

## COMPETITION LAW AND COPYRIGHT CHALLENGES IN THE INDIAN ENTERTAINMENT INDUSTRY

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### ABSTRACT

The Indian Media and Entertainment industries, especially the Film industry, is frequently under the scrutiny of competition authorities since copyright issues are intrinsically related to anti-competitive conduct in the industry. The majority of instances result from film associations exercising significant control over the industry's operations by participating in coordinated activities against third parties that are anti-competitive in nature. Just as crucial is the investigation of anti-competitive behavior by industry stakeholders, such as entering into restrictive agreements and exploiting their dominating position. The study looks at how the requirements of Copyright and Competition Laws affect the general operation of the field of entertainment, particularly the film industry, as well as the interactions between various stakeholders.

Furthermore, the purposes of copyright law do not intrinsically clash with the goals of competition law, as both systems may take various paths to achieve the same goal of maximizing consumer welfare and efficient resource distribution. However, the Competition Commission of India is frequently confronted with cultural and linguistic issues that necessitate the development of clear rules based on careful consideration of the application of Competition Law to disputes in the entertainment industry.

**Keywords:** competition, agreement, copyright, abuse, anti-competitive

### 1. CHAPTER 1: INTRODUCTION

Intellectual property rights (IPR) and competition law are two legal systems that are sometimes referred to as "friends in disagreement." Despite having distinct theoretical visions, in actuality they cooperate to maintain both static and dynamic market efficiency and advance consumer welfare. From an economic standpoint, one may attempt to think of competition law as attempting to establish a boundary between legitimate company practices and IPR infringement. It's usually problematic to determine when and how a line is crossed. In the first place, competition law disciplines should refrain from interfering too soon with intellectual property rights (IPRs) as they are government-

sanctioned monopolies designed to protect consumers and promote innovation.<sup>360</sup>

Maintaining a dynamic and competitive economic market is greatly dependent on the interaction that exists between intellectual property rights and competition law. Examining the similarities between intellectual property law and competition law in relation to the consumer market is obvious. On the other hand, one could also contend that they are completely distinct, much like fire and water. The purpose of competition law is to outlaw any actions that impede trade or generally deter monopolies. Conversely, the goal of intellectual

<sup>360</sup> Lakshmi Kumar & Sridharan, *Interface between Competition Law and Intellectual Property Laws: Indian Perspective* (2014) <<https://www.lakshmisri.com/Media/Uploads/Documents/Interface%20between%20Competition%20Law%20and%20Intellectual%20Property%20Law%20-%20INDIAN%20PERSPECTIVE.pdf>> accessed 25 March 2024.

property law is to enable the owner of such rights to profit from their unrestricted use and to retain their exclusivity.

Competition law aims to prevent market barriers by promoting competition among different suppliers of goods, services, and technology to ensure maximum benefit to customers, even if intellectual property law grants exclusive control of intellectual assets to their legal owners.

Conflicts, if any, may arise from such divergent and conflicting objectives. Competition law also promotes a number of ideas, such as the need for open markets and the creation of an ideal marketplace that enhances consumer choice. With this framework in place, the goal is to establish a system that is focused on free commerce, consumer rights, effective resource allocation, etc. Conversely, intellectual property establishes a monopoly. There is a conflict between the two in this way.

The Indian film industry is intricately intertwined with both copyright law and competition law, each playing a significant role in shaping the landscape of the industry. Under the Copyright Act, 1957, a feature film is unequivocally recognized as subject matter for copyright protection. Section 2 (f) <sup>361</sup>of the Act delineates the definition of a "cinematograph film," encompassing both visual and audio elements, while Section 13(1)(b) <sup>362</sup>explicitly states the subsistence of copyright in such films. However, it's crucial to note that copyright, while providing exclusive rights to the creator, is not absolute but rather statutory, subject to the provisions outlined in the Act.

## 2. CHAPTER 2: EXAMINING THE RELATIONSHIP BETWEEN COPYRIGHT AND COMPETITION LAW VIS-À-VIS THE COPYRIGHT BASED ENTERTAINMENT INDUSTRY

Senior OECD economist Giuseppe Nicoletti says that "the innovative effort of firms in a competitive environment is best exploited when

intellectual property right protection guarantees that innovators receive sufficient rewards, and when scope for the strategic use of innovations to limit competition is restricted."

