

Standard Essential Patents and Abuse of Dominance Implications for India's Telecom Sector

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Abstract

The rapid advancement of technology has positioned Standard Essential Patents (SEPs) as a critical component of innovation in the telecommunications sector, particularly in India. SEPs are patents that cover inventions essential to industry standards, facilitating interoperability and ensuring effective communication between devices. However, the significant market power held by SEP holders raises important concerns regarding the potential abuse of dominance, especially when these entities impose excessive licensing fees or engage in discriminatory practices. This paper examines the intersection of SEPs and competition law in India, focusing on the legal challenges faced by the Competition Commission of India (CCI) in regulating SEP holders under the Competition Act, 2002. By analyzing the regulatory framework and its implications for market dynamics, this study highlights the necessity for a balanced approach that protects both intellectual property rights and competitive practices. The findings suggest that while existing legal mechanisms aim to address abuses of dominance, there is a pressing need for clearer guidelines and stronger enforcement to ensure that SEPs foster innovation without stifling competition in India's rapidly evolving telecom landscape.

Keywords: Standard Essential Patents (SEPs), Competition Law, Abuse of Dominance, Telecommunications, Intellectual Property Rights (IPR)

Introduction

In the rapidly evolving landscape of technology, Standard Essential Patents (SEPs) have become integral to facilitating innovation and ensuring interoperability among devices. SEPs are patents that cover inventions essential to industry standards, enabling seamless communication and functionality across various telecommunications technologies. As the demand for advanced telecommunications services continues to grow, particularly with the advent of 4G and 5G technologies, the significance of SEPs has increased, especially in sectors where connectivity is paramount. However, the concentration of market power among SEP holders raises critical legal and economic concerns regarding the potential abuse of dominance.¹ In India, the telecommunications sector has experienced significant growth and competition,

¹ Assess the Impact of Current Indian Policy on Standard Essential Patents (SEPs) on Domestic Manufacturers in the Telecom Sector, ForumIAS (2024), <https://forumias.com/blog/answered-assess-the-impact-of-current-indian-policy-on-standard-essential-patents-seps-on-domestic-manufacturers-in-the-telecom-sector-what-changes-are-necessary-to-ensure-fair-competition-and-in/>.

yet it also faces challenges related to anti-competitive practices by dominant players. The intersection of intellectual property rights (IPR) and competition law is crucial in this context, as it seeks to balance the protection of innovation with the need to maintain fair competition in the market.

The legal framework governing SEPs in India is shaped by two key legislations: The Patents Act, 1970, which establishes the foundation for patent protection, and The Competition Act, 2002, which addresses anti-competitive practices and abuse of dominance. Under this framework, SEP holders are required to license their patents on Fair, Reasonable, and Non-Discriminatory (FRAND) terms. However, the interpretation and enforcement of these obligations often lead to disputes that highlight the complexities of regulating market behavior in this context. The role of regulatory bodies like the Competition Commission of India (CCI) becomes increasingly important as they navigate these challenges. The CCI is tasked with ensuring that SEP holders do not engage in practices that harm competition or consumer welfare.² As such, understanding the dynamics between SEPs and competition law is essential for fostering an environment that encourages innovation while safeguarding competitive markets. In summary, SEPs represent a double-edged sword in the telecommunications sector—while they are vital for technological progress and standardization, their potential for abuse necessitates careful regulatory oversight. The ongoing evolution of both technology and law will continue to shape the landscape in which SEPs operate, making it imperative to examine how these elements interact within India's dynamic telecom industry.

1. Legal Framework

A. Understanding Standard Essential Patents (SEPs)

Standard Essential Patents (SEPs) are patents that protect inventions essential to the implementation of technical standards established by recognized standard-setting organizations (SSOs). These patents are critical for ensuring interoperability among devices and technologies, particularly in sectors like telecommunications, where compliance with industry standards is necessary for devices to function together seamlessly. The significance of SEPs lies in their ability to foster innovation and competition by providing a legal framework that incentivizes inventors to develop new technologies. However, because SEPs are tied to essential standards, their holders often possess substantial market power, which can lead to anti-competitive behavior if not properly regulated. This dual nature—promoting innovation while posing risks of abuse—makes SEPs a focal point in discussions about intellectual property rights and competition law.³

B. Legal Framework Governing SEPs in India

The Patents Act, 1970

The Patents Act, 1970⁴, serves as the primary legislation governing patent rights in India. It outlines the criteria for patentability, the rights conferred upon patent holders, and the duration of patent protection. Under this Act, SEPs are granted protection similar to other patents, but with specific obligations regarding licensing. The Act mandates that patent holders must disclose their patents to relevant SSOs during the standard-setting process, ensuring transparency and accountability.

² Cyril Amarchand Mangaldas, Standard Essential Patents – The Irony of Standardization (Apr. 2018), <https://competition.cyrilamarchandblogs.com/2018/04/standard-essential-patents-irony-standardization/>

³ Standard Essential Patent Landscape in India – Part 1, European Union Intellectual Property Office (Jan. 4, 2024), https://intellectual-property-helpdesk.ec.europa.eu/news-events/news/standard-essential-patent-landscape-india-part-1-2024-01-04_en.

⁴ *The Patents Act, 1970*, No. 39 of 1970, Acts of Parliament, 1970 (India).

The Competition Act, 2002

The Competition Act, 2002⁵, aims to promote fair competition and prevent anti-competitive practices in India. It provides a framework for addressing abuse of dominance, which occurs when a dominant player engages in practices that harm competition or consumer welfare. The Act defines dominance and outlines various forms of abuse, including excessive pricing and discriminatory practices. In the context of SEPs, the Competition Act plays a crucial role by imposing obligations on SEP holders to license their patents on Fair, Reasonable, and Non-Discriminatory (FRAND) terms. This requirement seeks to prevent SEP holders from leveraging their market power to impose unfair conditions on licensees or restrict market entry for competitors.

