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Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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HARMONIZING THE JURISDICTION OF THE COMPETITION COMMISSION OF INDIA FOR PATENT REGULATION

AUTHORED BY - PRAKRUTH P HONAGANAHALLI

In 2023, the Delhi High Court, in the case of [*Telefonaktiebolaget LM Ericsson \(PUBL\) v. Competition Commission of India*](#), held that when a patentee exercises rights granted under the Patents Act, the Competition Commission of India (CCI) is barred from scrutinizing the nature and manner of such exercise, under the powers granted by the Competition Act, 2002. The two-judge bench of the High Court found that Chapter XVI of the Patents Act constituted a self-contained code, thus taking precedence over any proceedings initiated under the Competition Act.

Recently, in March 2024, the Supreme Court of India admitted a Special Leave Petition filed by the CCI and issued notices against the decision of the Delhi High Court, signifying a crucial juncture, warranting a revisiting of the case's intricacies and implications. The Patent holders argue that remedies within the Patents Act suffice for addressing licensing matters, including restrictive conditions and pricing concerns. Conversely, the Competition Commission of India asserts its authority in cases of anti-competitive behavior by patentees, emphasizing its role in safeguarding public and national interests, despite any overlap with the Patents Act. The Supreme Court is required to answer if and whether the CCI's jurisdiction can be entirely ousted from matters concerning anti-competitive agreements and abuse of dominant status among patent holders and whether Chapter XVI of the Patent Act was intended to create an exclusive domain for the Patents Act.

Judgement

The division bench of The Delhi High Court extensively compared relevant provisions in the Competition Act and the Patents Act. It reasoned that the investigative powers granted to the CCI under the Competition Act, concerning anti-competitive agreements, closely align with those of the Controller of Patents (Controller) under Sections 84(6) and 84(7) of the Patents Act. Section 84 of the Patents Act outlines conditions for applying for a compulsory license on a patent. Section 84(6)(iv) requires the applicant to try to secure the license on reasonable terms. In this context, the

Court applied the principles of *generalia specialibus non derogant* and *lex posterior derogat priori* to rule that the Patents Act should take precedence over the Competition Act, when it concerns the exercise of rights by a patent holder under the Patents Act. Furthermore, the Delhi High Court recognized that restrictions under Section 83(f) serves a similar purpose to that of Section 4 of the Competition Act.

Scheme of the Legislations

The compulsory licensing provision is specific to Patent law and aims to balance the rights of patentees with public interest by allowing third parties to obtain compulsory licenses in certain circumstances, under Section 84 of the Patents Act. It is a mechanism to ensure that patented inventions are adequately commercialized and accessible to the public. The grant of compulsory licenses under the Patents Act is subject to various limitations. For instance, the Controller is required to weigh the "reasonable requirements of the public" against the rights of the patentee; it can only grant a compulsory license after a three-year period. Furthermore, the Controller must also consider the ability of the applicant to exercise and develop the patent for the purposes of public advantage. There is also ambiguity about whether the Controller plays the role of an implementer or regulator, under the Patents Act scheme.

Whereas Sections 3 and 4 of the Competition Act have a broader scope and apply to all enterprises and industries. Section 3 prohibits anti-competitive agreements, such as those that determine prices, limit production or supply, share markets or sources, or result in bid-rigging or collusive bidding. Section 4 prohibits the abuse of dominant market position through practices such as imposing unfair conditions or prices, limiting production or technical development, denying market access, or leveraging dominance across markets.

Remedies under the Competition Act vary significantly from those of the Patent Act. Although the CCI does not have the power to grant compulsory licenses, it is empowered to grant compensation and impose monetary penalties. Unlike the Controller, it is not subject to any threshold to engage anti-competitive allegations and has the option to be more purposive when considering *locus standi*, as anyone alleging a violation of Section 3 and Section 4 of the Competition Act may approach the CCI. Further to enhance its bite, the CCI is granted the power of investigation under Section 26 and Section 29 with respect to anti-competitive agreements and combinations, which the Controller does not have under the Patents Act, despite what is provided for under Section 84 of the Patents Act. Additionally, Neither Section 77 nor Section 88 enable

the Controller to investigate if patentees have engaged in anticompetitive practices through the exercise of rights granted by patents. The CCI has also been granted certain discretionary powers. For instance, if a patentee is found to have abused its dominant position through practices outlined in Section 4(2), the CCI may pass an order under Section 27(g), directing the informants to apply for a compulsory license. In cases of *suo moto* action by the CCI, it may even apply for a compulsory license itself.

