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NAVIGATING THE INTERSECTION OF COMPETITION LAW AND INTELLECTUAL PROPERTY RIGHTS IN INDIA: TOWARDS CLARITY AND BALANCE

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ABSTRACT:

This paper delves into the nuanced relationship between competition law and intellectual property rights (IPR) in India, particularly focusing on the provisions outlined in §3(5) of the Competition Act. While this section allows IPR holders to impose certain conditions or restrictions to safeguard their rights, the criteria for determining the reasonableness and necessity of such conditions remain ambiguous. Through an analysis of past cases and existing legal discourse, this study underscores the pressing need to revisit competition policy concerns surrounding IPR agreements in India. It argues for greater clarity and predictability in the evaluation process of these conditions to ensure a balanced approach that considers both anti-competitive and pro-competitive effects. Drawing on insights from jurisdictional conflicts and international best practices, the paper proposes the introduction of mandatory consultations between competition law and IP authorities to assess the extent of protection offered by IPR and the necessity of imposed conditions. Furthermore, it emphasizes the importance of considering various factors such as public interest, innovator and licensee positions, innovation strength, and competition effects in evaluating these agreements. To strengthen the application of competition law and IP law, the paper recommends the formulation of comprehensive guidelines by regulatory bodies in consultation with stakeholders, outlining the assessment process under §3(5) of the Competition Act. By advocating for a clearer framework and collaborative approach, this study aims to foster a conducive environment for innovation and competition while safeguarding the rights of intellectual property holders.

Keywords: Competition law, Intellectual property rights, §3(5) of the Competition Act, Reasonableness, Necessity, India, Jurisdictional conflicts, Pro-competitive effects, Anti-competitive effects, Regulatory guidelines.

Introduction:

In the realm of legal frameworks promoting innovation and safeguarding consumer interests, Intellectual Property Rights (IPRs) laws and Competition Law stand as pivotal mechanisms. While IPRs are typically perceived as catalysts for innovation and drivers of dynamic competition, the synergy between these laws is not without complexities. The interplay between patent protection, which grants legal exclusivity to inventors, and Competition Law, designed to regulate market behaviour and prevent anti-competitive practices, often gives rise to tensions and contradictions. This apparent friction stems from the fundamentally divergent economic theories that underpin these legal frameworks' approaches to innovation and market dynamics. Notably, the seminal works of economists such as Schumpeter and Arrow have fuelled a longstanding debate regarding the interrelationship between innovation and competition. Schumpeter's perspective, rooted in the notion that monopolies stimulate innovation by safeguarding property rights, contrasts sharply with Arrow's proposition that competition fosters innovation. This dichotomy

underscores the complexity of reconciling the objectives of Patent Law and Competition Law, both of which are essential for fostering innovation while ensuring fair competition. While it is widely recognized that Patent Law and Competition Law play complementary roles in promoting innovation, operationalizing this complementarity poses significant challenges. Instances of market abuse, arising from the exercise of monopoly rights in an exclusionary manner, underscore the need for policy interventions to maintain a delicate balance between exclusivity and competition. This necessitates viewing these legal frameworks not as opposing forces but as complementary mechanisms that must work in tandem to promote innovation and enhance consumer welfare.[1299]

The relationship between Competition Law and intellectual property ('IP') law:

The intricate relationship between Competition Law and intellectual property ('IP') law underscores a fundamental tension between the objectives of promoting innovation and ensuring market competitiveness. Whereas Competition Law is rooted in the maximization of public interest and seeks to foster market entry and consumer choice, IP law operates on the premise of exclusivity, granting inventors control over their intellectual labour.[1300]

Historically, the exclusivity afforded by IP law has been equated with granting monopolistic power to rights holders, while Competition Law has been viewed as a counterforce aimed at curbing such monopolies. However, despite the apparent incongruence in their modes of operation, it is imperative to reconcile these conflicting objectives to maintain market equilibrium. Central to this reconciliation is the adoption of an innovation-centric approach that acknowledges the shared goals of both legal domains: enhancing innovation, promoting social welfare, and maximizing market efficiencies.[1301] By recognizing the complementary nature of these laws, efforts can be directed towards fostering a regulatory environment that encourages innovation while preventing anti-competitive practices.[1302]