C. FRAND Licensing

The concept of "Fair, Reasonable, and Non-Discriminatory" (FRAND) terms remains largely undefined by legislation, with Standard Setting Organizations (SSOs) offering limited guidance. The aim is to establish licensing terms that are equitable, involve reasonable royalties, and incentivize further innovation while compensating SEP holders for their technological investments.

Although Indian courts have not issued a definitive ruling on FRAND, they have addressed related issues in SEP infringement cases. A recent 2023 judgment in *Ericsson v. Intex*⁶ highlighted issues such as royalty calculations, Non-Disclosure Agreements (NDAs), and "willing" versus "unwilling" licensees.

Royalty Calculation

The basis for calculating FRAND royalties is a key concern. SEP holders often base royalties on the price of the final product, leading to payments for unrelated components and potential royalty stacking. Despite concerns from the Competition Commission of India (CCI), Indian courts have upheld this method, aligning with global practices.⁷

Non-Disclosure Agreements (NDAs)

SEP holders often require NDAs before negotiations, which restrict information exchange and can allow SEP holders to apply different rates. Courts have accepted NDAs as necessary for protecting intellectual property, despite concerns over their restrictive nature.

Licensee Obligations

FRAND terms place responsibilities on both SEP holders and licensees. While SEP owners must offer fair terms, licensees should seek licenses and avoid patent hold-out. Courts stress the importance of transparent negotiations, with injunctive relief for licensees who delay negotiations.⁸

Portfolio Licensing

The issue of whether SEP holders must offer individual patents or portfolio licenses has arisen. The Delhi High Court ruled that global portfolio licenses are FRAND-compliant, as the technology is part of a global standard, rejecting claims from Intex that the offer was not FRAND.

In India, the enforcement of FRAND obligations is particularly relevant given the competitive dynamics within the telecommunications sector. As new entrants seek to establish themselves in a market dominated by established players with extensive SEP portfolios, ensuring adherence to FRAND principles is vital for

⁵ *The Competition Act, 2002*, No. 12 of 2003, Acts of Parliament, 2003 (India).

⁶ *Intex Technologies (India) Ltd v. Telefonaktiebolaget LM Ericsson, FAO(OS) (COMM) 296/2018 & Telefonaktiebolaget LM Ericsson v. Intex Technologies (India) Ltd, FAO(OS)(COMM) 297/2018 (March 29, 2023). 2023:DHC:2243-DB*

⁷ *Supra*, note 11

⁸ *Supra*, note 11

fostering innovation and preventing anti-competitive behavior.⁹

D. Role of FRAND commitments

Fair, Reasonable, and Non-Discriminatory (FRAND) commitments play a critical role in the licensing of Standard Essential Patents (SEPs), particularly in the telecommunications sector. SEPs are patents that protect technologies essential for compliance with standards set by Standard Setting Organizations (SSOs). Given the monopoly granted to patent holders under patent law, there is a significant risk that SEP owners could exploit their dominant positions by demanding excessive royalties or imposing unfair licensing terms. This potential for abuse highlights the importance of FRAND commitments in maintaining a competitive market environment.

The primary purpose of FRAND commitments is to ensure that SEP holders do not engage in anti-competitive practices that could harm other market players. By agreeing to license their patents on FRAND terms, SEP owners commit to offering licenses that are fair and reasonable, thereby preventing patent hold-up scenarios where they might demand royalties that reflect the value of the entire standard rather than the patented technology itself. Without such commitments, SEP owners could leverage their patents to extract exorbitant fees from manufacturers who need access to these essential technologies, ultimately leading to higher consumer prices and reduced innovation.¹⁰

In India, the necessity for FRAND commitments has been highlighted in various regulatory decisions. For instance, in the case of *Micromax Informatics Limited v. Telefonaktiebolaget L.M. Ericsson*¹¹, the CCI noted that hold-up can subvert the competitive process of choosing among technologies and undermine the integrity of standard-setting activities. The commission emphasized that high costs associated with such patents get transferred to final consumers, which reflects the broader implications of failing to adhere to FRAND obligations.

Moreover, while FRAND commitments are designed to protect market participants from exploitation by SEP holders, they also benefit the patent owners themselves. By ensuring that their patented technologies are included in industry standards, SEP owners can expand their market reach and enhance their revenue streams through licensing agreements with various manufacturers. This mutually beneficial arrangement fosters technological advancement and encourages further investment in standardization activities.

However, despite the recognized importance of FRAND commitments, there remains a lack of specific legal provisions in India defining what constitutes fair and reasonable licensing terms. This ambiguity often leads to contentious negotiations between SEP holders and potential licensees, with parties left to determine license terms based on their relative market positions. In practice, this has resulted in SEP owners insisting on royalty rates calculated on broader bases or engaging in discriminatory pricing practices through confidentiality agreements.

The interplay between FRAND commitments and antitrust laws is also significant. While antitrust laws prohibit anti-competitive practices and abuse of dominant positions, they do not interfere with intellectual property rights conferred by patent law. However, when standards adopted attract SEPs owned by competitors, it becomes essential to ensure that SEP owners do not abuse their dominant positions by

⁹ What is FRAND Licensing all About: Top 10 Points to Keep in Mind, iPleaders Blog (July 2024), <https://blog.ipleaders.in/frand-licensing/>

¹⁰ Yann Ménière, *Fair, Reasonable and Non-Discriminatory (FRAND) Licensing Terms: Research Analysis of a Controversial Concept*, in *European Commission Joint Research Centre* (2023).

