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GOVERNING SEPS IN INDIA: THE ROLE OF COMPETITION LAW IN THE ABSENCE OF SPECIFIC SEP REGULATION

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ABSTRACT

Standard Essential Patents (SEP) occupy a unique position at the intersection of intellectual property rights and competition law. In India, the absence of dedicated SEP legislation creates a regulatory void wherein the Competition Act, 2002, and the Patents Act, 1970, operate in tension. This paper evaluates how effectively India's competition law framework governs SEPs in light of the jurisprudential developments from 2013 to 2025, examining pivotal case law from both the Delhi High Court and the Competition Commission of India (CCI). Through comprehensive analysis of landmark cases including *Ericsson v. Micromax* (2013-2014), *Ericsson v. Intex* (2014-2023), and *Dolby v. Lava* (2024-2025) this study demonstrates that while the Delhi High Court has developed a pragmatic framework for FRAND (Fair, Reasonable, and Non-Discriminatory) enforcement with downstream royalty bases and pro-tem security deposits, the CCI's jurisdiction remains effectively foreclosed by the Supreme Court and NCLAT decisions (2025). The paper argues that India's governance of SEPs, while protective of IP rights, lacks the transparent, predictable mechanisms found in the EU's *Huawei v. ZTE* framework or the proposed EU SEP Regulation. The study concludes that legislative intervention is essential to address patent hold-up, patent hold-out, and the artificial bifurcation of enforcement between patent and competition regimes, thereby fostering sustainable innovation in India's telecommunications and technology sectors.

KEYWORDS: Standard Essential Patents, FRAND, Competition Law, Intellectual Property, Patent Hold-Up, Patent Hold-Out, Pro-Tem Security, Unwilling Licensee, Patent Licensing, Delhi High Court, Competition Commission of India, Innovation, Telecommunication Standards.

1. INTRODUCTION

The swift evolution of telecommunications technologies in the last two decades has made Standard Essential Patents (SEPs) vital to global commerce and connectivity.¹ These patents protect inventions essential for implementing technical standards set by organizations such as the European Telecommunications Standards Institute (ETSI), the 3rd Generation Partnership Project (3GPP), and the International Organization for Standardization (ISO)². SEP governance involves a core conflict: holders invest substantial resources in creating technologies integrated into worldwide standards, yet the essential nature of these patents grants them significant market power that risks anticompetitive exploitation.³ Standard-setting organizations (SSOs) counter this risk by mandating that SEP owners commit to licensing on Fair, Reasonable, and Non-Discriminatory (FRAND) terms, thereby curbing "patent hold-up", where owners leverage implementers' reliance on the standard to extract competitive royalties.⁴

India's telecom sector now ranks as the world's second-largest by subscriber numbers, boasting over 1.19 billion cellular users as of late 2024.⁵ This expansion draws heavily on standardized technologies from 2G (GSM) and 3G (WCDMA) to 4G (LTE) and the rollout of 5G networks all reliant on thousands of declared SEPs controlled largely by multinational firms.⁶ Unlike the European Union's proposed SEP frameworks or the established case law in the United States and Germany, India has no dedicated statutory regime for SEPs.⁷ Governance instead emerges piecemeal through court and quasi-judicial rulings under the Competition Act, 2002, and the Patents Act, 1970, a divided structure that breeds inconsistency, uncertainty, and, ultimately, the effective exclusion of the Competition Commission of India (CCI) from antitrust oversight after Supreme Court and NCLAT rulings in 2025.⁸

¹ Int'l Telecommunication Union (ITU), *Global Connectivity Check-up* (2024); *Ericsson v. Intex Techs. (India) Ltd.*, 2023 SCC OnLine Del ¶ 69.

² Eur. Telecomms. Standards Inst. (ETSI), *Intellectual Property Rights Policy* cl. 15.6 (Annex 6 to ETSI Rules of Procedure).

³ Mark A. Lemley & Carl Shapiro, Patent Hold-Up and Royalty Stacking, 85 *Tex. L. Rev.* 1991 (2007); J. Gregory Sidak & David J. Teece, Whither Rival Standard-Setting Organizations?, 9 *J. Competition L. & Econ.* 1 (2009).

⁴ Eur. Telecomms. Standards Inst. (ETSI), *IPR Policy* cl. 6.1; 3rd Generation Partnership Project (3GPP), *IPR Policy*; Int'l Telecommunication Union Telecommunication Standardization Sector (ITU-T), *Standards*

⁵ Telecom Regulatory Auth. of India (TRAI), Press Release, *Wireless Subscriber Base in India* (2024).