Furthermore, the regul[1303]atory stance towards the impact of Competition Law on IP agreements significantly influences the dissemination and creation of novel technology in the economy. Achieving a careful balance between the operation of Competition Law and IP law regimes requires nuanced approaches that recognize the unique challenges posed by each domain. One proposed mechanism for achieving this balance is the limited exemption of certain IP rights from the general application of Competition Law. Such an exemption could serve as a viable balancing mechanism, regulating the exercise and ramifications of IP rights while fostering innovation. However, to be effective, the scope of such exemptions must be clearly defined to prevent ambiguity and ensure regulatory certainty.[1304] In light of these considerations, it is imperative to analyse and delineate the boundaries of the IP law exemption under Competition Law, particularly in the context of the Indian legal framework.[1305] By examining the legislative evolution and jurisdictional issues surrounding this exemption, regulatory authorities can better navigate the complexities of reconciling Competition Law and IP law objectives. By adopting an innovation-centric approach and exploring pragmatic solutions, regulatory authorities can navigate the complexities of this interface to

[1299] Régibeau, P. and Rockett, K., 2004. The relationship between intellectual property law and competition law: An economic approach.
[1300] Chandrika Bothra & Mehak Kumar, Determining the Reasonability of Conditions under Sec. 3(5) of the Competition Act: Analysing the Intellectual Property Law Exemption, 13 NUJS L. REV. 630 (2020).
[1301] Drexl, J. ed., 2010. Research handbook on Intellectual property and Competition law. Edward Elgar Publishing.
[1302] Ghidini, G., 2006. Intellectual property and competition law: the innovation nexus. Edward Elgar Publishing.
[1303] Ehlermann, C.D. and Atanasiu, I. eds., 2007. European competition law annual 2005: the interaction between competition law and intellectual property law. Bloomsbury Publishing.
[1304] Drexl, J. ed., 2010. Research handbook on Intellectual property and Competition law. Edward Elgar Publishing.
[1305] Lianos, I. and Dreyfuss, R.C., 2013. New Challenges in the Intersection of Intellectual. Property Rights with Competition Law. A View from Europe and the United States.

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foster innovation and enhance consumer welfare effectively.[1306]

Historical evolution and jurisprudential underpinning:

Understanding the origins of contemporary competition law requires examining the role and objectives of competition policy in shaping its current form. Competition policy aims to enhance efficiency and maximize social welfare.[1307] At its core, it strives to maintain competition as the primary driver for resource allocation in free market economies, fostering an environment conducive to business growth and promoting both static and dynamic efficiency through heightened competition.[1308] This encompasses various government interventions affecting business operations. The framework of competition policy comprises both proactive measures, such as fostering competition domestically, and reactive measures, including legislation, judicial decisions, and regulations aimed at curbing anti-competitive behaviour. Moreover, competition policy necessitates managing the intersection between competition law and intellectual property (IP) law.[1309] This entails regulating instances of monopolistic abuse arising from IP rights and overseeing agreements between IP right holders and third parties. In certain contexts, while restrictions within licensing agreements may generally foster competition, they could potentially be anti-competitive if exploited for cartel-like behaviour or to stifle competition among different technologies. On the other side, intellectual property rights (IPRs) and IP policy are geared towards fostering innovation, thereby enhancing consumer welfare and economic progress.[1310] The exclusive rights conferred by IPRs incentivize innovation and R&D investments, with right holders often engaging in agreements for the licensing or utilization of their IP.[1311] These agreements enable them to capitalize on their innovations while stimulating further technological advancements and economic gains. However, excessive protection of IPRs can stifle competition and innovation, necessitating a delicate balance between protecting innovation and fostering competition.[1312] Despite their shared goals of promoting innovation and social welfare, competition law and IP law can sometimes clash, particularly regarding the extent of protection afforded by IP rights in competitive markets. While IP law aims to reward innovators and encourage innovation through exclusivity, competition law intervenes to ensure market access and prevent monopolistic practices, thereby facilitating long-term dynamic competition.[1313]

Efforts to reconcile these conflicting objectives have led to suggestions for limited exemptions for IP-related agreements from competition law scrutiny, provided they contribute to economic growth, technological progress, and consumer welfare. Such exemptions aim to harmonize the functioning of both regimes and ensure their complementary operation towards achieving broader societal benefits. In essence, while competition law emphasizes short-term allocative efficiency by aligning prices with marginal costs, IP law incentivizes innovation by allowing right holders to charge prices above marginal costs. Bridging the gap between these two objectives necessitates a focus on long-term consumer welfare, underscoring the importance of clear and nuanced application of

[1306] Lianos, I., 2016. competition law and Intellectual Property (IP) rights: analysis, cases and materials.
[1307] Geradin, D., 2016. European Union competition law, intellectual property law and standardization. *Intellectual Property Law and Standardization (April 15, 2016)*.
[1308] Lianos, I., 2016. competition law and Intellectual Property (IP) rights: analysis, cases and materials.
[1309] Anderson, R.D., 1998. The interface between competition policy and intellectual property in the context of the international trading system. *Journal of international economic law*, *1*(4), pp.655-678.
[1310] Singh, S., 2015. Innovation, intellectual property rights and competition policy. *Innovation and Development*, *5*(1), pp.147-164.
[1311] Schmidt, H., 2019. Competition Law and IP Rights: Not So Complementary: Time for Re-alignment of the Goals? *World Competition*, *42*, p.451.
[1312] Kovacic, W.E. and Reindl, A.P., 2004. An Interdisciplinary Approach to Improving Competition Policy and Intellectual Property Policy. *Fordham Int'l LJ*, *28*, p.1062.
[1313] Hemphill, C.S., 2017. Intellectual property and competition law. *Forthcoming, Oxford Handbook of Intellectual Property Law (Rochelle C. Dreyfuss & Justine Pila eds. 2017)*.