¹¹ *Micromax Informatics Ltd. v. Telefonaktiebolaget LM Ericsson*, FAO(OS) (COMM) 169/2017 & CM No. 40001/2017 (Delhi High Court, Dec. 4, 2017).

withholding licenses or demanding exorbitant royalty rates. In this context, enforceable FRAND commitments serve as a critical mechanism for limiting the rights of SEP owners and protecting other market players from exploitation.¹²

In conclusion, FRAND commitments are foundational to the standards development process and play an essential role in balancing the interests of SEP owners with those of other stakeholders in the telecommunications industry. As India continues to navigate the complexities surrounding SEPs and competition law, a clearer framework defining FRAND obligations will be crucial for fostering a competitive environment that promotes innovation while preventing anti-competitive behavior.¹³

E. Economic Implications

The theoretical framework surrounding SEPs and competition law also encompasses economic considerations. The presence of SEPs can create significant barriers to entry for new firms seeking to compete in established markets. If dominant players exploit their SEP portfolios through excessive licensing fees or restrictive terms, it can limit competition and hinder market growth. Moreover, the economic theory of monopolistic practices suggests that when firms hold significant market power due to exclusive rights over essential technologies, they may prioritize profit maximization over consumer welfare. This scenario highlights the importance of regulatory oversight to mitigate potential abuses while encouraging continued investment in research and development. In conclusion, understanding the theoretical framework surrounding SEPs involves examining their legal foundations within Indian law as well as their economic implications for competition in the telecommunications sector. This framework sets the stage for analyzing how effectively existing laws address potential abuses of dominance by SEP holders while balancing innovation with competitive market practices.¹⁴

2. Abuse of Dominance: Legal Concepts and Implications.

A. Defining Abuse of Dominance

The concept of abuse of dominance is defined under Section 4 of the Competition Act, 2002 in India.¹⁵ A firm is considered to be in a dominant position if it holds a position of economic strength that enables it to operate independently of competitive forces or to affect its competitors or consumers in its favor. The law identifies several behaviors that can constitute abuse, including excessive pricing, discriminatory practices, and refusal to deal. Excessive pricing occurs when a dominant firm charges prices significantly higher than the competitive level. Discriminatory practices involve offering different prices or conditions to different customers without justification, while refusal to deal refers to denying access to essential facilities or products necessary for competitors to operate.

The legal framework requires a thorough examination of market share, the ability to influence prices, and the overall market structure to determine whether a firm is abusing its dominant position. In the context of Standard Essential Patents (SEPs), the economic implications of abuse are profound. When SEP holders engage in anti-competitive practices, they can create barriers to entry for potential competitors, stifle

¹² Ravin Kapur, Standard Essential Patents and Their Competition Law Regulation - Discovering the Law, in the Realm of Inventions, SSRN (2016), <https://ssrn.com/abstract=2719130>.

¹³ Licensors' FRAND Commitments Do Not Limit Licensees' Rights, IPWatchdog (May 18, 2021), <https://ipwatchdog.com/2021/05/18/licensors-frand-commitments-not-limit-licensees-rights/id=133658/>.

¹⁴ OECD Report on Competition Policy and Intellectual Property Rights (1997), available at <https://www.oecd.org/daf/competition/competitionpolicyandintellectualpropertyrights.htm>.

¹⁵ Competition Act, 2002, No. 12 of 2003, § 4, India.

innovation, and lead to higher prices for consumers.¹⁶ This not only undermines the competitive landscape but also results in reduced choices for consumers and potentially lower quality products and services. Moreover, the misuse of SEPs can lead to an environment where smaller firms are unable to compete effectively, resulting in market consolidation that further entrenches dominant players. This economic concentration diminishes the overall health of the telecommunications sector, reducing incentives for innovation and technological advancement. Consequently, understanding abuse of dominance within this context becomes crucial for ensuring a balanced market that encourages competition while protecting intellectual property rights.

B. Types of Abusive Practices by SEP Holders

Excessive Pricing and Its Impact on Market Competition

One significant form of abusive practice by SEP holders is excessive pricing. This occurs when patent holders impose exorbitant licensing fees on companies seeking access to essential technologies. Such pricing strategies create substantial financial burdens for smaller competitors or new entrants who may lack the resources to pay these fees. The impact on market competition is considerable; excessive pricing can lead to higher costs for consumers as companies pass on these costs, deterring innovation by limiting access to critical technologies needed for developing new products or services. Ultimately, this practice undermines the very purpose of SEPs, which is to facilitate technological advancement and ensure interoperability.

Discriminatory Licensing Practices Affecting Competitors

Another form of abuse involves discriminatory licensing practices. These occur when SEP holders offer different licensing terms to different companies without valid justification based on objective criteria. For instance, charging higher fees or imposing stricter conditions on certain licensees while providing more favorable terms to others distorts competition by giving preferential treatment to specific firms. This creates an uneven playing field and discourages competition from smaller firms or new entrants who may be unable to secure fair access to essential technologies.

Refusal to License and Its Consequences for Market Entry

Refusal to license represents a significant form of abusive behavior among SEP holders. This occurs when patent holders deny access to their patents altogether, particularly when such patents are deemed essential for compliance with industry standards. Such refusals can significantly hinder market entry for new competitors who rely on access to these technologies. The consequences are far-reaching; they can lead to reduced competition, limit consumer choice, and stifle innovation within the industry. When dominant players refuse to license their SEPs, they effectively control the market landscape, making it difficult for others to compete effectively or develop alternative solutions. In summary, understanding abuse of dominance within the context of SEPs involves examining both legal definitions and economic implications. The various forms of abusive practices not only threaten market competition but also have significant repercussions for innovation and consumer welfare in India's telecommunications sector. Addressing these issues through effective regulatory oversight is essential for fostering a competitive environment that benefits all stakeholders involved.¹⁷

¹⁶ *India: SEPs and FRAND Litigation – Policy and Latest Developments*, Global Competition Review (2023), <https://globalcompetitionreview.com/hub/sepfrand-hub/2023/article/india-seps-and-frand-litigation-policy-and-latest-developments>.

