Patents and Competition Law in India

CCI's reductionist approach in evaluating competitive harm

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Abstract

The objective of this article is to examine the CCI's reasoning and approach in patent—related cases, in light of (i) the legislative framework governing competition and patent law in India, (ii) the economic theories that govern the intersection between competition law and patent law, and (iii) the manner in which competition agencies in comparative jurisdictions have dealt with similar agreements and conduct by patent holders. Section 1 of this article deals with an analysis of the distinction between sections 3 and 4 of the Competition Act 2002, in light of the CCI's tendency to conflate issues pertaining to abuse of dominance and evaluation of anti-competitive agreement involving patents. Section 2 deals with constraints on pricing imposed in several CCI rulings. Section 3 deals with non-price licensing restrictions as constituting abuse of dominance. The article concludes by cautioning that CCIs approach in dealing with patent licensing arrangements risks hurting the dynamic nature of competition fostered in highly innovative markets and highlights the urgent need to develop a principle-based approach by focusing on competitive harm in dealing with the conduct of patent holders.

Keywords: Patents, Competition Law, CCI, Monsanto, Ericsson

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