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both competition and IP laws to foster efficient market dynamics and sustainable economic growth.[1314]

BACKGROUND OF THE IP LAW EXEMPTION

The provision §3(5)(i) of the Act stands at the crossroads of intellectual property (IP) law and competition law, offering a nuanced balance between protecting IP rights and ensuring competitive market dynamics.[1315] This provision grants right holders in competitive environments the authority to safeguard their IP rights from infringement or impose reasonable conditions necessary for their protection. It serves as a pivotal mechanism for fostering pro-competitive utilization of IP rights while addressing the inherent conflict between competition and IP laws. However, the precise scope and extent of this exemption remain ambiguous, warranting a deeper exploration of its rationale and legislative evolution.

THE NEED FOR AN EXEMPTION:

Recognition of the potential clash between IP law and competition law underscores the necessity for such an exemption. The foundational principle of competition law advocates for its uniform application across all sectors to uphold equality and fairness before the law. This ensures consistent interpretation and implementation, fostering transparency and accountability crucial for economic growth and investment. Economically, the interconnected nature of markets necessitates uniform competition law application to prevent distortions in resource allocation across different sectors. In India, competition law aims to protect consumer welfare and establish a fair business environment. Exempting certain entities or sectors from competition law could bolster their market power, potentially leading to anti-competitive practices detrimental to competition, innovation, and consumer welfare. However, limited exemptions may be indispensable to promote economic efficiency and consumer welfare, necessitating careful consideration of their justifications and implications. Various jurisdictions have adopted exemptions to competition law, guided by factors such as economic efficiency, public interest, and consumer welfare. Exemptions, including those for IP rights, are designed to incentivize innovation and enhance product quality and services. However, to minimize adverse impacts on competition, exemptions must strike a delicate balance between protecting investments and fostering competition.[1316]

LEGISLATIVE EVOLUTION OF THE EXEMPTION:

In India, §3(5)(i) of the Act represents a limited exemption from competition law, rooted in its legislative evolution from the Monopolies and Restrictive Trade Practices Act, 1969 (MRTP Act).[1317]Unlike the MRTP Act, which did not explicitly regulate IP rights, the current provision acknowledges the intersection of IP and competition laws. The MRTP Act's approach to IP and competition law intersection was limited, primarily focusing on abusive exercises of IP rights resulting in unfair trade practices. As India aligned its regulatory framework with international standards, including WTO agreements like TRIPS, the inadequacy of the MRTP Act in governing the IP-competition law intersection became apparent. Consequently, §3(5)(i) of the Act emerged to address this gap, offering a nuanced exemption mechanism to navigate the complex interplay between IP rights and competition considerations.[1318]

Raghavan Committee's Insights on Intellectual Property Rights and Competition:

The Raghavan Committee, established amidst the backdrop of economic liberalization and the obsolescence of the MRTP Act, played a pivotal

[1314] Kovacic, W.E. and Reindl, A.P., 2004. An Interdisciplinary Approach to Improving Competition Policy and Intellectual Property Policy. *Fordham Int'l LJ*, *28*, p.1062.
[1315] Schmidt, H., 2019. Competition Law and IP Rights: Not So Complementary: Time for Re-alignment of the Goals? *World Competition*, *42*, p.451.
[1316] Anderson, R.D., 1998. The interface between competition policy and intellectual property in the context of the international trading system. *Journal of international economic law*, *1*(4), pp.655-678.
[1317] Monopolies and Restrictive Trade Practices Act, 1969
[1318] Dumont, B. and Holmes, P., 2002. The scope of intellectual property rights and their interface with competition law and policy: divergent paths to the same goal?. *Economics of Innovation and New Technology*, *11*(2), pp.149-162.

