patentees to impose reasonable conditions for protecting their rights. Second, it relied on the Delhi High Court's Division Bench judgment in *Ericsson* , which had held that Chapter XVI of the Patents Act is a "complete code" for dealing with issues of unreasonable licensing conditions and abuse of patentee status.Third, it noted that the Supreme Court had recently disposed of the CCI's appeal against the Ericsson judgment, albeit while keeping questions of law open.[^4] Reading these together, the NCLAT concluded that "the Patent Act will prevail over the Competition Act" in matters involving the exercise of

[19] *Monsanto Holdings Pvt Ltd v CCI*, W.P.(C) 1776/2016 (Delhi HC, 20 May 2020).
[20] The Competition Act, 2002 (12 of 2003), s 19(3).
[21] *Swapan Dey v Competition Commission of India Competition* Appeal (AT) No 5 of 2023 (NCLAT, 30 October 2025).

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patent rights[22].

The Tribunal further observed that the complainant could have sought a compulsory licence under Section 84 of the Patents Act if affordability or public health requirements were unmet, but could not "short-circuit that route through a competition complaint." The appeal was dismissed.

The Supreme Court's February 2026 Stay Order

On February 2, 2026, the Supreme Court intervened. Admitting the CCI's appeal, a Bench of Justices J.B. Pardiwala and Vijay Bishnoi issued notice returnable on February 23, 2026. Crucially, the Court stayed the operation of paragraphs 8-10 of the NCLAT's order—the precise paragraphs containing the Tribunal's jurisdictional holding.

The Court made its intent clear: "We will be hearing the parties only on the issue of jurisdiction." This formulation serves two purposes. First, it confines the appeal to the legal question of whether the CCI has jurisdiction, excluding any reconsideration of the merits of the underlying complaint. Second, it signals that the Court intends to definitively resolve the conflict that has divided the Delhi High Court and the NCLAT[23].

The stay order temporarily restores the status quo ante, permitting the CCI to exercise jurisdiction over patent-related competition matters pending final adjudication. However, the underlying legal uncertainty remains and will only be resolved when the Supreme Court delivers its judgment.

ECONOMIC AND LEGAL TOOLS FOR RESOLVING THE CONFLICT

If the Supreme Court holds that the CCI has jurisdiction, the next question is how to distinguish legitimate patent enforcement from anti-competitive conduct. Indian competition law provides several tools for this analysis, supplemented by comparative jurisprudence.

The AAEC Test Under Section 19(3)

The primary tool is the AAEC test. Section 19(3) of the Competition Act lists factors the CCI must consider: creation of barriers to new entrants, driving out existing competitors, foreclosure of competition, and accrual of benefits to consumers.

The test doesn't ask whether a patent exists. It asks how the patent is *used*. A patentee who

[22] *Telefonaktiebolaget LM Ericsson (PUBL) v CCI* LPA 247/2016 (Delhi HC, 13 July 2023).
[23] *Competition Commission of India v Swapan Dey & Anr* Civil Appeal No 519/2026 (SC, order dated 02 February 2026).

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simply exercises its exclusive right to make and sell the invention, even at high prices unlikely triggers the test. But a patentee who uses the patent to foreclose competition in a related market, or imposes licensing conditions that go beyond what's necessary to protect the patent, may cross the line.

In pharmaceuticals, this means examining whether a patentee has refused to license to generic manufacturers despite surplus capacity or entered into exclusive arrangements that prevent distributors from dealing with substitutes.

Demand-Side and Supply-Side Analysis

Defining the relevant market is essential. On the demand side, the question is whether patients and doctors view other drugs as substitutes. If a patented drug has unique therapeutic properties with no close substitutes, the market may be defined narrowly.

On the supply side, the question is whether other manufacturers could easily switch to producing the drug. In pharmaceuticals, this is complicated by regulatory approvals, patent barriers, and development timelines. The fact that Vifor's FCM patent was set to expire in 2023 was relevant once the patent expired, supply-side substitution became possible[24].

The Essential Facilities Doctrine and Refusal to Deal

The essential facilities doctrine holds that a dominant firm controlling a facility essential to competition in a downstream market may be required to provide access on reasonable terms.

In the patent context, this is contentious. A patent is by definition exclusive, others cannot use the invention without permission. But if a patented input is essential to compete downstream, and the patentee refuses to license on reasonable terms, the conduct may shift from exclusivity to exclusion.

Section 4(2)(c) of the Competition Act specifically includes “denial of market access” as an abuse. Whether refusal to license a patent constitutes denial of market access depends on factors like whether the patent is essential to compete, whether substitutes exist, and whether the refusal is objectively justified.