⁶ *Ericsson v. Intex Techs. (India) Ltd.*, 2023 SCC OnLine Del ¶ 62

⁷ Proposal for a Regulation on Standard Essential Patents, COM (2023) 232 final; BGH, *Orange-Book-Standard*, May 6, 2009, KZR 39/06 (Ger.); U.S. DOJ & FTC, *Policy Statement on Remedies for SEPs*; Patents Act, 1970, chs. XI & XVI (India).

⁸ *Telefonaktiebolaget LM Ericsson v. CCI*, 2023 SCC OnLine Del 4078; *CCI v. Ericsson*, SLP (C) No. 25026/2023 (India Sept. 2, 2025); *Swapan Dey v. CCI*, NCLAT (2025).

This study evaluates the performance of India's current legal mechanisms in managing SEPs, focusing especially on how the Competition Act addresses potential abuse of dominance by SEP holders. Drawing on thirteen years of jurisprudence, including appellate outcomes that have shielded patent enforcement from competition scrutiny, explore four central questions: (1) how well the Competition Act, 2002, regulates SEPs without targeted legislation; (2) whether FRAND enforcement under India's framework measures up to international benchmarks; (3) the effects of prevailing SEP practices on competition and innovation within India; and (4) how governance models in the EU, US, and other major jurisdictions compare. Through close examination of landmark judgments, statutory provisions, and cross-jurisdictional insights, it maintains that the Delhi High Court has built a workable, economically grounded approach to determining FRAND rates and requiring pro-tem security deposits. Nevertheless, the closure of CCI jurisdiction leaves a notable oversight gap, heightening the risk of patent hold-up for implementers while providing limited safeguards against hold-out behavior. Legislative reform thus remains essential to achieve more equitable SEP management.

2. RESEARCH OBJECTIVES

- To assess the effectiveness of India's Competition Act, 2002, in governing Standard Essential Patents (SEPs) in the absence of dedicated legislation, through analysis of judicial and quasi-judicial precedent from 2013 to 2025.
- To evaluate the Delhi High Court's jurisprudence on FRAND licensing, including royalty determination methodologies, the "unwilling licensee" doctrine, and the availability of injunctive relief for FRAND-committed SEP holders;
- To examine the Competition Commission of India's initial investigations and orders regarding abuse of dominance by SEP holders, and the subsequent foreclosure of CCI jurisdiction by the Supreme Court and NCLAT;
- To conduct a comparative analysis of SEP governance frameworks in the United States, the European Union, and other relevant jurisdictions, identifying lessons applicable to the Indian context;
- To identify regulatory gaps and formulate evidence-based recommendations for legislative reform to enhance transparency, predictability, and balanced incentives in India's SEP ecosystem.

3. RESEARCH QUESTIONS

1. How effectively does the Competition Act, 2002, regulate Standard Essential Patents (SEPs) in India in the absence of dedicated SEP-specific legislation?
2. How effective is India's framework for enforcing FRAND commitments in comparison with international approaches, particularly in striking a balance between the rights of SEP holders and the access needs of implementers?
3. How do prevailing SEP-related practices under the Competition Act influence market competition and innovation dynamics within India?

5. RESEARCH METHODOLOGY

This study employs a qualitative doctrinal methodology to examine the legal framework governing Standard Essential Patents (SEPs) in India, with particular attention to the interface between competition law and patent law. The analysis focuses principally on key statutory provisions: Sections 4(2)(c) and 3(5) of the Competition Act, 2002, and Chapter XVI of the Patents Act, 1970, alongside relevant constitutional principles of fairness and equality. A detailed review of case law is undertaken, drawing on significant decisions rendered by the Delhi High Court, the Competition Commission of India (CCI), appellate tribunals, and the Supreme Court in SEP-related disputes. Emphasis is placed on issues concerning FRAND obligations, royalty determination, and allegations of abuse of dominant position. The examination also includes a concise comparative overview of SEP regulation in selected jurisdictions, the European Union, the United States, Germany, and China, with a view to identifying established international practices and approaches. Secondary materials, including academic literature, policy reports, and other authoritative sources, are utilised to support and contextualise the primary legal analysis.

6. LITERATURE REVIEW

This section examines the core theoretical aspects of SEP governance as developed in economic scholarship. Lemley and Shapiro's analysis of patent hold-up describes how standardization can lock in a patented technology, allowing SEP holders to exploit the threat of injunctive relief and demand royalties exceeding the patented invention's incremental contribution to the standard.⁹ In counterpoint, Geradin and Stein highlight patent hold-out, where implementers strategically delay or avoid licensing through prolonged negotiations, litigation, or regulatory

⁹ Lemley & Shapiro, Patent Hold-Up and Royalty Stacking, 85 Tex. L. Rev. 1991 (2007).