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role in shaping India's competition policy. Chaired by Mr. S.V.S. Raghavan in 1999, the committee advocated for the repeal of the MRTP Act and the adoption of globally recognized competition law principles tailored to India's needs. Acknowledging the intricate relationship between intellectual property rights (IPRs) and competition law, the committee highlighted the potential of IPRs to raise competition concerns. While affirming the exclusive rights conferred by IP law, the committee emphasized that such rights should not enable the exercise of restrictive or monopolistic power. It distinguished between the mere existence of IPRs and their actual exercise, advocating for competition law intervention when the latter jeopardizes consumer or public interests. The committee's recommendations underscored the importance of amending Indian competition law to address conflicts between IPRs and competition objectives, thus promoting a competitive market environment. This recognition of the interplay between IPRs and competition law laid the groundwork for the incorporation of an IPR exemption in subsequent competition legislation, despite the Competition Act, 2002 not explicitly reflecting such nuances in its §3(5) framework. Recognizing the evolving dynamic between intellectual property rights (IPRs) and competition regulations, policymakers aimed to clarify their relationship through the Competition Act, 2002. Consequently, §3(5)(i) was introduced as an effort to outline the circumstances under which protections afforded by IP laws may be limited. In this section, we delve into the specifics of the provision, examining its scope as an exemption, the rights it safeguards, and the level of protection it provides. Additionally, we scrutinize key cases to better understand the interpretation of "reasonable and necessary" conditions outlined in §3(5)(i) of the Act.[1319]

Understanding the Scope of §3(5) of the Competition Act, 2002:

A. §3(5): An Exemption?

Compared to its predecessor, the 2002 Act not only aims to curb monopoly power but also strives to foster healthy competition among market players and prevent agreements that may harm the market. Consequently, §3(5)(i) was enacted to address the potential anti-competitive nature of certain IPRs if left unchecked, particularly concerning agreements that could lead to an Appreciable Adverse Effect on Competition (AAEC). Under §3(5), individuals may impose conditions that are deemed reasonable and necessary to protect their rights or prevent infringement of rights outlined in IP law statutes. Some argue that §3(5) does not fully exempt right holders from the application of §3. However, it's contended that §3(5) operates separately because its conditions might conflict with other provisions of §3. Although the Competition (Amendment) Bill, 2012, aimed to clarify this, it hasn't been enacted.[1320]

B. Which Rights Are Protected?

The provision primarily safeguards rights associated with copyrights, patents, trademarks, geographical indicators (GI), industrial designs, and layouts of integrated circuits. It's crucial to note that it doesn't extend to know-how or other forms of IP not explicitly mentioned. Additionally, it's ambiguous regarding whether it protects future rights granted through legal processes.[1321] In the Shamsher Kataria case[1322], it was emphasized that to avail of protection under §3(5), rights should either exist or have initiated a protection process under relevant IP statutes. However, the

[1319] Dumont, B. and Holmes, P., 2002. The scope of intellectual property rights and their interface with competition law and policy: divergent paths to the same goal? Economics of Innovation and New Technology, 11(2), pp.149-162.

[1320] Gallego, B.C., 2010. Intellectual property rights and competition policy. *Research Handbook on the Protection of Intellectual Property under WTO Rules*, p.226.

[1321] Kovacic, W.E. and Reindl, A.P., 2004. An Interdisciplinary Approach to Improving Competition Policy and Intellectual Property Policy. *Fordham Int'l LJ*, *28*, p.1062.

[1322] Shri Shamsher Kataria vs Honda Siel Cars India Ltd. & Ors on 25 August, 2014

exact scope of protection for future rights remains unclear.[1323]

C. Protection or Enjoyment?

§3(5) allows individuals to exercise their IPRs in two ways: preventing infringement or imposing reasonable conditions for protection. However, it's essential to distinguish between protecting rights from infringement and commercial exploitation. The exemption only applies to protection, not exploitation.[1324]

D. Reasonable and Necessary: Drawing the Line

Conditions imposed under §3(5) must be both reasonable and necessary for protecting the rights outlined in the relevant IP statutes. However, parameters for determining reasonability remain unclear, and assessments are often case-specific. Courts have emphasized that conditions should be indispensable for protecting IPRs, but guidelines for this evaluation are lacking while §3(5) seeks to balance competition and IP rights, uncertainties persist regarding its application and the evaluation of "reasonable and necessary" conditions.[1325]

Jurisdictional Challenges under §3(5)

The intersection of intellectual property (IP) law and competition law, explicitly addressed by §3(5) of the Act, poses jurisdictional uncertainties regarding which authority—CCI, IP authority, or both—should handle disputes involving the exercise of IPRs within the framework of competition law. To clarify this issue, we examine the current jurisdictional landscape and contrast two models for resolving jurisdictional conflicts between sector regulators and competition agencies. Subsequently, we evaluate the applicability of these models within the current framework and offer recommendations to address this jurisdictional dilemma.[1326]

A. Current Jurisdictional Landscape

Past cases demonstrate that the CCI has jurisdiction over disputes involving the intersection of IP law and competition law, particularly those falling under §3(5) of the Act. However, disputes over CCI's jurisdiction have been contentious. In the *Aamir Khan Productions (P) Ltd. v. Union of India*[1327] case, the Bombay High Court upheld CCI's jurisdiction over disputes concerning the exercise of copyright, affirming that CCI could determine its jurisdiction in individual cases. Similarly, in the *HT Media Ltd. v. Super Cassettes Industries Ltd. case*, CCI asserted its jurisdiction over disputes related to licensing conditions, despite objections citing the jurisdiction of the Copyright Board.