¹⁷ Sandeep Kumar & Neha Sharma, *Balancing IP Rights and Competition: The Role of CCI*, Indian Economic Review 22(1) (2020).

3. Regulatory Landscape in India

A. Role of the Competition Commission of India (CCI)

The Competition Commission of India (CCI) serves as the primary regulatory body responsible for enforcing the Competition Act, 2002, which aims to maintain fair competition in Indian markets. Established in March 2009, the CCI operates as a quasi-judicial authority tasked with eliminating practices that have an adverse effect on competition, promoting and sustaining competition, protecting consumer interests, and ensuring freedom of trade among market participants. The commission comprises a chairperson and six members, all appointed by the Central Government, who bring diverse expertise in areas such as law, economics, and business.¹⁸

The CCI's mandate includes not only the assessment of anti-competitive practices but also the advocacy of competition policy. It engages in activities designed to educate stakeholders about the benefits of competition and works to create a culture of compliance within the business community. The CCI has adopted a proactive approach to regulating Standard Essential Patents (SEPs), recognizing the unique challenges posed by these patents in maintaining competitive markets. By scrutinizing licensing practices and ensuring adherence to Fair, Reasonable, and Non-Discriminatory (FRAND) terms, the CCI plays a crucial role in mitigating potential abuses of dominance by SEP holders.

B. Mechanisms for Addressing Abuse of Dominance

The CCI possesses significant investigative powers under the Competition Act, 2002, enabling it to conduct inquiries into anti-competitive behaviour. These powers include the ability to summon documents, conduct inspections, and seek information from parties involved in alleged violations. The investigative process is designed to be thorough and transparent, ensuring that all relevant evidence is considered before reaching a conclusion.¹⁹

Once an investigation is completed, the CCI has various remedies at its disposal to address identified abuses of dominance. These remedies can include imposing penalties on offending parties, issuing cease-and-desist orders to halt anti-competitive practices, and mandating changes to business conduct to restore competitive conditions. The Act emphasizes consumer welfare as a guiding principle, aiming to ensure that market dynamics benefit consumers while fostering an environment conducive to innovation and growth.²⁰

C. Challenges Faced by the CCI

Despite its robust framework and proactive stance, the CCI faces several challenges in effectively regulating SEPs and addressing abuse of dominance. One major issue is jurisdictional overlap with other regulatory bodies, such as the Telecom Regulatory Authority of India (TRAI). This overlap can lead to ambiguities regarding which authority has jurisdiction over specific matters involving SEPs, complicating enforcement efforts.

Additionally, the rapid pace of technological advancement presents difficulties for regulators who must adapt existing legal frameworks to new market realities. The digital economy has introduced complexities that require specialized knowledge in technology and industrial economics—areas where the CCI may

¹⁸ Kiran S., Competition Commission of India: Duties and Powers, *Aliah University Journal of Law & Governance* (2020), available at https://aliah.ac.in/upload/media/12-04-20_1586639430.pdf.

¹⁹ Competition Act, 2002, No. 12 of 2003, § 19(3), India.

²⁰ Competition Act, 2002, No. 12 of 2003, § 27, India.

need further capacity building.²¹

Furthermore, balancing intellectual property rights with competitive practices remains a significant challenge for the CCI. While protecting innovation is essential, it is equally important to prevent dominant players from using their patent portfolios to engage in anti-competitive behaviour that harms consumers and stifles competition. This delicate balance requires ongoing dialogue between regulatory bodies and stakeholders across industries to develop coherent policies that promote both innovation and fair competition.

In conclusion, while the CCI plays a vital role in regulating SEPs and addressing abuse of dominance within India's telecommunications sector, it must navigate various challenges related to jurisdictional clarity, technological advancements, and the interplay between IP rights and competition law. Strengthening its capacity and refining its approach will be essential for ensuring that Indian markets remain competitive and innovative.

4. Case Studies and Analysis

A. Overview of Significant Regulatory Decisions

An analysis of trends in CCI decisions reveals a growing emphasis on enforcing compliance with FRAND obligations among SEP holders. The commission has increasingly recognized that adherence to fair licensing practices is essential for maintaining competitive markets and protecting consumer interests. Patterns observed in recent rulings indicate a proactive approach by the CCI to address issues such as excessive pricing, discriminatory licensing practices, and refusal to license.

Micromax Informatics Limited v. Telefonaktiebolaget L.M. Ericsson

In 2013, Micromax Informatics Limited filed a complaint against Telefonaktiebolaget L.M. Ericsson with the Competition Commission of India (CCI), alleging that Ericsson was abusing its dominant position in violation of Sections 3 and 4 of the Competition Act, 2002. Micromax claimed that Ericsson, as the sole licensor of SEPs necessary for implementing 2G and 3G wireless telecommunication standards set by the European Telecommunications Standards Institute (ETSI), was charging excessive royalties based on the sale price of downstream products rather than on the smallest saleable component price, such as GSM or CDMA chips. Additionally, Micromax pointed out that Ericsson's insistence on signing a non-disclosure agreement (NDA) facilitated discriminatory pricing practices, further exacerbating the issue.²²

The CCI's preliminary findings indicated that Ericsson held a dominant position in the relevant market due to its extensive portfolio of SEPs. The commission noted that there were no viable alternatives to Ericsson's SEPs, which allowed it to impose unfair licensing terms. The CCI concluded that the royalty rates requested by Ericsson had no reasonable nexus to the patented technology and ordered further investigation into Ericsson's licensing practices.