When Does Patent Exercise Cross the Line?

Several factors help distinguish legitimate exercise from anti-competitive conduct:

First, the nature of the restriction. Conditions directly preventing infringement, like

[24] CCI, Case No 05 of 2022, order dated 25 October 2022.

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prohibitions on reverse engineering are likely legitimate. Conditions extending beyond the patent's scope like tying or non-compete clauses invite scrutiny.

Second, market position. A patentee with genuine market power raises greater concerns than one facing competition.

Third, substitute availability. If the patented technology is essential to compete downstream, the case for intervention is stronger[25].

Fourth, effect on innovation. Remedies that force licensing on overly generous terms might discourage future innovation. The AAEC test attempts to balance this.

Fifth, alternative remedies. If a compulsory licence under the Patents Act would adequately address the concern, CCI intervention may be less necessary. But as the *Monsanto* judgment noted, the remedies are different and may serve different purposes[26].

4Comparative Approaches

Comparative analysis of other jurisdictions provides valuable guidance.

The EU Approach

The European Court of Justice has developed a nuanced approach. In *Magill*, refusal to license copyrighted TV listings was abusive where the information was indispensable, the refusal prevented a new product, and there was no justification[27].

In *IMS Health*, the Court refined the test: refusal is abusive where (i) the product is indispensable to compete downstream, (ii) the refusal prevents a new product for which there is demand, and (iii) there's no objective justification[28].

In *Microsoft*, the Court applied these principles to refusal to supply interoperability information, even though IP-protected[29]. Once a product becomes an industry standard, the owner may be required to license on reasonable terms[30].

These cases establish that IP rights are not absolute, they can be abused. But the threshold is high.

The US Approach

US antitrust law takes a more cautious view. In *Walker Process* (1965), enforcing a patent

[25] 'Exploring Anti – Competitiveness in Standard Essential Patents; A Law and Economics Perspective' (2024) RMLNLU Law Review.
[26] *Monsanto Holdings Pvt Ltd v CCI* W.P.(C) 1776/2016 (Delhi HC, 20 May 2020).
[27] Joined Cases C-241/91 P & C-242/91 *P Magill* [1995] ECR I-743.
[28] Case C-418/01 *MS Health* [2004] ECR I-5039.
[29] Case T-201/04 *Microsoft* [2007] ECR II-3601.
[30] 'Herbert Hovenkamp, Federal Antitrust Policy' (5th edn, West 2016).

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obtained through fraud on the Patent Office could violate antitrust laws[31]. The *Noerr-Pennington* doctrine protects petitioning activity unless it's a "sham."

In *Image Technical Services v. Kodak*, the Ninth Circuit held that while IP rights don't confer market power, their exercise can still violate antitrust laws in appropriate circumstances[32].

The US approach focuses on conduct beyond the legitimate scope of the patent—fraudulent procurement, sham litigation, or exclusionary conduct.

4Drawing the Threads Together

The existence of a patent doesn't immunise conduct from competition scrutiny. But neither does competition law ignore legitimate patent interests. The line is crossed when the patent is used not to protect the invention, but to exclude competition in a way that harms consumers without offsetting benefit.

The AAEC test provides the structure. The comparative cases supply the nuance and the specific facts market definition, substitute availability, nature of restrictions determine the outcome.

For the Supreme Court, the question isn't whether Vifor crossed this line. The question is whether the CCI should have the chance to ask it at all.

IMPLICATIONS OF THE CASE

The Supreme Court's decision in Swapan Dey will ripple far beyond the parties before it. Depending on which way the Court rules, the implications for industry, innovation, and consumers could be significant.

For the Pharmaceutical Industry

The pharmaceutical sector has the most at stake. Patents are central to how drug companies do business they recover R&D costs through exclusive rights, and licensing arrangements determine who gets to manufacture and sell what.

If the Court upholds the NCLAT's view that the CCI has no jurisdiction, pharmaceutical patentees effectively operate outside competition scrutiny. Licensing terms, refusal to deal, and pricing strategies would be reviewed only under the Patents Act primarily through compulsory licensing applications before the Controller. This gives patentees greater certainty and removes

[31] *Walker Process Equipment Inc v Food* Machinery 382 US 172 (1965).
[32] *Eastman Kodak Co v Image Technical Services Inc* 125 F.3d 1195 (9th Cir. 1997).

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the risk of parallel CCI investigations.