In *Telefonaktiebolaget LM Ericsson v. Competition Commission of India*[1328], Ericsson challenged CCI's jurisdiction, arguing that the Patents Act provided mechanisms to address abuse of rights. However, the Delhi High Court ruled that CCI had jurisdiction over disputes involving competition law, emphasizing that the Competition Act and the Patents Act operated consistently. These cases indicate that CCI has the authority to adjudicate disputes involving competition law and IP rights, as IP law authorities lack equivalent provisions to address anti-competitive behaviour.[1329]

B. Evaluating Jurisdictional Models

While CCI has competence in resolving competition law aspects of disputes, we argue that exclusive jurisdiction should not rest solely with CCI. IP law authorities may be better equipped to determine the necessity of certain restrictions to protect IP rights. Adjudication in such cases requires a balance between

[1323] Roughton, A., 2008. The interface between intellectual property rights and competition policy.
[1324] Anderson, R.D., 2008. Competition policy and intellectual property in the WTO: More guidance needed? *Research Handbook on Intellectual Property and Competition Law*, pp.451-473.
[1325] *Id at 16*
[1326] Anderson, R.D. and Wager, H., 2006. Human rights, development, and the WTO: The cases of intellectual property and competition policy. *Journal of International Economic Law*, *9*(3), pp.707-747.
[1327] *Aamir Khan Productions Private Limited vs Union of India on 18 August, 2010*
[1328] *Telefonaktiebolaget Lm Ericsson vs Competition Commission Of India on 30 March, 2016*
[1329] Kovacic, W.E., 2010. Intellectual Property Policy and Competition Policy. *NYU Ann. Surv. Am. L.*, *66*, p.421.

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competition law and IP law, as highlighted in the FTC v. Actavis case, where courts considered both antitrust and patent law to define the scope of patent monopoly. To address jurisdictional challenges, a collaborative approach involving both CCI and IP law authorities is recommended. While CCI can handle competition law aspects, IP authorities should contribute to determining the necessity and extent of protection of IP rights. This balanced approach ensures that disputes at the intersection of IP and competition law are effectively addressed.[1330]

Way forward:

The jurisdictional intricacies arising from conflicts between intellectual property (IP) and competition law echo similar challenges observed in disputes between sector regulators and competition agencies. Addressing such duplicity of jurisdictions involves considering three distinct models: exclusivity, concurrency, and cooperation. Under the exclusivity model, only competition law authorities like the Competition Commission of India (CCI) regulate disputes, as seen in past cases where courts held that only the CCI can address IP-competition law conflicts and disputes concerning Section 3(5) of the Act. On the other hand, concurrency of jurisdictions suggests that both IP and competition law agencies could individually adjudicate cases at their intersection.[1331] However, the mixed nature of Section 3(5) disputes makes this model impractical, as neither authority possesses full jurisdiction. This is because agencies like the Copyright Board or the Controller of Patents lack the authority to address anti-competitive practices, while the CCI alone cannot determine the extent of protection available to right holders.[1332] The third model, cooperation, emphasizes resolving conflicts through consultations and reference to each other. This approach, akin to the one adopted in the Airtel case, involves cooperation between conflicting regulators. In the Airtel case, the Supreme Court recognized the importance of domain expertise and thematic relevance in determining jurisdictional conflicts. It emphasized that jurisdictional disputes should be resolved by the authority better suited to consider the specific issue based on thematic relevance. The Court held that specialized regulators should act before the CCI in disputes where two "special" laws might prevail. Mandatory consultations between conflicting regulators emerge as a potential solution, drawing from global best practices.[1333] These consultations aim to foster cooperation and balance in resolving jurisdictional conflicts. The essence lies in cooperation rather than competition between the regulators. This approach ensures that issues at the intersection of conflicting areas of law are determined with consideration of expertise and thematic relevance. While the ultimate jurisdiction over Section 3(5) disputes rests with the CCI, mandatory consultations between the CCI and IP law authorities can help ensure a balanced and holistic approach to dispute resolution. Such consultations would promote accountability, clarity, and due process in the legal framework, ultimately leading to more equitable outcomes.[1334]

The legal landscape surrounding the interpretation of reasonable and necessary conditions under Section 3(5) has seen limited development. While the Competition Commission of India (CCI) has provided illustrative examples of unreasonable conditions under Section 3(5), there remains a lack of clear guidance or precedent for determining reasonability. Thus far, no cases have determined a condition in an agreement to be reasonable and necessary for the protection of Intellectual Property Rights (IPR).