Intex Technologies v. Telefonaktiebolaget L.M. Ericsson

Following Micromax's complaint, Intex Technologies also filed a complaint against Ericsson in 2013, alleging similar anti-competitive behavior. Intex contended that Ericsson was offering excessive royalty rates for its SEPs and imposing unfair licensing terms, including the requirement to sign an NDA. Intex

²¹ Ansruta Debnath, *A Case for CCI's Jurisdiction Over Standard Essential Patents*, Indian Review of Competition Law (2024), <https://www.ircl.in/post/a-case-for-cci-s-jurisdiction-over-standard-essential-patents>.

²² *Micromax Informatics Limited v. Telefonaktiebolaget LM Ericsson (PUBL)*, CS (COMM) 442/2013, Delhi High Court, 2021.

argued that this NDA not only restricted its ability to discuss licensing terms with other licensees but also forced it into foreign arbitration for dispute resolution, thus limiting its legal recourse.²³

The CCI found merit in Intex's allegations, observing that Ericsson's requirement for NDAs indicated an attempt to engage in discriminatory pricing practices by preventing licensees from comparing royalty rates. The commission identified the relevant product market and determined that Ericsson had a dominant position due to its portfolio of SEPs relating to mobile phone devices implementing GSM standards. The CCI concluded that the royalty offers made by Ericsson were prima facie discriminatory and contrary to FRAND obligations, leading to an order for further investigation.

iBall's Complaint Against Telefonaktiebolaget L.M. Ericsson

In 2015, iBall filed a complaint against Ericsson, alleging that although it was willing to enter into a license agreement based on FRAND terms, Ericsson imposed stringent conditions including a ten-year NDA and mandatory arbitration in Stockholm before negotiations could commence. iBall argued that these demands constituted an abuse of dominant position under the Competition Act.²⁴

The CCI agreed with iBall's allegations and concluded that Ericsson's practices amounted to abuse of dominance. However, before any conclusive action was taken by the CCI, iBall and Ericsson reached a settlement, resulting in iBall withdrawing its complaint. This case illustrates how negotiations can sometimes lead to settlements outside formal adjudication processes while raising questions about whether such settlements adequately protect competitive dynamics in the market.

Nokia v. Oppo

A significant recent case is *Nokia v. Oppo*²⁵, which highlights ongoing disputes over SEP licensing practices. In this case, Nokia alleged that Oppo was infringing its SEPs related to 4G technologies without obtaining proper licenses. The litigation raised critical questions about FRAND commitments and whether Nokia's licensing terms were indeed fair and reasonable. The outcome of this case is anticipated to have substantial implications for how SEPs are licensed in India, particularly regarding what constitutes acceptable licensing practices under FRAND obligations.

Following the Division Bench judgment, related cases like *Nokia Technologies OY v. Vivo Mobile Communication Co.*, CS(COMM) 162/2022²⁶, were listed for determination of interim injunctions. During this period, a significant development occurred when the Chongqing No. 1 Intermediate People's Court in China issued a judgment on November 28, 2023, determining a global FRAND rate in a parallel proceeding. In response to this development, the parties reached a settlement, leading to the withdrawal of the suit. A final judgment on the matter and its connected cases was passed on February 13, 2024.

Lava International Ltd. v. Ericsson

In the first post-trial ruling on telecom SEP infringement, the Delhi High Court awarded Ericsson damages of Rs 244 crore (~30 million USD), along with 5% interest until the amount is fully paid.²⁷ The Court set the FRAND royalty rate for Lava at 1.05% of the net selling price of the devices, rejecting the calculation based on chipsets. The Court determined that royalty calculation at the end-product level is more

²³ *Telefonaktiebolaget LM Ericsson (PUBL) v. Intex Technologies (India) Limited*, CS (OS) No. 1045/2014, Delhi High Court, 2015.

²⁴ *Best IT World (India) Pvt. Ltd. (iBall) v. Telefonaktiebolaget LM Ericsson*, CS (COMM) 1281/2015, Delhi High Court, 2015.

²⁵ *Nokia Technologies Oy v. Guangdong Oppo Mobile Telecommunications Corp Ltd & Ors.*, CS (COMM) 303/2021, 2022/DHC/004935 (Del. Nov. 17, 2022), aff'd, CS (COMM) 303/2021, 2023/DHC/004935 (Del. July 3, 2023).

²⁶ *Nokia Technologies OY v. Vivo Mobile Communication Co.*, CS(COMM) 162/2022 (Delhi High Court 2022).

²⁷ *Lava Int'l Ltd. v. Telefonaktiebolaget LM Ericsson*, 2024 SCC OnLine Del 2497, CS(COMM) 65/2016.

appropriate, reflecting core functionalities and industry standards. The Court ruled that damages should reflect the full SEP portfolio rather than just the asserted patents, in line with industry practices and FRAND principles. Since compliance with standards requires licensing all SEPs, damages were calculated based on the entire portfolio.

The Court applied the two-step test to establish SEP infringement:

Mapping of Patents to Standards: First, the suit patents were mapped to the relevant industry standards.

Mapping of the Implementer's Product: The second step involved verifying that the defendant's product complied with these standards. Since Lava's devices complied with the standards, infringement was deemed an inevitable result.

This test highlights the automatic nature of SEP infringement when a product implements a standard, as confirmed by the Court.