If the Court instead holds that the CCI has concurrent jurisdiction, pharmaceutical companies face dual oversight. A licensing arrangement could be challenged before the Controller (for compulsory licence) and the CCI (for abuse of dominance) simultaneously. This could lead to inconsistent outcomes and regulatory burden but also ensures that competition concerns aren't ignored simply because a patent exists.

The Vifor case itself illustrates the tension. The complaint was about access to a patented drug, exactly the kind of issue that sits at the intersection of patent policy and competition policy.

For Innovation Incentives

The decision will also affect how innovators view the Indian market. Patent exclusivity is, at its core, an incentive to innovate. The promise of temporary monopoly power encourages investment in research and development.

A ruling that immunises patentees from competition scrutiny strengthens that incentive. Innovators can be confident that their licensing decisions won't be second-guessed by the CCI. This may encourage greater investment and technology transfer.

But there's another side. Competition law doesn't undermine innovation it targets *abuse* of market power that harms the innovation ecosystem. Predatory licensing that forecloses competition can actually *discourage* innovation by smaller players. Generic manufacturers, for instance, may invest in developing alternatives if they know that dominant patentees can't use exclusionary tactics to keep them out.

The balance is delicate. The Court's task is to determine where the line should be drawn not to strike the balance itself, but to decide who draws it.

For Other Sectors

While Swapan Dey is a pharmaceutical case, its reasoning will apply across industries. Telecom, technology, and biotechnology all rely heavily on patents and licensing[33].

The Ericsson case, which shaped the NCLAT's reasoning, arose from telecom standard-essential patents. If the CCI is ousted from patent matters entirely, SEP holders may face less scrutiny over licensing terms, including allegations of excessive royalties or discriminatory licensing. This could affect everything from mobile handset prices to the rollout of new technologies.

[33] 'Exploring Anti – Competitiveness in Standard Essential Patents; A Law and Economics Perspective' (2024) RMLNLU Law Review.

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The Delhi High Court's Division Bench in Ericsson explicitly held that Chapter XVI of the Patents Act is a "complete code" for dealing with licensing abuses[34]. If the Supreme Court endorses this view, patent-intensive industries across the board will be regulated primarily through the patent regime, not competition law.

For Consumers and Access to Essential Medicines

Finally, the decision has implications for consumers and particularly patients who depend on access to affordable medicines.

The complainant in Swapan Dey wasn't a competitor seeking market entry. He was a hospital administrator trying to secure affordable drugs for dialysis patients. His concern wasn't about the structure of the market in the abstract, it was about whether patients could get the medicine they needed.

If the CCI is excluded from patent matters, consumers lose one potential avenue for challenging practices that limit access. The Patents Act offers compulsory licensing, but this remedy is rarely granted and involves a different kind of inquiry, focused on whether the patentee has met the "reasonable requirements of the public," not on whether competition has been harmed. The Monsanto judgment noted that the remedies under the two statutes are materially different[35]. The CCI can impose penalties, issue cease-and-desist orders, and direct behavioural remedies ie. tools designed to restore competition, not just ensure access to a particular invention. If these tools are unavailable in patent matters, consumers may have fewer protections.

ASSESSING THE LIKELY OUTCOME

Predicting how the Supreme Court will rule is always speculative, but the arguments and precedents point in a few possible directions.

Competing Interpretations of Section 62

The outcome largely turns on how the Court reads Section 62 of the Competition Act. The provision says the Act operates "in addition to, and not in derogation of" other laws[36].

If the Court reads this literally, the CCI's jurisdiction runs parallel to the patent regime. The Patents Act doesn't oust the Competition Act, they coexist. This was the Monsanto single judge

[34] *Telefonaktiebolaget LM Ericsson (PUBL) v CCI*, LPA 247/2016 (Delhi HC, 13 July 2023).
[35] *Monsanto Holdings Pvt Ltd v CCI* W.P.(C) 1776/2016 (Delhi HC, 20 May 2020).
[36] The Competition Act, 2002 (12 of 2003) ss 60–62.

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view[37].

If the Court instead reads Section 62 as subject to the *lex specialis* principle, the Patents Act prevails whenever a patent is involved. The "in addition to" language can't save CCI jurisdiction if the two statutes genuinely conflict—and the Ericsson Division Bench found they do[38].

The Supreme Court's own order in the Ericsson SLP kept questions of law open. That suggests the Court isn't bound by the Division Bench view and can reconsider the issue afresh.

The Supreme Court's Approach to Jurisdictional Conflicts

The Court has dealt with similar conflicts before. In *CCI v. Bharti Airtel*, it held that the CCI could proceed only after the sectoral regulator (TRAI) had determined technical issues[39]. But crucially, the Court didn't oust CCI jurisdiction entirely, it merely deferred it pending the regulator's findings.