[1330] *Id at 1*
[1331] Anderson, R.D. and Wager, H., 2006. Human rights, development, and the WTO: The cases of intellectual property and competition policy. *Journal of International Economic Law*, *9*(3), pp.707-747.
[1332] *Id at 15*
[1333] Lianos, I. and Dreyfuss, R.C., 2013. New Challenges in the Intersection of Intellectual. Property Rights with Competition Law. A View from Europe and the United States.
[1334] Ullrich, H., 2020. Technology Protection and Competition Policy for the Information Economy. From Property Rights for Competition to Competition Without Proper Rights? *From Property Rights for Competition to Competition Without Proper Rights*, pp.19-12.

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Examining cases where conditions were deemed unreasonable, they can be categorized into pricing abuse and non-price abuse

A. Pricing Abuse:

Excessive and Discriminatory Pricing by Ericsson: Cases involving Intex and Micromax revealed that Ericsson's licensing agreements imposed unfair and unjustified conditions. Ericsson's excessive pricing for licensing SEPs and discriminatory royalty rates were found to lack linkage to the patented product and contravene FRAND terms. The CCI concluded that such practices constituted anti-competitive behaviour and exploitation of IPR through excessive pricing.[1335]

Exploitation by Super Cassettes Industries: Super Cassettes' imposition of minimum commitment charges and discriminatory pricing strategies were found to be exploitative and exclusionary. The CCI applied a rule of reason analysis, emphasizing that conditions in agreements must closely relate to the subject matter and have a nexus to the licensed product/work's use or value.[1336]

B. Onerous Licensing Conditions:

Non-disclosure agreements and Jurisdictional Restrictions by Ericsson: Ericsson's non-disclosure agreements and imposition of jurisdictional restrictions on licensees were considered unreasonable. These conditions reduced negotiating power and hindered fair competition, leading to findings of unreasonableness by the CCI. *Termination Conditions in Monsanto Biotech*: Harsh termination conditions in licensing contracts were deemed unreasonable if they disproportionately harmed the licensee. The court rejected arguments suggesting unrestricted rights for imposing conditions, emphasizing the need for reasonability, necessity, and proportionality.

Additionally, the *Shamsher Kataria v. Honda Siel Cars India Ltd*. case highlighted that restrictive conditions imposed by OEMs must be justified by the need to protect IPR and not unnecessarily limit competition. These decisions underscore that while IPR holders are exempt from certain competition law provisions, they cannot impose onerous conditions or engage in pricing abuse. However, there's a lack of clear principles guiding the assessment of reasonability and necessity in licensing agreements, making it a case-by-case analysis without the development of fixed principles.[1337]

In this comparative analysis, the intricate interplay between intellectual property (IP) law and competition law is scrutinized within the legal frameworks of New Zealand and Australia, juxtaposed against the backdrop of implications for India.

In New Zealand, the regulatory landscape is delineated by the Commerce Act of 1986, which seeks to bolster market competition by circumscribing certain contractual arrangements. Notably, despite acknowledging the potential anti-competitive ramifications of IP rights, New Zealand's legal regime historically tends to afford them a degree of insulation. This is evidenced by the cautious approach towards interfering with the legitimate exercise of IP rights, as enshrined in Section 37 of the Commerce Act. However, recognizing the need for a nuanced approach, recent discussions and proposed reforms pivot towards subjecting IP rights to heightened scrutiny. The shift towards an effects-based approach signifies a departure from the blanket exemptions traditionally granted to IP holders, potentially restricting IP enforcement practices that substantially curtail market competition.

Conversely, Australia underwent a seismic shift in its competition law landscape following the repeal of Section 51(3) of the Competition and

[1335] Morando, F., 2020. Software Interoperability: Issues at the Intersection between Intellectual Property and Competition Policy.

[1336] Anderson, R.D., de Carvalho, N.P. and Taubman, A. eds., 2021. *Competition policy and intellectual property in today's global economy*. Cambridge University Press.

[1337] Anderson, Robert D. "Intellectual property rights, competition policy and international trade: reflections on the work of the WTO Working Group on the interaction between trade and competition policy (1996-1999)." In *Intellectual Property: Trade, Competition, and Sustainable Development The World Trade Forum, Volume 3*, vol. 3, p. 15. University of Michigan Press, 2010.