challenges, thereby pressuring SEP holders to accept reduced royalties.¹⁰ These opposing dynamics distort innovation incentives and standardization participation, underpinning the case for FRAND obligations enforced by standard-setting organizations.¹¹ Sidak's work further argues that, in multi-component products like smartphones, the downstream end-product price provides a more suitable royalty base than component-level pricing, as it incorporates complementarities and network effects central to standardized technologies.¹² This perspective has influenced Delhi High Court approaches, as discussed in Section 5. In India, SEP regulation arises from the convergence of the Patents Act, 1970 (covering patent validity, infringement, and licensing), Section 4 of the Competition Act, 2002 (prohibiting abuse of dominance), and general contract and tort principles. Section 3(5) of the Competition Act offers a key exclusion for intellectual property rights "to the extent permitted by law," which has shaped jurisdictional analyses in SEP cases, as explored in Section 6.¹³

Scholarship on India's SEP regime, including publications in outlets such as The Law Brigade and the International Journal for Multidisciplinary Research, points to the developing and fragmented nature of jurisprudence up to the significant rulings of 2023–2025.¹⁴ Dayitha's 2024 study examines the CCI's challenges in evaluating SEP licensing practices and calls for clearer guidelines and enhanced enforcement.¹⁵ The CJEU's 2015 decision in *Huawei v ZTE* (C-170/13) established a "willing licensee" framework requiring SEP holders seeking injunctions to notify infringers, provide a specific written FRAND offer, and permit counter-offers with security for prior use.¹⁶ The ruling prioritizes bilateral good-faith negotiations without mandating third-party FRAND rate determination. The European Commission's 2023 SEP Regulation proposal introduced mandatory pre-litigation conciliation, essentiality checks, and aggregate royalty assessments steps that remain debated for potentially increasing hold-out risks.¹⁷ In the United States, FTC and DOJ guidance supports SEP holders' rights to seek injunctions and exclusion orders when adhering to FRAND commitments.¹⁸ Courts have

¹⁰ Geradin & Stein, *Wealth Effects of Compulsory Licensing*, 5 *J. Competition L. & Econ.* 1 (2014).

¹¹ ETSI, *IPR Policy* cl. 3.1 (Annex 6).

¹² Sidak, *FRAND in India*, 10 *J. Intell. Prop. L. & Prac.* 609 (2015); Sidak, *Meaning of FRAND*, 9 *J. Competition L. & Econ.* 931 (2013).

¹³ Competition Act, 2002, § 3(5) (India); Sherman Act, 15 U.S.C. § 1; Patent Misuse Reform Act of 1988.

¹⁴ Standard-Essential Patents in India, 10 *Int'l J. Legal Dev. & Allied Issues*, no. 3 (2024); Standard Essential Patents and Abuse of Dominance, 6 *Int'l J. Multidisciplinary Res.*, no. 6 (2024).

¹⁵ Dayitha T.K., *Standard Essential Patents and Abuse of Dominance*, 6 *Int'l J. Multidisciplinary Res.*, no. 6 (2024).

¹⁶ *Huawei Techs. Co. v. ZTE Corp.*, Case C-170/13, ¶¶ 61–67 (CJEU July 16, 2015).

¹⁷ Proposal for a Regulation on Standard Essential Patents, COM (2023) 232 final; Law & Econ. Ctr., *FRAND Determinations Under the EU SEP Proposal* (Issue Brief 2023).

¹⁸ U.S. DOJ & FTC, *Licensing Negotiations for Standard-Essential Patents* (Apr. 2020).

accepted downstream product prices as royalty bases (e.g., in *CSIRO v Cisco*) and view FRAND as encompassing a range of reasonable rates, often based on comparable licenses.¹⁹ Unlike the EU's procedural focus, the US approach emphasizes economically sound outcomes through court or expert adjudication.²⁰ China's NDRC 2015 resolution in the Qualcomm case endorsed downstream device prices (65% of net selling price) as a valid royalty base, aligning with US and certain Delhi High Court views while contrasting earlier CCI stances.²¹

7. Standards, SEPs, SSOs, and the FRAND Framework

Standards play a vital role in high-technology sectors by facilitating interoperability across complementary products and systems for instance, smartphones that depend on diverse communication, connectivity, positioning, and audio-visual specifications.²² A significant portion of these standards draw on patented inventions, and those patents that must inevitably be used to comply with a standard are known as Standard Essential Patents (SEPs).²³ These formal standards emerge from Standard-Setting Organizations (SSOs), which rely on voluntary, consensus-driven procedures to unite technology contributors and adopters. Key examples include the European Telecommunications Standards Institute (ETSI), the International Telecommunication Union (ITU), and the Institute of Electrical and Electronics Engineers (IEEE). Standardisation processes are generally seen as promoting competition and serving broader public interests, a perspective long reflected in European Commission initiatives aimed at strengthening the EU Single Market.²⁴ To balance the exclusive nature of patent rights against the shared advantages of standardisation, SSOs typically oblige SEP owners to commit to licensing their patents on Fair, Reasonable, and Non-Discriminatory (FRAND) terms. This arrangement secures access to critical technologies for those implementing the standards while maintaining rewards for ongoing innovation. In the European context, ETSI has been instrumental in embedding the FRAND framework within its IPR Policy, first adopted in 1994 with backing from the European Commission. Subsequent revisions have reinforced requirements for disclosure, while ongoing discussions have centered