### 2.1 COMPETITION LAW CONCERNING FILM INDUSTRY

In the domain of entertainment, cinema stands out as one of the most cherished forms of artistic expression, captivating audiences globally. Even as technology continues to evolve, ushering in new possibilities, the film industry finds itself confronted with unprecedented challenges in the realm of competition.

In India, the film industry has taken proactive steps to regulate itself through the establishment of self-disciplinary associations or agencies. These entities, operating as either societies or companies under Section 8 of the Companies Act, play a pivotal role in crafting bye-laws and serving as arbiters in disputes, thereby safeguarding the financial interests of exhibitors. This is achieved through various mechanisms, including the registration of films to prevent clashes in release schedules and the formalization of distribution agreements to prevent financial exploitation.

The advent of cutting-edge technologies and the global diaspora's increasing appetite for Indian cinema have expanded the market exponentially, offering lucrative opportunities for rights sales across diverse platforms worldwide. However, this digital revolution has also given rise to rampant piracy, leading to substantial financial losses for producers and the unfortunate closure of numerous single-screen theaters across the country.

Despite India's stature as one of the world's leading film producers, the country grapples with a significant deficit in theater infrastructure, boasting only 12 screens per million inhabitants compared to 117 in the USA. This deficiency, coupled with declining ticket sales, has compelled industry stakeholders to rethink their strategies, leading to a trend where digital

<sup>361</sup> The Copyright Act of 1957 (14 of 1957) s 2(f).  
<sup>362</sup> The Copyright Act of 1957 (14 of 1957) s 13(1).

rights are negotiated and sold well in advance of theatrical releases. While concerns exist regarding the potential facilitation of piracy, empirical evidence suggests that consumers often prioritize affordability over authenticity, opting for pirated copies over legitimate ones, thereby eroding revenue streams for the industry.<sup>363</sup>

In essence, the Indian film industry finds itself navigating a complex landscape characterized by technological advancements, global market expansions, and piracy challenges. Addressing these multifaceted issues demands innovative approaches and robust regulatory frameworks to ensure the industry's sustained growth while safeguarding its economic interests.

## 2.2 ROLE OF COPYRIGHT IN INDIAN FILM INDUSTRY

Copyright laws are essential for regulating creativity in the Indian film industry, which produces over 1,000 films annually in multiple languages. These laws protect creators' intellectual property rights, encouraging the production of new works and preventing unauthorized use or replication of their creations. Directors, performers, and musicians are all safeguarded by copyright laws, enabling the industry to generate original content. However, piracy remains a significant challenge, with pirated copies of films distributed widely through the black market and online platforms. Effective enforcement of copyright laws is crucial for combating piracy and ensuring artists receive their rightful compensation.

When it comes to remakes, navigating the legal landscape becomes nuanced. While most remakes may not necessitate permission from copyright owners, it's crucial to discern between mere duplication and transformative adaptation. Factors such as the extent of original work usage, the degree of changes implemented, and the addition of transformative elements play pivotal roles in

determining legal requirements and the need for permission from copyright holders.<sup>364</sup>

The interpretation of the term "copy" in the Copyright Act of 1957 has been a subject of debate in Indian courts, notably in the landmark case of *R.G. Anand v. M/s. Delux Films & Ors.*<sup>365</sup> the Supreme Court outlined guidelines for determining copyright infringement, emphasizing that themes or concepts cannot be copyrighted, and similarities may naturally occur in separate works. Recent cases, like *MRF Limited vs. Metro Tyres Limited*<sup>366</sup>, have further clarified the boundaries between inspiration and infringement in remakes.

Despite concerns about story theft in Bollywood, effective enforcement of copyright laws remains crucial for protecting intellectual property rights and promoting original content creation. In the dynamic Indian film industry, copyright law plays a vital role in safeguarding the interests of filmmakers and production houses, ensuring a thriving environment for creativity and innovation.<sup>367</sup>

The amended Copyright Act of 1957 provides comprehensive protection for various works, including films, in the Indian film industry. Here are key provisions:

- 1) **Originality and Protection:** The Act grants copyright protection to original cinematographic works in any medium, including digital formats.
- 2) **Ownership and Rights:** Copyright ownership typically belongs to the producer or production house, conferring exclusive rights over reproduction, distribution, public communication, and adaptation.
- 3) **Duration of Protection:** Copyright for cinematographic films lasts 70 years after the death of the last surviving author. For

<sup>363</sup> Deiya Goswami, 'Competition Law Concerning the Film Industry in India' (ksk Advocates and Attorneys 24 June 2019) <<https://ksandk.com/competition/competition-law-concerning-the-film-industry-in-india/>> accessed 24 March 2024.