Telefonaktiebolaget LM Ericsson (PUBL) v. Competition Commission of India

Ericsson appealed against the CCI's orders regarding investigations into its licensing practices before the Delhi High Court²⁸ in 2014. Initially, the court sided with Ericsson; however, subsequent rulings clarified that there is no legal barrier preventing the CCI from investigating potential violations under the Competition Act. In July 2023, an appellate division of the Delhi High Court ruled that while provisions within the Patent Act aimed at controlling anti-competitive practices exist, they do not preclude CCI's authority under competition law when investigating SEP licensing practices.²⁹

The court emphasized that although patent holders have rights under the Patents Act, these rights do not exempt them from scrutiny under competition law when their actions adversely affect competition. This ruling highlighted the ongoing tension between patent rights and competition enforcement in India.

B. Enforcement of Injunctions in SEP Infringement Cases

In India, holders of Standard Essential Patents (SEPs) have the right to pursue legal action against unauthorized users, seeking remedies such as injunctions and damages. However, the issuance of an injunction, especially an interim injunction, is an equitable remedy that is granted based on a three-pronged evaluation: (i) establishing a prima facie case of infringement, (ii) determining that the balance of convenience favors the patentee, and (iii) assessing the likelihood of irreparable harm to the patentee if the injunction is not granted.

For SEPs, the obligation to license on Fair, Reasonable, and Non-Discriminatory (FRAND) terms introduces specific challenges. The FRAND commitment requires the patent holder to negotiate licenses for the patented technology at reasonable rates, typically resulting in royalty-based compensation rather than imposing restrictions on the use of the technology. Some argue that granting an injunction in SEP infringement cases could cause irreparable harm to the alleged infringer, particularly if they depend on the patented technology to produce and market products that comply with industry standards.³⁰

C. Analysis of trends in CCI

An analysis of trends in CCI decisions reveals a growing emphasis on enforcing compliance with FRAND

²⁸ J. Gregory Sidak, *FRAND in India: The Delhi High Court's Emerging Jurisprudence on Royalties for Standard-Essential Patents*, 10 J. Intell. Prop. L. & Prac. 609 (2015), <https://doi.org/10.1093/jiplp/jpv096>.

²⁹ *W.P.(C) 8379/2015*, Delhi High Court, 2023.

³⁰ India: SEPs and FRAND Litigation—Policy and Latest Developments, *Global Competition Review* (Jan. 31, 2023), <https://globalcompetitionreview.com/hub/sepfrand-hub/2023/article/india-seps-and-frand-litigation-policy-and-latest-developments>.

obligations among SEP holders. The commission has increasingly recognized that adherence to fair licensing practices is essential for maintaining competitive markets and protecting consumer interests. Patterns observed in recent rulings indicate a proactive approach by the CCI to address issues such as excessive pricing, discriminatory licensing practices, and refusal to license.

For instance, in its rulings against Ericsson, the CCI demonstrated vigilance regarding compliance with FRAND terms by highlighting discriminatory pricing strategies employed by SEP holders. The commission's findings indicated that different royalty rates charged to various licensees for similar technologies could distort competition and create barriers for smaller players attempting to enter the market. This proactive stance signals a robust commitment to fostering a fair competitive environment.

Moreover, there is an emerging consensus within regulatory circles regarding the necessity of balancing intellectual property rights with competitive practices. The CCI has acknowledged that while protecting intellectual property is crucial for innovation, it must also ensure that these rights do not become tools for anti-competitive behavior. This nuanced understanding reflects an evolving jurisprudence that seeks to harmonize the objectives of both intellectual property law and competition law.

The implications of these trends for future regulatory actions are significant. As the CCI continues to refine its approach to SEPs, stakeholders can expect more rigorous scrutiny of licensing agreements and a stronger emphasis on ensuring compliance with FRAND obligations. The commission's willingness to impose penalties for non-compliance signals a robust enforcement mechanism aimed at deterring potential abuses of dominance by SEP holders.

In conclusion, these significant cases illustrate how regulatory decisions concerning SEPs are shaping India's telecommunications market while emphasizing compliance with FRAND obligations. By analyzing these cases and identifying trends in its rulings, it becomes evident that the CCI is adapting its strategies to address emerging challenges while balancing innovation needs with fair competition imperatives. This evolving regulatory landscape will be crucial for shaping future dynamics in India's telecom industry.

5. Comparative Perspective on Global Practices

A. International Approaches to SEPs and Competition Law

The regulatory landscape surrounding Standard Essential Patents (SEPs) varies significantly across jurisdictions, with notable frameworks established in the European Union (EU) and the United States (US). In the EU, the landmark case of *Huawei v. ZTE* has set important precedents regarding the negotiation process for FRAND licenses. The European Court of Justice ruled that SEP holders must engage in good faith negotiations with potential licensees before seeking injunctions for infringement. This decision emphasizes the mutual obligations of both parties in licensing agreements and aims to prevent abuse of dominance by ensuring that implementers are not unfairly pressured into unfavourable terms.³¹

In the United States, the Federal Trade Commission (FTC) has also taken an active role in regulating SEPs through antitrust enforcement. A significant case involved Qualcomm, where the FTC alleged that Qualcomm engaged in anti-competitive practices by refusing to license its patents to rival chip manufacturers and imposing excessive royalties on its licensees. The court ruled against Qualcomm,

³¹ *Enforcing Telecoms SEPs as Abuse of Dominant Position: The European Principles*, 32 Eur. Competition J. 125 (2022).

highlighting the importance of fair licensing practices and setting a precedent for how SEP holders must conduct themselves in competitive markets.³²

India's recent legal developments reflect a growing trend towards harmonizing its approach with international standards. The Delhi High Court's decision in *Intex Technologies v. Ericsson*³³ sought to align Indian jurisprudence with global practices by emphasizing the need for SEP holders to adhere to FRAND obligations while also considering the complexities of international patent law. This case affirmed that an SEP owner must grant a license on FRAND terms to anyone who requests one, thereby reinforcing principles established in other jurisdictions.