¹⁹ *CSIRO v. Cisco Sys., Inc.*, 809 F.3d 1295 (Fed. Cir. 2015); *Microsoft Corp. v. Motorola, Inc.*, 904 F. Supp. 2d 1109 (W.D. Wash. 2012).

²⁰ 35 U.S.C. § 284; *Georgia-Pacific Corp. v. U.S. Plywood Corp.*, 318 F. Supp. 1116 (S.D.N.Y. 1970).

²¹ Nat'l Dev. & Reform Comm'n (China), *Administrative Penalty Decision Against Qualcomm Inc.* (Feb. 10, 2015).

²² Int'l Telecommunication Union (ITU), *Global Connectivity Check-up* (2024).

²³ Eur. Telecomms. Standards Inst. (ETSI), *Intellectual Property Rights Policy* cl. 15.6 (Annex 6 to ETSI Rules of Procedure).

²⁴ Damien Geradin & Anne Layne-Farrar, *The Completeness of FRAND Commitments in Standard-Setting*, 9 J. Competition L. & Econ. 1 (2013).

on challenges in royalty assessment, the breadth of licensing obligations, and risks like patent hold-up and royalty stacking.²⁵ Throughout these developments, ETSI has maintained that specific licensing terms remain a matter for private commercial agreement rather than detailed regulatory prescription.²⁶

8. DELHI HIGH COURT JURISPRUDENCE ON SEPS AND FRAND (2013-2025)

8.1 Foundation Cases: *Ericsson v. Micromax (2013-2014)* and *Ericsson v. Intex (2014-2023)*

The Delhi High Court's initial SEP jurisprudence emerged from Ericsson's infringement suits against Indian handset manufacturers. In *Telefonaktiebolaget LM Ericsson v. Mercury Electronics (Micromax) (2013-2014)*, the Single Judge required disclosure of 26 comparable licences and set interim royalties at 0.8%–1.3% of the net selling price of 2G/3G-compliant devices.²⁷ The court adopted the downstream handset price as the royalty base, rejecting chipset-based calculations, reasoning that end-product pricing better captures complementarities, consumer surplus, and network effects.²⁸ It also introduced “pro-tem security” deposits to avoid injunctions. The *Intex* case (2014-2023) saw the Division Bench, in its 29 March 2023 judgment, clarify reciprocal FRAND duties: SEP holders must disclose patents, avoid hold-up, and offer genuine FRAND terms; implementers must respond promptly with acceptance or credible counter-offers backed by security.²⁹ The court endorsed downstream device pricing (citing US and Chinese precedents), dismissed the CCI-preferred SSPPU approach, and rejected the rigid “*Nokia v. Oppo*” four-fold test at the interim stage. Essentiality and validity can be shown prima facie via technical mapping and prior findings, with willingness assessed through negotiation conduct.

8.2 Emerging Standards: The “Unwilling Licensee” Doctrine and Pro-Tem Security

The Division Bench of the Delhi High Court in *Telefonaktiebolaget LM Ericsson v. Intex Technologies (India) Ltd.* adopted a conduct-based test to distinguish willing from unwilling

²⁵ Mark A. Lemley & Carl Shapiro, Patent Hold-Up and Royalty Stacking, 85 Tex. L. Rev. 1991 (2007).

²⁶ Eur. Comm'n, *Communication on ICT Standardisation Priorities for the Digital Single Market*, COM (2016) 176

²⁷ *Telefonaktiebolaget LM Ericsson v. Mercury Elecs. (Micromax)*, Interim Apps. Nos. 3825/2013 & 4694/2013, CS (OS) No. 442/2013 (Delhi HC Nov. 12, 2014).

²⁸ Sidak, supra note 12, at 625–26.

²⁹ *Telefonaktiebolaget LM Ericsson v. Intex Techs. (India) Ltd.*, IA No. 6735/2014, CS (OS) No. 1045/2014 (Delhi HC Mar. 13, 2015), aff'd (DB Mar. 29, 2023).