<sup>364</sup> Kavya, 'Role of Intellectual Property in Entertainment Industry (IIPRD, 6 February 2024) <<https://www.iiprd.com/role-of-intellectual-property-in-entertainment-industry/>> accessed 23 March 2024.

<sup>365</sup> *R.G. Anand v. M/s. Delux Films & Ors.* 1978 4 SCC 118.

<sup>366</sup> *MRF Limited vs. Metro Tyres Limited* (2019) 262 DLT 734.

<sup>367</sup> Seema Surendran, 'Application of Copyright Law to The Indian Film Industry: An Analysis' 2023 3(3) Indian Journal of Integrated Research in Law < <https://ijrl.com/wp-content/uploads/2023/06/APPLICATION-OF-COPYRIGHT-LAW-TO-THE-INDIAN-FILM-INDUSTRY-AN-ANALYSIS.pdf>> accessed 22 March 2024.

anonymous or pseudonymous works, protection extends for 70 years from publication or creation.

- 4) Moral Rights: Creators have the right to be identified as the author or director of the film and can object to any modification that compromises its integrity or their reputation.
- 5) Performers' Rights: Performers have rights to be identified and to prevent unauthorized recording or reproduction of their live performances.
- 6) Fair Use and Exceptions: The Act allows fair use of copyrighted works, including films, for purposes such as criticism, review, news reporting, research, or education.

Overall, the Copyright Act of 1957, amended in 2012, plays a vital role in protecting the rights of filmmakers and production houses in the Indian film industry, ensuring control over their intellectual property and fostering creativity.

### 2.3 RELATIONSHIP BETWEEN IP AND COMPETITION LAW

The Raghavan Committee Report on Competition Law in India <sup>368</sup>underscores the multifaceted relationship between intellectual property (IP) rights and competition policy. It acknowledges that all forms of IP possess the potential to give rise to competition law concerns. While IP grants exclusive rights to holders for productive or commercial activities, it does not confer the authority to wield restrictive or monopolistic power within a market or society.

The report emphasizes the importance of encouraging and rewarding human creativity through the provision of IP rights. These rights empower creators to safeguard their inventions, designs, or other creations from unauthorized use by others. However, it also highlights the imperative of curbing and preventing anti-competitive behaviors that may arise in the exercise of these rights.

In essence, while the protection of IP rights is crucial for fostering innovation and creativity, it must be balanced with the need to ensure competition within markets. Striking this delicate balance is essential to promote both innovation and fair competition, thereby maximizing the societal benefits derived from intellectual property.

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) encompasses provisions that grant considerable discretion to Member states regarding the application of competition law concerning the acquisition and exercise of intellectual property (IP) rights. Article 8.2 <sup>369</sup>of the Agreement emphasizes the necessity for appropriate measures to prevent the abuse of IP rights by their holders. Additionally, Article 31 <sup>370</sup>delineates detailed conditions for granting compulsory licenses, aimed at safeguarding the legitimate interests of rights holders. Notably, Article 31(k) validates Members' rights to utilize such licenses as anti-competitive remedies, contingent upon a determination of anti-competitive practices through a judicial or administrative process.

Moreover, Article 40 of the TRIPS Agreement acknowledges that licensing practices or conditions related to IP rights, which restrain competition, may adversely affect trade and hinder the transfer and dissemination of technology.

It permits Members to identify anti-competitive practices constituting abuses of IP rights and to adopt measures to prevent or control such practices <sup>371</sup>. These practices may encompass exclusive grant backs, clauses inhibiting validity challenges, and coercive package licensing. Hence, Member states possess significant discretion under the TRIPS Agreement concerning the advancement and application of competition law within the realm of IP law.