Additionally, regulatory bodies worldwide have recognized the importance of balancing intellectual property rights with competition law. For instance, the EU's guidelines advocate for a collaborative approach between patent authorities and competition regulators, which has led to a more integrated framework for addressing SEP-related disputes.

B. Lessons Learned from Global Practices

The experiences of other jurisdictions provide valuable lessons that can inform India's regulatory approach to SEPs and competition law. One key takeaway is the importance of establishing clear guidelines for FRAND negotiations. The EU's emphasis on good faith negotiations between SEP holders and implementers serves as a model for India, highlighting the need for both parties to engage constructively to avoid disputes and foster innovation.

Moreover, the concept of mutual obligations within FRAND commitments, as demonstrated in cases like *Huawei v. ZTE*³⁴, highlights that both SEP holders and implementers have responsibilities during licensing negotiations. This balanced perspective can help mitigate issues related to "hold-up" and "hold-out," which are common challenges in SEP licensing disputes.

Another critical lesson is the necessity for regulatory bodies like the Competition Commission of India (CCI) to adopt a proactive stance in monitoring compliance with FRAND obligations. The CCI's recent investigations into companies like Ericsson and Monsanto reflect a growing awareness of the need to scrutinize anti-competitive behaviour among SEP holders. By learning from international practices, India can enhance its regulatory framework to ensure that it effectively addresses potential abuses while promoting a competitive environment conducive to innovation.

Furthermore, adopting commitment mechanisms similar to those used by the EU Commission could provide an effective way for SEP holders to demonstrate compliance with competition law while avoiding lengthy litigation processes. For instance, Samsung's voluntary commitments during an antitrust investigation illustrate how proactive measures can lead to constructive resolutions that benefit all parties involved.

In conclusion, examining international approaches to SEPs and competition law reveals critical insights that can enhance India's regulatory framework. By integrating best practices from jurisdictions like the EU and US, India can establish a more robust system for managing SEPs, ensuring that intellectual property rights are upheld while fostering fair competition and innovation within its telecommunications sector.

³² **Federal Trade Commission v. Qualcomm Inc.**, No. 19-16122, 2020 WL 4605647 (9th Cir. Aug. 11, 2020).

³³ *Intex Technologies v. Ericsson* in the High Court of Delhi is 2023:DHC:2243-DB, FAO(OS)(COMM) 296-297/2018

³⁴ **Huawei Technologies Co. Ltd v. ZTE Corp., ZTE Deutschland GmbH**, Judgment of the Court (Fifth Chamber) of 16 July 2015, [2015] ECLI:EU:C:2015:477.

6. Insights and Implications

A. Key Insights from the Analysis

The analysis of the regulatory landscape surrounding Standard Essential Patents (SEPs) in India reveals several key findings. First, there is a clear recognition of the tension between intellectual property rights and competition law. The courts and the Competition Commission of India (CCI) have increasingly acknowledged that while SEPs are essential for fostering innovation and technological advancement, they also confer significant market power that can lead to anti-competitive behaviour. Cases such as *Ericsson v. Intex* and *Oppo v. Nokia* illustrate how courts are grappling with the need to balance these competing interests, emphasizing the importance of Fair, Reasonable, and Non-Discriminatory (FRAND) licensing terms.

Second, the CCI's proactive stance in investigating allegations of abuse of dominance among SEP holders highlights an evolving regulatory framework that aims to protect consumer interests while promoting fair competition. The commission's scrutiny of excessive pricing and discriminatory licensing practices indicates a commitment to ensuring that SEP holders do not exploit their dominant positions at the expense of smaller competitors and consumers.

Lastly, the global perspective on SEPs highlights the necessity for India to align its regulatory practices with international standards. The experiences from jurisdictions like the EU and US provide valuable insights into effective regulatory mechanisms that can mitigate anti-competitive behaviour while fostering innovation.

B. Implications for Stakeholders

The implications of these findings are significant for various stakeholders within the telecommunications sector. For SEP holders, there is a pressing need to adopt transparent licensing practices that comply with FRAND obligations. Failure to do so could result in legal challenges and reputational damage, as seen in recent cases where courts have scrutinized excessive royalty demands.

For implementers and new entrants in the market, understanding their rights under competition law is crucial. The CCI's rulings provide a framework for challenging unfair licensing practices and seeking redress against dominant players who may attempt to impose onerous terms. This empowerment is vital for fostering a competitive environment where innovation can thrive.

Furthermore, policymakers must recognize the importance of creating a coherent regulatory framework that harmonizes intellectual property rights with competition law. This involves continuous engagement with stakeholders to ensure that regulations are not only effective but also adaptable to the rapidly changing technological landscape.

7. Conclusion

The interaction between SEPs and competition law presents both challenges and opportunities for India's telecommunications sector. The CCI's increased scrutiny of SEP holders demonstrates a commitment to protecting consumer interests and promoting fair competition. Important cases have highlighted the need for balanced approaches that respect intellectual property rights without allowing these rights to enable anti-competitive behaviour. As technology continues to advance, a nuanced approach to SEPs will be crucial. While intellectual property rights are necessary to incentivize innovation, they should not be misused to restrict consumer welfare or fair competition.

There are numerous future research directions that could guide India's SEP policy. With emerging technologies like artificial intelligence and 5G reshaping the landscape, research into how these

developments impact SEPs will be crucial for adapting existing frameworks. Analysing the impact of SEP pricing on consumer welfare will provide valuable insights into market dynamics and inform policies that ensure SEP practices remain fair to consumers.