SEP licensees. The court held that an unwilling licensee is one who delays negotiations, fails to make a concrete counter-offer, or uses collateral proceedings to avoid taking a licence.³⁰ By contrast, a willing licensee may dispute validity or essentiality while still negotiating in good faith. This approach broadly echoes the negotiation discipline envisaged in *Huawei Technologies Co. v. ZTE Corp.*, but gives Indian courts greater flexibility to assess real commercial behaviour.³¹ Complementing this doctrine is the growing use of pro-tem security deposits. Courts treat these deposits as an equitable tool to prevent implementers from exploiting SEPs royalty-free during lengthy litigation.⁴ The mechanism (i) deters hold-out, (ii) safeguards the patentee's monetary interests without immediately granting injunctions, and (iii) allows continued market participation by the implementer subject to a secured royalty reserve. In *Ericsson v. Intex*, the Division Bench also affirmed that interim royalty liability could run from the date of suit and may extend even to patents that expired during litigation.⁵ The court reasoned that timely, good-faith negotiations would have resulted in a portfolio licence covering all then-valid SEPs; allowing the implementer to benefit from delay until expiry would reward strategic hold-out. Overall, the unwilling-licensee doctrine and pro-tem deposit practice reflect a shift in Indian SEP jurisprudence toward behaviour-focused, equity-driven enforcement, though the framework remains more ex post and less procedurally structured than the Huawei model.³²

8.3 The Ericsson v. Lava Judgment (2024) and FRAND Rate Determination

On 28 March 2024, after nearly nine years of litigation, the Single Judge of the Delhi High Court in *Telefonaktiebolaget LM Ericsson v. Lava International Limited* issued what is widely regarded as India's first fully reasoned FRAND rate determination, awarding approximately INR 244 crore in damages. The decision marked a shift from interim SEP jurisprudence to a merits-based FRAND adjudication. On essentiality, the court relied on claim-to-standard mapping and the absence of non-infringing alternatives. On validity, it reaffirmed the rebuttable presumption arising from patent grant and held Lava's late challenges insufficient. The court further found that Lava's six-year delay, repeated information requests without a counter-offer, and belated validity objections amounted to implementer hold-out. For royalty determination, the court primarily relied on comparable Indian licences. It fixed FRAND rates between 0.8%

³⁰ J. Gregory Sidak, *The Meaning of FRAND*, 9 J. Competition L. & Econ. 931, 954–60 (2013).

³¹ **Huawei Techs. Co. v. ZTE Corp.**, Case C-170/13, ¶¶ 61–67 (CJEU July 16, 2015).

³² Law & Econ. Ctr., George Mason Univ., *FRAND Determinations Under the EU SEP Proposal: Discarding the Huawei Framework* (Issue Brief 2023).

and 2.0% of the net device price (tiered by standard and period) and rejected unsupported top-down models, aligning with prevailing international practice.³³

8.4 Dolby v. Lava (2025): Pro-Tem Deposits and Proportionate Interim Relief

In *Dolby International AB v. Lava International Limited* (10 July 2025), the Delhi High Court further refined the doctrine of pro-tem security in the context of AAC standard-essential patents. Rather than granting an immediate injunction, the Court directed Lava to deposit INR 20.08 crore toward past use, calculated from Dolby's initial licensing offer dated 31 December 2018 up to 31 December 2024, along with continuing half-yearly deposits for ongoing use. This calibrated approach enabled Lava to maintain market operations while ensuring that the patentee's FRAND entitlement was meaningfully secured during litigation. The Court emphasised that pro-tem security functions as an equitable interim mechanism to approximate the value of a negotiated licence and to deter strategic hold-out by implementers. Significantly, the royalty obligation was held to extend even to patents that had expired during the dispute period, on the reasoning that timely good-faith negotiations would ordinarily have resulted in a portfolio licence covering the entire period from the initial offer.³⁴

9. COMPETITION COMMISSION OF INDIA AND THE FORECLOSURE OF ANTITRUST JURISDICTION (2013-2025)

9.1 Initial CCI Investigations and Prima Facie Orders (2013-2015)

From 2013 to 2015, the Competition Commission of India (CCI) passed three prima facie orders on complaints accusing Telefonaktiebolaget LM Ericsson of abusing dominance in its 2G and 3G Standard Essential Patents (SEPs). In *Micromax Informatics Ltd. v. Telefonaktiebolaget LM Ericsson* (Case No. 50/2013, 12 November 2013), Micromax claimed Ericsson imposed excessive royalties based on downstream handset prices, enforced discriminatory licensing through mandatory nondisclosure agreements, and violated Section 4(2) of the Competition Act, 2002.³⁵ The CCI found prima facie dominance in the market for 2G/3G SEPs (with India as the geographic market) and raised concerns that downstream pricing created discriminatory effects: the same royalty percentage yielded different absolute amounts on low- and high-priced devices despite identical technology use. Viewing this as

³³ *Georgia-Pacific Corp. v. U.S. Plywood Corp.*, 318 F. Supp. 1116, 1120 (S.D.N.Y. 1970).