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Consumer Act in 2019. This pivotal amendment abolished the automatic exemptions previously enjoyed by IP-related activities from competition law scrutiny. Prior to this reform, IP laws were often perceived as being at loggerheads with competition principles, with IP holders shielded from the full force of competition law. However, the repeal signifies a paradigm shift, signalling a newfound recognition of the symbiotic relationship between IP and competition. By removing the safe harbours, Australia now subjects IP-related conduct to rigorous competition law scrutiny, aligning more closely with global trends that emphasize the compatibility of IP rights with pro-competitive objectives.[1338]

Importantly, both New Zealand and Australia are navigating a delicate balance between safeguarding IP rights and fostering competitive markets. While New Zealand contemplates reforms to address perceived gaps in its regulatory framework, Australia's overhaul reflects a broader evolution towards recognizing the role of IP in driving innovation and competition. These developments resonate with broader international discourse surrounding the intersection of IP and competition law, with implications for jurisdictions worldwide, including India. As countries grapple with the challenges posed by emerging technologies and evolving market dynamics, the convergence of IP and competition law remains a focal point of legal and policy debates, shaping the contours of innovation, competition, and consumer welfare in the digital age.[1339]

In the United States, the convergence of intellectual property (IP) and antitrust laws mirrors the nuanced approach found in India. IP holders are not automatically shielded from antitrust scrutiny if their actions impede fair competition. This principle is enshrined in three key statutes: the Sherman Antitrust Act of 1890, the Clayton Antitrust Act of 1914, and the Federal Trade Commission Act of 1914. These laws govern various aspects of competition, including unilateral restraint of trade, mergers, acquisitions, and unfair business practices.To provide further clarity on the intersection of IP and competition law, the Department of Justice and the Federal Trade Commission have issued Antitrust Guidelines for the Licensing of Intellectual Property. These guidelines establish a framework for evaluating the competitive implications of IP licensing agreements. Unlike blanket exemptions, the guidelines employ a rule of reason approach, requiring a detailed analysis of the circumstances and impacts of any restrictions imposed by IP holders. Licensing agreements are generally viewed as pro-competitive but are subject to scrutiny under this rule. Similar to India's reasonable conditions, the guidelines also establish safe harbours for licensing agreements that are presumed to be pro-competitive. These safe harbours operate under specific conditions, such as restrictions that are unlikely to have anti-competitive effects and where the combined market share of the licensor and licensee does not exceed certain thresholds. Refusals to license IP may also have anti-competitive implications, particularly if they are pretextual attempts to harm rivals. While refusals to license are generally lawful, they may be subject to the rule of reason analysis, especially if they involve concerted actions to restrict competition.

Vertical and horizontal restraints, such as resale price maintenance and exclusive dealing, are evaluated based on their potential anti-competitive effects. While some restraints may be deemed per se illegal, others are subjected to rule of reason analysis, taking into account factors such as market power and competitive dynamics. Overall, the U.S. approach emphasizes an economics-based analysis, akin to India's effects-based approach, to determine the legality of IP-related conduct. Safe harbours provide clarity and certainty for firms operating

[1338] Bakhoum, M., 2020. The interface between intellectual property rights and competition law: implications for public health in sub-Saharan Africa. In *Research Handbook on Methods and Models of Competition Law* (pp. 312-335). Edward Elgar Publishing.
[1339] Anderson, R.D. and Kovacic, W.E., 2017. *The application of competition policy vis-à-vis intellectual property rights: The evolution of thought underlying policy change* (No. ERSD-2017-13). WTO Staff Working Paper.

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in complex markets, while allowing for a flexible evaluation of potentially anti-competitive practices.[1340]

The Vertical Block Exemption Regulation (VBER) applies to agreements concerning Intellectual Property Rights (IPRs) between entities operating at different levels of the production or distribution chain, such as relationships between manufacturers and retailers or wholesalers. Conditions for exemptions under the VBER are outlined in Articles 2, 3, and 4 of Commission Regulation No. 330/2010 ('VCR'). Similar to Technology Transfer Block Exemptions (TTBEs), the applicability of VBERs follows a three-step process[1341]

Existence of a Vertical Agreement:

The first step involves the presence of a vertical agreement between the parties. Market Share Limitation: The market share of each party must not exceed thirty percent. Absence of Hardcore Restrictions: Hardcore restrictions, such as those related to price, sales, or market allocations, should not be present in the agreement. While the first two steps are concise, the third step requires detailed analysis. Hardcore restrictions, such as those concerning resale price maintenance or sales territories, render the entire agreement ineligible for VBER applicability. However, certain excluded restrictions, outlined in Article 5 of the VCR, may still operate in IPR agreements under specific conditions. Moving on to Research and Development Block Exemption Regulation (RDBER), it pertains to agreements concerning joint or paid-for R&D for contract products or technologies, including joint exploitation of the results. The RDBER operates for limited durations depending on whether the entities involved are competing or non-competing. Conditions for applicability, including access to R&D results and limitations on output, are detailed. Agreements falling outside the scope of block exemption regulations undergo individual analysis. Restrictions are assessed based on their rationale and effect, with consideration for their impact on competition and consumer welfare. The EU regime provides clearer guidelines compared to the Indian system, with a focus on consumer-friendly practices and delineation of excluded restrictions. In Japan, the Intellectual Property Basic Act and the Antimonopoly Act address the intersection of IP and competition law, ensuring fair exploitation of IP while preventing anti-competitive practices. Market share, price restrictions, and output restraints are key factors in determining the reasonability of conditions imposed by IP holders. Similarly, Canada reconciles the conflict between competition law and IP law by focusing on common objectives such as innovation and economic efficiency. The Competition Bureau enforces guidelines to protect against anti-competitive practices arising from the exercise of IPRs, categorizing agreements for step-by-step analysis and prohibiting agreements that create market power. Refusal to license IPRs is considered legitimate under certain conditions. The article discusses the intersection of intellectual property rights (IPRs) and competition law, particularly in the context of licensing agreements.[1342] It highlights the challenges and ambiguities surrounding the regulation of such agreements under the Competition Act, 2002 in India, specifically focusing on §3(5), which allows rights holders to impose reasonable and necessary conditions to protect IPRs. It emphasizes the need for a balanced approach that considers both IP and competition law factors when assessing the reasonableness of conditions in licensing agreements. It discusses various pro-competitive and anti-competitive effects that such conditions may have, depending on their impact on innovation, competition, consumer welfare, and market dynamics.[1343]

Elaborated concepts:

[1340] Rooijen, A.V., 2007. Essential Interfaces: Exploring the Software Directive's equilibrium between intellectual property rights and competition law. *Computer Law Review International*, *8*(5), pp.129-137.
[1341] *Id at 1*
[1342] *Id at 14*
[1343] Id at 2

1. *Pro-competitive effects*: Certain conditions in licensing agreements, such as those aimed at maximizing profits, standardizing agreements, or maintaining the reputation of right holders, may have beneficial effects on competition and innovation.
2. *Anti-competitive effects*: Restrictions in licensing agreements, particularly in horizontal agreements between competitors, may lead to cartelization, market division, or exclusionary behaviour, thereby harming competition and consumers.
3. *Balancing agreements*: The passage argues that the assessment of the reasonableness of restrictions in licensing agreements should consider the specific circumstances of each case, weighing the potential pro-competitive benefits against the anti-competitive risks.
4. *Market power*: It cautions against presuming that the grant of IPRs equates to market power and emphasizes the importance of analyzing market dynamics and competitive effects when assessing the validity of licensing agreements under competition law.
5. *Abuse of dominance*: It distinguishes between anti-competitive agreements and abuse of dominance under §4 of the Competition Act, highlighting that not all agreements that may be anti-competitive under §3 would constitute an abuse of dominant position.[1344]

Conclusion:

This article discusses the complexities inherent in reconciling competition law with intellectual property rights (IPR) agreements in India, particularly under §3(5) of the Competition Act. This provision allows IPR holders to introduce conditions or restrictions in their agreements with third parties to safeguard their rights, provided such conditions are deemed reasonable and necessary.[1345] However, the absence of clear legal discussions and precedents complicates the determination of the validity of these conditions. Moreover, restrictive clauses in IPR agreements can have both anti-competitive and pro-competitive effects, necessitating a careful balancing act.[1346] To address jurisdictional conflicts and ensure a balanced approach, mandatory consultations between competition law and IP law authorities are suggested. This involves assessing the protection offered by rights and determining the necessity of conditions from both competition and IP law perspectives. Additionally, enforcement of restrictions in vertical agreements differs from that in horizontal agreements, requiring regulators to consider various factors such as public interest and competition impact.[1347] Given these complexities, there's a call for the competition commission to develop comprehensive guidelines in consultation with stakeholders to clarify the assessment process under §3(5) and strengthen the application of competition and IP law in India.[1348]

[1344] Rooijen, A.V., 2007. Essential Interfaces: Exploring the Software Directive's equilibrium between intellectual property rights and competition law. *Computer Law Review International*, *8*(5), pp.129-137.

[1345] *Id at 17*
[1346] *Id at 19*
[1347] Singham, S.A., 2000. Competition policy and the stimulation of innovation: TRIPS and the interface between competition and patent protection in the pharmaceutical industry. *Brook. J. Int'l L.*, *26*, p.363.
[1348] Kaur, M., The interface between Competition Law and Intellectual Property Rights.