<sup>368</sup> S.V.S. Raghavan, 'Report of the High-Level Committee on Competition Policy and Law' (2000) <[https://theindiancompetitionlaw.files.wordpress.com/2013/02/report\\_of\\_high\\_level\\_](https://theindiancompetitionlaw.files.wordpress.com/2013/02/report_of_high_level_)> accessed 25 March 2024.

<sup>369</sup> Agreement on Trade-Related Aspects of Intellectual Property Rights, 1995 art 8.2.

<sup>370</sup> Agreement on Trade-Related Aspects of Intellectual Property Rights, 1995 art 13.

<sup>371</sup> Agreement on Trade-Related Aspects of Intellectual Property Rights, 1995 art 40.2.

### CHAPTER 3: EFFECT OF RESTRICTIVE AGREEMENTS ON COPYRIGHT BASED ENTERTAINMENT INDUSTRY

Restrictive agreements wield significant influence in market dynamics, enabling powerful firms to constrain fair entry for other players. These agreements<sup>372</sup>, as defined under Section 2(b) of the Competition Act, 2002, encompass arrangements, understandings, or actions in concert, regardless of their formal or informal nature. Even oral agreements hold weight under the Act, signifying the broad scope of what constitutes an agreement in the context of competition law.

The standard of proof required for anti-competitive agreements is a "preponderance of probabilities," distinct from the "beyond a reasonable doubt" standard in criminal law. The Competition Commission of India (CCI) relies on circumstantial evidence to determine infringement, reflecting the pragmatic approach to enforcing competition law.

A core aspect of modern competition law revolves around scrutinizing agreements that regulate or inhibit market behavior, such as mergers, horizontal, and vertical agreements. Horizontal agreements involve competitors selling similar products, potentially leading to cartelization and price-fixing. Vertical agreements, on the other hand, involve firms at different production levels in various markets, governing aspects like production, supply, distribution, and pricing.<sup>373</sup>

#### SECTION 3

In India, agreements causing an appreciable adverse effect on competition are void and considered anti-competitive. Section 3(1) of the Act prohibits agreements related to goods or services that harm competition within India, rendering them void under Section 3(2). Although the term isn't explicitly defined, Section 19(3) outlines factors to consider, such as

barriers to entry, market dynamics, and consumer benefits.

Horizontal agreements involve competitors, including right holders, while vertical agreements occur among firms at different production and distribution levels. These agreements often include copyright licensing, mainly in vertical arrangements allowing licensees to use copyright in downstream markets.

#### 3.1. HORIZONTAL ANTI-COMPETITIVE AGREEMENT

Horizontal agreements in the film industry involve collusive behavior among competitors at the same level of economic activity. These agreements, despite appearing benign, often draw scrutiny from competition authorities due to their potential to stifle competition and promote monopolistic practices.

Under Section 3(3) of the Competition Act, agreements between entities engaged in identical or similar trades are presumed to harm competition. These agreements cover various practices like price-fixing, production control, market sharing, and bid rigging. Although not explicitly termed "horizontal agreements," they are considered anticompetitive under Section 3(3), allowing the Competition Commission of India to take action without further inquiry. However, defendants can challenge this presumption, as seen in the *Neeraj Malhotra vs Deutsche Post Bank Home Finance Ltd. & Ors*<sup>374</sup> case. Furthermore, Section 3(3) provides an exception for joint ventures promoting efficiency in production or services. While horizontal agreements are generally subject to the per se rule, exceptions exist for ventures aiming to enhance efficiency.<sup>375</sup>

<sup>372</sup> The Competition Act, 2002 (12 of 2003) s 2.

<sup>373</sup> Report by the Max Planck Institute for Intellectual Property and Competition Law, Munich, 'Copyright, Competition and Development' (December 2013) <[https://www.wipo.int/export/sites/www/competition-policy/en/docs/copyright\\_competition\\_development.pdf](https://www.wipo.int/export/sites/www/competition-policy/en/docs/copyright_competition_development.pdf)> accessed 22 March 2024.

<sup>374</sup> *Neeraj Malhotra vs Deutsche Post Bank Home Finance Ltd. & Ors* Case no. 5/2009.