The petitioners in Swapan Dey rely heavily on Bharti Airtel, arguing that the Controller of Patents should first determine whether licensing terms are reasonable. But as the Monsanto judgment noted, the Controller's role is different from TRAI's, as it regulates the telecom industry pervasively; the Controller examines patent applications and compulsory licences but doesn't regulate ongoing conduct. The analogy may not hold.

Patent Safe Harbour or Case-by-Case Test?

The Court has three broad options.

First, it could create a complete patent safe harbour, holding that the CCI has no jurisdiction over any matter involving the exercise of patent rights. This would endorse the NCLAT and Ericsson Division Bench view. Patentees would operate exclusively under the Patents Act.

Second, it could hold that jurisdiction is always concurrent, the CCI can examine any conduct, regardless of whether a patent is involved. This would endorse the Monsanto single judge view. Every patent licensing dispute could potentially land before the CCI.

Third, it could adopt a middle path: the CCI has jurisdiction, but must defer to the Controller on technical patent issues, or must consider the existence of a patent as a relevant factor in its analysis. This would follow the Bharti Airtel model of coordinated decision-making.

The third option seems most likely. The Supreme Court rarely adopts absolute positions. It

[37] *Monsanto Holdings Pvt Ltd v CCI* W.P.(C) 1776/2016 (Delhi HC, 20 May 2020).
[38] *Telefonaktiebolaget LM Ericsson (PUBL) v CCI* LPA 247/2016 (Delhi HC, 13 July 2023).
[39] *CCI v Bharti Airtel Ltd* (2019) 2 SCC 521.

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prefers nuanced solutions that preserve both statutory schemes. A middle path would allow the CCI to examine competition issues while recognising that patent-specific questions—like validity or scope, are for the Controller. It would also align with comparative approaches in the EU and US, which don't immunise patentees but set a high threshold for intervention.

The Court's observation that it will hear the parties "only on the issue of jurisdiction" suggests it intends to settle the legal question definitively. But definitive doesn't have to mean absolute. A framework that allocates questions to the appropriate forum that patent issues to the Controller, competition issues to the CCI, would respect both statutes and provide clarity going forward.

CONCLUSION

The Supreme Court's decision in *CCI v. Swapan Dey* will settle a question that has divided Indian courts for nearly a decade: whether the competition regulator can scrutinise conduct that lies at the intersection of patent rights and market power.

The stakes are considerable. For the pharmaceutical industry, the outcome determines whether licensing arrangements face dual oversight or remain exclusively within the patent regime. For innovators, it affects the certainty and scope of patent protection. For consumers, particularly those dependent on essential medicines, it determines whether the CCI remains available as a forum to challenge practices that limit access and for other patent-intensive sectors, telecom, technology, biotechnology, the reasoning will apply with equal force.

But the case also reflects a broader challenge facing competition authorities worldwide. Traditional antitrust tools were designed for an economy of factories, railways, and steel plants. Applying them to industries built on intellectual property, where the very source of market power is a legal right granted by the state, requires nuance. The question isn't whether patents should be immune from competition law, or whether competition law should disregard patents entirely. The question is how to design a framework that respects both.

Comparative jurisdictions offer guidance. The EU's essential facilities cases establish that IP rights are not absolute, but set a high threshold for intervention. US antitrust law focuses on conduct beyond the legitimate scope of the patent, fraudulent procurement, sham litigation, exclusionary behaviour. Both approaches reject blanket immunity in favour of context-specific analysis.

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The Indian framework has the tools for such analysis. The AAEC test under Section 19(3) directs attention to market effects, not just legal rights. Section 3(5) protects reasonable conditions but requires reasonableness to be shown. Section 62 confirms that the Competition Act supplements, not supplants, other laws. These provisions don't demand an either-or choice between patent exclusivity and competition scrutiny. They invite a coordinated approach—patent issues for the Controller, competition issues for the CCI.

The Supreme Court now has the opportunity to provide that clarity. A middle path recognising concurrent jurisdiction but allocating questions to the appropriate forum would respect both statutory schemes, preserve the CCI's expertise in competition analysis, and ensure that patent rights don't become a licence to harm competition. It would also bring India closer to the mainstream of global antitrust practice, where intellectual property and competition law are understood as complementary rather than conflicting regimes.

Whatever the Court decides, the days of uncertainty are numbered. After nearly a decade of conflicting judgments, the law will soon have an answer.