³⁴ *Dolby Int'l AB v. Lava Int'l Ltd.*, CS (COMM) 350/2024 (Del. HC July 10, 2025).

³⁵ *Micromax Informatics Ltd. v. Telefonaktiebolaget LM Ericsson*, Case No. 50/2013 (Competition Comm'n of India Nov. 12, 2013).

unlinked to the patented invention and prima facie contrary to FRAND, the CCI directed a Director General investigation.

Similar allegations appeared in *Intex Technologies (India) Ltd. v. Telefonaktiebolaget LM Ericsson* (Case No. 76/2013, 16 January 2014), which added complaints about nondisclosure agreements, foreign arbitration clauses (e.g., Stockholm), and restrictive terms breaching FRAND and Section 4.³⁶ The CCI again identified prima facie abuse and consolidated the Micromax and Intex probes. In *Best IT World (India) Private Ltd. (iBall) v. Telefonaktiebolaget LM Ericsson* (Case No. 4/2015, 12 May 2015),³⁷ iBall echoed concerns over NDAs, foreign jurisdiction clauses, and high royalties. The CCI's order followed the earlier pattern, though issued before the Delhi High Court's 2023 Intex ruling shifted the underlying jurisprudence.³⁸

9.2 Jurisdiction Bifurcation: The Ericsson v. CCI Decision (Delhi High Court, 2023)

The core issue whether the CCI could investigate SEP licensing was settled in *Telefonaktiebolaget LM Ericsson (Publ) v. Competition Commission of India Delhi 4078*, 3 October 2023, though commonly dated to the July 2023 Division Bench ruling.³⁹ The Division Bench ruled that the Patents Act, 1970, constitutes a complete code for patent licensing, including unreasonable conditions via Chapter XVI (compulsory licensing), while Section 3(5) of the Competition Act excludes legitimate patent-rights exercises from its scope. Parliament intended patent licensing disputes including reasonable-condition assessments to remain within the Patents Act framework, the court held.⁴⁰ The Controller of Patents holds specialised expertise on validity, essentiality, and licensing reasonableness, unlike the CCI's general antitrust role. This decision excluded CCI jurisdiction over dominance abuse claims against SEP holders exercising patent rights.

9.3 Supreme Court Affirmation (2025) and NCLAT Reinforcement

On 2 September 2025, the Supreme Court dismissed the CCI's appeal (SLP No. 25026/2023) against the Delhi High Court's *Ericsson v. CCI* ruling, leaving the ouster of CCI jurisdiction in

³⁶ *Intex Techs. (India) Ltd. v. Telefonaktiebolaget LM Ericsson*, Case No. 76/2013 (Competition Comm'n of India Jan. 16, 2014).

³⁷ *Best IT World (India) Pvt. Ltd. (iBall) v. Telefonaktiebolaget LM Ericsson*, Case No. 4/2015, Competition Comm'n of India, ¶¶ 18–30 (May 12, 2015).

³⁸ *iBall v. Telefonaktiebolaget LM Ericsson*, Case No. 4/2015 (Competition Comm'n of India May 12, 2015).

³⁹ *Telefonaktiebolaget LM Ericsson (Publ) v. Competition Comm'n of India*, 2023 SCC OnLine Del 4078 (Del. HC Oct. 3, 2023) (Div. Bench).

⁴⁰ *Id.* ¶¶ 106–118; Competition Act, 2002, § 3(5); Patents Act, 1970, ch. XVI.

place.⁴¹ The National Company Law Appellate Tribunal (NCLAT) later reinforced this in *Swapan Dey v. Competition Commission of India* (2025), ruling that the CCI lacks authority to scrutinise anticompetitive conduct arising from patent-rights exercises, including in SEP licensing contexts.⁴² These 2025 outcomes left the CCI's decade-old investigations into the Micromax, Intex, and iBall complaints stalled without prospect of completion. They also resolved a longstanding dual-track tension: the Delhi High Court had built a detailed FRAND and hold-up jurisprudence in patent proceedings, while the CCI pursued separate inquiries on different premises. By affirming the Delhi High Court's position, the Supreme Court prioritised the specialised patent-law regime over general competition-law oversight in SEP matters.⁴³