<sup>375</sup> Amey Jadhav 'Antitrust Issues in Entertainment and Film Industry' (Khurana & Khurana, 11 February 2022) <[https://www.khuranaandkhurana.com/2022/02/11/antitrust-issues-in-entertainment-and-film-industry-part-1/?utm\\_source=mondaq&utm\\_medium=syndication&utm\\_term=anti-trust-competition-law&utm\\_content=articleoriginal&utm\\_campaign=article](https://www.khuranaandkhurana.com/2022/02/11/antitrust-issues-in-entertainment-and-film-industry-part-1/?utm_source=mondaq&utm_medium=syndication&utm_term=anti-trust-competition-law&utm_content=articleoriginal&utm_campaign=article)> accessed 23 March 2024.

## CARTEL

Cartels, considered horizontal agreements under Section 3 of the Competition Act, are deemed highly detrimental to competition worldwide. Defined under Section 2(c) of the Competition Act, 2002, cartels involve associations of producers, sellers, or service providers aiming to influence pricing, distribution, or trade through mutual agreement.

In the entertainment industry, copyright holders often collaborate to adapt to changing consumer trends. These collaborations, termed joint ventures, may pursue competitive outcomes but frequently attract scrutiny from competition authorities, especially regarding exclusive intellectual property rights.

Joint ventures in entertainment involve multiple parties pooling resources, typically copyrights, to achieve specific goals. Assessing their competitive impact is crucial, with authorities closely monitoring ventures with anti-competitive motives, such as price fixing or output limitations, often branding them as cartels per se.

However, ventures promoting efficiency may undergo a rule of reason analysis to assess legality.<sup>376</sup> Price fixing, a common cartel activity, involves competitors agreeing on pricing strategies, leading to increased prices and reduced market output. Such cartels face criticism for harming consumers and stifling competition, particularly affecting industries like film exhibition.

Overall, these instances underscore the susceptibility of copyright-related markets to restrictive agreements, with cartels adversely impacting competition and consumer welfare.

### 3.2. VERTICAL ANTI-COMPETITIVE AGREEMENT

Vertical agreements involve anticompetitive conduct and are associations between trading firms along the production chain, from

upstream to downstream. These agreements occur between manufacturers, suppliers, and retailers and encompass activities from raw material collection to product distribution and consumer sales. Vertical restraints, such as contractual restrictions, are applied to promote goods and services distribution. The impact of vertical agreements on competition varies and depends on factors like market power.

If the imposing firm holds market power, competition from other products may be limited, necessitating competition among distributors and retailers. Conversely, without adequate market power, competition among distributors and retailers of the same brand may have little effect on the market. Section 3(4) of the Indian Competition Act, 2002, deals with the provisions on Vertical Agreement.

This section<sup>377</sup> states that, "Any agreement amongst enterprises or persons at different stages or levels of the production chain in different markets, in respect of production, supply, distribution, storage, sale or price of, or trade in goods or provision of services, including—

- a. tie-in arrangement;
- b. exclusive supply agreement;
- c. exclusive distribution agreement;
- d. refusal to deal;
- e. resale price maintenance,

shall be an agreement in contravention of subsection (1) if such agreement causes or is likely to cause an appreciable adverse effect on competition in India."

A pivotal case, *FICCI - Multiplex Association of India vs. United Producers/Distributors Forum*<sup>378</sup> (UPDF), underscored the interplay between copyright and competition law. UPDF contended that film producers, being copyright owners, possess the exclusive authority to determine how their films are presented to the public, including commercial terms. Drawing from precedent, notably the Indian Performing Right

<sup>376</sup> Shashwat, 'Per Se Rule Vis-À-Vis Rule of Reason: A Comparative Study of India And U.S. Competition Laws' [2016] Law Mantra accessed 29 March 2024.

<sup>377</sup> The Competition Act, 2002 (12 of 2003) s 3.

<sup>378</sup> *FICCI - Multiplex Association of India v. United Producers/Distributors Forum* (2011) CCI 32.

Society Ltd. v. Eastern Indian Motion Pictures Association<sup>379</sup>, which equated feature films to bundles of copyrights, the case raised pertinent questions regarding the extent to which copyright holders can exercise their rights vis-à-vis competition in the market.