Comparative studies across jurisdictions offer further insights. By learning from other regions' approaches to managing SEPs, India can integrate effective practices that mitigate anti-competitive behaviour. Longitudinal studies on regulatory impacts could also prove invaluable, helping assess how policy changes influence market entry, innovation rates, and consumer choice over time. These studies will be essential in determining whether the proposed adjustments foster an environment of innovation and fair competition.

Through rigorous research and thoughtful policy adjustments, stakeholders can navigate the complexities of SEPs, creating a system that supports both innovation and competitive fairness in India's telecommunications sector.

8. Recommendations and way forward

1. Defining FRAND Obligations under Competition Law

The **Competition Act, 2002** prohibits practices that abuse a dominant position (Section 4) and promotes fair competition. However, it lacks explicit guidelines on Fair, Reasonable, and Non-Discriminatory (FRAND) licensing, leading to a legal gap. By defining FRAND obligations in this Act or related regulations, it would help SEP holders understand what constitutes "fair" and "reasonable" licensing fees, making it easier for the **Competition Commission of India (CCI)** to enforce compliance and resolve disputes.³⁵

2. Monitoring Anti-Competitive Conduct of SEP Holders

SEP holders often possess market power due to the essential nature of their patents, and without regulatory checks, they may engage in **exclusive or discriminatory licensing** practices. CCI's authority to monitor licensing behavior under the Act could be enhanced to allow closer scrutiny, ensuring SEP holders do not exploit their dominance to impose restrictive or excessive licensing terms that hinder competition.

3. Transparency in Licensing Agreements

Legal provisions mandating **transparency in SEP licensing agreements** would discourage discriminatory pricing and ensure equal access to technology. This could involve amendments or additional guidelines to the **Patent Act, 1970** or other IP regulations, compelling SEP holders to publicly disclose licensing terms, creating accountability and preventing hidden, unfair terms.

4. Incorporating Alternative Dispute Resolution (ADR) Provisions

Currently, SEP-related disputes can be time-consuming and expensive, burdening the legal system. **ADR mechanisms** like mediation and arbitration could be introduced into SEP licensing frameworks, either through the **Competition Act** or IP laws, to streamline resolution. This would allow the CCI or IP regulatory bodies to create a specialized forum for SEP-related disputes, reducing litigation costs and offering faster settlements.

5. Strengthening IPR and Competition Law Interface

Intellectual property rights and competition law often conflict when it comes to SEPs. Amending or issuing **guidelines on the interplay between IP rights and competition law** could clarify when CCI's

³⁵ Supra, Note 1

intervention is warranted. Guidelines should address when SEP holders' licensing practices qualify as anti-competitive, establishing a clear threshold for when IP rights can be limited in favor of market competition.³⁶

6. International Precedents and Comparative Law

Analyzing SEP regulation frameworks in the **European Union, United States**, and other jurisdictions provides legal insights for India. Legal adaptation of successful practices, such as **EU's Guidelines on Horizontal Cooperation Agreements** which emphasize FRAND compliance in licensing, could serve as a model for India to refine its regulatory and legal approach to SEPs.³⁷

7. Regulating Standard-Setting Organizations (SSOs)

Standard-setting organizations play a key role in establishing technical standards and often enforce FRAND commitments among members. India could adopt laws that regulate SSOs to ensure that their procedures uphold **fair and balanced SEP licensing practices**, preventing dominance abuse. Legal measures may include mandating SSOs to impose transparent and enforceable FRAND commitments on SEP holders, overseen by the CCI or a dedicated regulatory body.³⁸

9. Consumer Welfare and Competition Safeguards

Consumer protection laws could also play a role in SEP regulation. By ensuring that SEPs do not restrict competition or inflate consumer prices, CCI could apply **Section 19 of the Consumer Protection Act, 2019** or similar provisions to safeguard consumer welfare. SEP licensing that restricts market entry or unfairly raises costs could be challenged on consumer rights grounds, bringing a multi-faceted legal approach to addressing SEP dominance.

10. Explicit Provisions for SEPs

Amend the Patents Act to specifically define Standard Essential Patents (SEPs) and establish clear guidelines for Fair, Reasonable, and Non-Discriminatory (FRAND) licensing. These provisions should clarify what constitutes a FRAND-compliant offer, addressing negotiation processes and ensuring non-discriminatory access to essential technologies. Additionally, guidelines for setting reasonable royalty rates, based on factors like the technology's economic value and market standards, would help minimize disputes and promote transparency for both SEP holders and implementers.

11. Mandatory Registration of SEPs

Implement a mandatory registration system requiring SEP holders to register their patents with a designated national authority responsible for overseeing SEPs. This registry would serve as a transparent, central database for essential patents tied to specific standards. Registration should involve essentiality checks to confirm that the registered patents are indeed essential to the relevant technical standards, helping to prevent overreach and ensuring only truly essential patents are classified as SEPs.

³⁶ Arpan Banerjee, Background Note: Standard Essential Patents, Innovation and Competition: Challenges in India, 7 IP Theory 1 (2017), available at <https://www.repository.law.indiana.edu/ipt/vol7/iss1/1>.

³⁷ Miko Mustonen, Enforcing Telecoms SEPs as Abuse of Dominant Position: The European Principles, 11 Helsinki L. Rev. 48, 48–73 (2021), <https://doi.org/10.33344/vol11Ypp48-73>.

³⁸ Nishtha Pant, Decoding the Interplay of Standard Essential Patents and Competition Law: An Indian Perspective, 19 *Supremo Amicus* 319 (2020).