Construction of Statutes

In [*CCI v. Bharti Airtel*](#), the Supreme Court grappled with a similar jurisdictional dilemma between the Telecom Regulatory Authority of India (TRAI) and the CCI. The Court recognized CCI's competence in assessing the potential impact of agreements between telecom operators on competition. The Supreme Court affirmed CCI's jurisdiction, stipulating that it should be subsequent to TRAI's investigative process. However, the Delhi High Court did not offer reasons to deviate from the Supreme Court's ruling in *CCI v. Bharati Airtel*. Consequently, the judgment of the Delhi High Court creates a void by hindering the application of competition law remedies in instances of market abuse through patents.

By enabling the applicability of the Competition Act, practices outlined as constituting an abuse of dominant position under Section 4(2) could be aligned with Patent law while considering the grant of compulsory licenses by the Controller. For example, imposition of unfair or discriminatory conditions or prices [Section 4(2)(a)], limited production or technical development [Section 4(2)(b)], denial of market access [Section 4(2)(c)], or leveraged dominant position across markets [Section 4(2)(e)] by the patentee may be grounds for considering the grant of a compulsory license under the patent law if read with Section 84 (1)(a) or Section 84(1)(b) of the Patents Act.

Additionally, when there exists the avenue of public law recourse to fulfil the objectives of promoting competitive market practices through the authority of the Competition Commission of India, that offers distinct remedies from that of the Patents Act, it would be prudent to grant it jurisdiction. Accordingly, it is important to consider the perspective of the CCI, that its jurisdiction serves the broader public interest. Notwithstanding the above, one of the key advantages in allowing the jurisdiction of the CCI is that CCI can regulate without being restricted to issue a compulsory license, provided for under Section 27 and Section 28 of the Competition Act.

The primary remedies under patent law would be the issue of a compulsory license or repudiation of the patent, which tends to be rather disadvantageous. If compulsory licenses are granted for every alleged anti-competitive practice engaged, it would disincentivize invention, as inventors would have no proper protection under the law. When it comes to suits for repudiation of patents, it is difficult to address instances of reverse payment patent settlements, the legality of which is highly contested. Enabling the CCI to apply its enforcement mechanisms alongside the Patents Act in addressing anti-competitive conduct complements the objectives of safety to the interests of the patentees while also promoting fair competition and ensuring market efficiency. Furthermore, the role of the Controller is largely limited and unrequited when it comes to addressing antitrust and competition issues. It is argued that the functions of the Controller remain largely administrative in terms of ensuring fulfillment of compliances for patent grants.

Granting the CCI authority over patent-related matters comes with its fair criticism. Regulatory overreach, positing that the CCI might interfere with legitimate business decisions of patent holders, is a major disadvantage. Doubts regarding the CCI's proficiency in assessing the intricate technical and economic facets of patent licensing may raise questions about its expertise in this domain. However, considering that Section 3(5) imposes significant restrictions on the authority of the CCI, thus acting as a deterrent to any abuse of process on the part of informants or the CCI. Several jurisdictions have already recognized the need to address abuse by patent holders, especially when it comes to the issue of licensing of standard essential patents, by empowering their competition regulators - the FTC in the United States and European Commission in the European Union. For instance, in the case of *Federal Trade Commission v. Qualcomm Incorporated*, the Federal Trade Commission was able to institute antitrust charges against Qualcomm, for alleged anti competitive practices engaged by Qualcomm with respect to the issue of licensing of Qualcomm's standard essential patents. Although the U.S. Court of Appeals for the Ninth Circuit reversed the decision by the U.S. District Court for the Northern District of California, it still exemplifies an instance where competition regulators exercise authority over patent holders. However, given the framework of the Competition Act, the CCI would be limited to exercising its jurisdiction with respect to Section 4 concerns only.

Conclusion

The case of *Telefonaktiebolaget LM Ericsson (PUBL) v. Competition Commission of India* sheds light on the complex interplay between the Competition Act, 2002, and the Patents Act, 1970. The Delhi High Court's ruling, emphasizing the primacy of the Patents Act in matters concerning the

exercise of patent rights, seems to be misconceived. The comparison between the two legislative frameworks highlights the distinct objectives and mechanisms inherent in each.

Accordingly, the Supreme Court must seek to harmonize an interpretation that grants jurisdiction to the Competition Commission of India, as it offers a pragmatic approach to address instances of anti-competitive behavior. By leveraging its enforcement mechanisms, the CCI can ensure fair competition and market efficiency without necessarily resorting to compulsory licensing. An approach that acknowledges the complementary roles of both laws is essential to uphold the principles of fair competition and consumer welfare in the dynamic marketplace.