10. ANALYSIS AND FINDINGS

10.1 Effectiveness of the Competition Act in Regulating SEPs

The Competition Act, 2002, proved ineffective for regulating SEP-related dominance abuse following the 2023 jurisdictional ouster, although its 2013–2015 *prima facie* orders raised economically plausible concerns. In the early Micromax, Intex, and iBall cases, the CCI viewed downstream royalty pricing as *prima facie* discriminatory, arguing that rates should tie directly to the patented component rather than the end-product price. This stance, however, overlooked established economic reasoning articulated by Sidak and reflected in US decisions such as *CSIRO v. Cisco*, that downstream bases better capture complementarities and network effects in multi-component devices.⁴⁴ The CCI's preference for top-down aggregate royalty analysis further diverged from the bottom-up, comparable-licence approach favoured internationally and later adopted by the Delhi High Court. The 2023 *Ericsson v. CCI* ruling held that the Patents Act constitutes a complete code for licensing disputes, with Section 3(5) excluding legitimate patent exercises from Competition Act scrutiny. This left implementers reliant solely on patent courts, where specialised patent adjudication prevails over general antitrust analysis.⁴⁵ Without CCI involvement, enforcement becomes reactive and patent-focused, limiting scrutiny of broader market-structure effects or licensing practices that fall short of clear dominance abuse. An enforcement gap now exists.⁴⁶ While Delhi High Court rulings address unwilling-licensee

⁴¹ Competition Comm'n of India v. Monsanto Holdings Pvt. Ltd., SLP (C) No. 25026/2023 (India Sept. 2, 2025).

⁴² *Swapan Dey v. Competition Comm'n of India*, NCLAT (2025); see also *Vifor Int'l AG v. Competition Comm'n of India*, NCLAT (2025).

⁴³ *Ericsson v. CCI*, 2023 SCC OnLine Del 4078, ¶¶ 119–125.

⁴⁴ J. Gregory Sidak, *The Meaning of FRAND*, 9 J. Competition L. & Econ. 931 (2013).

⁴⁵ Competition Act, No. 12 of 2003, § 3(5) (India).

⁴⁶ *Telefonaktiebolaget LM Ericsson (Publ) v. Competition Commission of India*, 2023 SCC OnLine Del 4078 (Del. H.C. Oct. 3, 2023).

conduct, they depend on proprietor-initiated suits and do not proactively police market-wide anticompetitive risks. Absent legislative reversal or clarification, the Competition Act cannot independently constrain potentially monopolistic SEP licensing.

10.2 FRAND Enforcement Effectiveness in India vs. International Frameworks

India's FRAND regime has developed through judicial interpretation under the Patents Act, yielding substantively sound outcomes: recognition of downstream royalty bases, comparable-licence methodologies, parallel validity challenges, and tools such as pro-tem deposits to counter hold-out.⁴⁷ Enforcement remains ex post, litigation-driven, and lacks statutory structure, mandatory negotiation protocols, or transparency mechanisms, resulting in high costs and extended disputes.

Comparatively:

- The EU's Huawei v. ZTE framework imposes structured, reciprocal negotiation duties and conditions injunctive relief on good-faith conduct; the 2023 SEP Regulation proposal adds ex ante tools (registration, essentiality checks, conciliation).⁴⁸
- The US emphasises strong patent rights, market-driven outcomes via comparable licences, and limited antitrust intervention, preserving flexibility but offering less procedural predictability.
- Germany blends efficient litigation with strict good-faith obligations and fast-track proceedings.⁴⁹
- China relies on administrative intervention to set royalty caps and licensing terms, prioritising market access but raising innovation concerns.⁵⁰
- Other models (Japan, South Korea, UK) vary from competition oversight to global-rate setting.⁵¹

India aligns well on substantive royalty principles and implementer protections but lags in procedural design and ex ante coordination. Introducing structured negotiation mandates,

⁴⁷ Proposal for a Regulation of the European Parliament and of the Council on standard essential patents and amending Regulation (EU) 2017/1001, COM (2023) 232 final (Apr. 27, 2023).

⁴⁸ Microsoft Corp. v. Motorola, Inc., 795 F.3d 1024 (9th Cir. 2015); U.S. Dep't of Justice & Fed. Trade Comm'n, *Policy Statement on Remedies for Standards-Essential Patents Subject to Voluntary F/RAND Commitments* (2019).

⁴⁹ Sisvel International S.A. v. Haier Deutschland GmbH, KZR 36/17 (Fed. Ct. Just. May 5, 2020) (Ger.).

⁵⁰ Huawei Technologies Co. Ltd. v. InterDigital Technology Corp., (2013) Yue Gao Fa Min San Zhong Zi No. 306 (China); National Dev. & Reform Comm'n, Qualcomm Antitrust Decision (2015).

⁵¹ Unwired Planet International Ltd. v. Huawei Technologies Co. Ltd., [2020] UKSC 37; Japan Patent Office, *Guide to Licensing Negotiations Involving Standard Essential Patents* (2018); Korea Fair Trade Comm'n, *Review Guidelines on Unfair Exercise of Intellectual Property Rights* (2016).

transparency requirements, and alternative dispute pathways would enhance predictability while preserving judicial flexibility.

10.3 Impact on Competition and Innovation

India's patent-centric SEP framework produces mixed competitive and innovative effects: it curbs hold-up through FRAND enforcement and non-discriminatory licensing, yet prolonged litigation and the absence of proactive antitrust oversight create uncertainty, hold-out risks, and barriers for smaller entrants.

- 1. Market Power:** SEP holders enjoy de facto monopoly power over essential technologies, but Delhi High Court rulings enforce FRAND obligations and deter excessive demands, supporting downstream competition more effectively than unregulated licensing.
- 2. Licensing and Entry:** Routine licensing (e.g., Ericsson's 100+ agreements) signals market functionality, yet 8–10-year litigation timelines deter investment, especially by SMEs in telecom and IoT sectors.
- 3. Downstream Innovation:** Standardised technologies lower interoperability costs and spur product development; current royalty rates (0.8%–2.0%) appear non-exclusionary, with no evident market collapse in India's telecom sector.⁵²
- 4. Hold-Up vs. Hold-Out Balance:** The court's focus on implementer willingness and security deposits addresses hold-out effectively, but places lighter reciprocal pressure on proprietors compared with Huawei's mutual obligations.⁵³

India's 1.19 billion subscribers and extensive 2G–5G infrastructure rely on SEP licensing without reported systemic disruption. However, the lack of transparent, ex-ante rate-setting mechanisms may hinder participation in future standards such as 6G.

Recommendations for Legislative Reform

1. Enact a dedicated SEP statute defining essentiality, mandating FRAND transparency, establishing a central registry, and codifying reciprocal obligations.
2. Require mandatory, time-bound pre-litigation conciliation with limited comparable-licence disclosure and non-binding rate guidance.

⁵² Telecom Regulatory Authority of India (TRAI), *The Indian Telecom Services Performance Indicators*

⁵³ European Commission, *Proposal for a Regulation on Standard Essential Patents*, COM (2023) 232 final (Apr. 27, 2023); OECD, *Standard-Essential Patents and Competition* (2019).

3. Amend the Competition Act to clarify CCI jurisdiction over SEP abuses while protecting legitimate patent enforcement and ensuring coordination with patent courts.
4. Introduce fast-track procedures in High Courts for SEP disputes, including specialised benches, fixed timelines, confidentiality safeguards, and accelerated appeals.

10. CONCLUSION

India's approach to Standard Essential Patents (SEPs) shows a clear split in roles between courts and other bodies. The Delhi High Court has developed a practical set of rules on FRAND (Fair, Reasonable, and Non-Discriminatory) terms through various judgments. These cover licensing duties, how to calculate royalties, and remedies that deal with both patent hold-up (where SEP owners demand too much) and hold-out (where implementers delay or avoid paying). The court has allowed SEP holders to protect their rights while ensuring that companies using the technology can obtain licenses on FRAND terms. But after the 2023 *Ericsson v. CCI* decision by the Delhi High Court, which was upheld by the Supreme Court in 2025, the Competition Commission of India (CCI) has largely lost its power to check SEP licensing practices for anti-competitive behaviour. This setup works in many disputed cases and keeps the telecom market running smoothly. India now has one of the biggest telecom sectors in the world, with lots of licensing happening and no major market collapse. The Delhi High Court's methods, like using the price of the final device (like smartphones) as the base for royalties, looking at similar license agreements, and asking for pro-tem security deposits (interim payments to court), are quite similar to what is done in the United States and China. However, it differs from the European Union's *Huawei v. ZTE* framework. In India, courts expect good-faith talks as part of the patent case itself, rather than having a strict step-by-step process or using competition law to judge unfair tactics. Still, this system has some ongoing problems: cases often take many years to finish, SEP owners have more information than implementers, there is no active antitrust check anymore, and there are no proper pre-court ways to settle disputes. With the move to 5G and later 6G, SEP portfolios will grow much bigger. This raises risks of too many royalties adding up (royalty stacking), hold-up problems getting worse, and some companies being shut out unless there is more openness and better coordination from the start. So, India needs new laws specifically for SEPs. A dedicated statute should clearly define what makes a patent "essential," require more public details on FRAND commitments, set up a central registry for SEPs, and spell out duties for both sides. Other needed changes include: forcing time-limited conciliation (mediation) before going to court, with rules to share information safely; carefully bringing back some CCI role for obvious

abuses while protecting normal patent enforcement; faster court processes in High Courts for SEP cases; and maybe an expert body to give non-binding guidance on FRAND rates. Without these steps, India will stay stuck with a system that depends too much on reacting through courts. This could keep creating uncertainty for companies using the tech or let SEP owners gain too much power both of which go against the goals of FRAND, which are to support innovation and make sure technologies work together smoothly.