The Competition Commission of India (CCI) intervened, asserting that coordinated actions by UPDF, such as withholding films from multiplexes and dictating revenue-sharing ratios, amounted to anti-competitive behavior. CCI's scrutiny centered on Section 3(5) of the Indian Competition Act, 2002, which ostensibly exempts certain actions aimed at protecting intellectual property rights from competition law's purview. However, CCI's ruling emphasized that intellectual property laws, while granting rights, do not enjoy absolute supremacy over competition law. Section 3(5) was interpreted as affording right holders' leeway to safeguard their rights from infringement, albeit within the confines of reasonableness.

The Indian film industry, due to its nexus with copyright issues and anti-competitive practices, has become a focal point for competition agencies. Notably, trade associations wield significant influence, often imposing stringent regulations that may impede fair competition, especially concerning dealings with non-members.

This has given rise to numerous antitrust cases, including landmark decisions like CCI vs. Coordination Committee of Artists and Technicians of West Bengal Film and Television & Ors<sup>380</sup>, highlighting the pervasive impact of trade bodies on industry dynamics.

In essence, the confluence of copyright and competition law in the Indian film industry underscores the delicate balance between protecting intellectual property rights and fostering fair competition. While copyright

grants creators' exclusive rights, competition law intervenes to ensure a level playing field, particularly in cases where anti-competitive practices impede market dynamics. As the industry continues to evolve, navigating these legal frameworks remains imperative for stakeholders to foster innovation while upholding equitable competition.

#### CHAPTER 4: ABUSE OF MARKET DOMINANCE IN THE COPYRIGHT BASED ENTERTAINMENT INDUSTRY

The primary aim of competition law is to ensure the efficient functioning of markets while safeguarding consumer welfare. The Indian Competition Act aligns with global competition laws, aiming to curb anti-competitive practices and promote fair competition in Indian markets. It addresses issues such as anti-competitive agreements, abuse of dominant position, and regulation of combinations to prevent adverse effects on competition.

A robust competition policy should prevent firms with significant market power from engaging in unilateral anti-competitive behavior. While monopolies may lead to higher prices and reduced consumer choices, they are not explicitly prohibited under modern competition regimes. However, competition law prohibits dominant firms from abusing their market power through anti-competitive practices.<sup>381</sup>

Laws against unilateral conduct focus on practices such as predatory pricing, exclusionary tactics, and misuse of intellectual property rights. This chapter will explore the concept of market dominance, conditions for abuse of dominant position, and its implications for the entertainment industry. It will also address the challenges faced by the Competition Commission in addressing these issues.<sup>382</sup>

<sup>379</sup> *Indian Performing Right Society Ltd. v. Eastern Indian Motion Pictures Association* (1977) 2 SCC 820.

<sup>380</sup> *CCI vs. Coordination Committee of Artists and Technicians of West Bengal Film and Television & Ors* 2017 (5) SCC 17.

<sup>381</sup> S Chakravarty, 'Intellectual Property Right and Anti-competitive Practices' (Manupatra, 17 January 2011) <<https://articles.manupatra.com/article-details/Intellectual-Property-Right-And-Anti-competitive-Practices>> accessed 23 March 2024.

<sup>382</sup> Alice Pham, 'Competition Law and Intellectual Property Rights: Controlling Abuse or Abusing Control?' (CUTS International, 2008) <[https://www.cuts-international.org/pdf/CompetitionLaw\\_IPR.pdf](https://www.cuts-international.org/pdf/CompetitionLaw_IPR.pdf)> accessed 22 March 2024.

Establishing a case of abuse of dominance involves identifying the dominant position held by a firm or group in a relevant market and detecting specific practices harmful to competition. Section 4 of the Competition Act, 2002 outlines activities constituting abuse of dominant position. Considering this, the Act's Section 19(4) outlines certain criteria that must be taken into account when determining an enterprise's dominance.

#### RELEVANT MARKET

Establishing the parameters within which an enterprise's behaviour will be examined for dominance and, eventually, abuse of dominance is the purpose of identifying the relevant market.

Relevant market is "the market which may be determined by the commission with reference to the relevant product market or the relevant geographic market or with reference to both the markets"

Section 2(t) of the Competition Act defines "relevant product market" as "a market comprising all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use."

Section 2(s) of the Competition Act defines "relevant geographic market" as "a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighbouring areas."

#### ABUSE OF DOMINANCE

In the case of *M/s HT Media Limited v. M/s Super Cassettes Industries Limited*<sup>383</sup>, the complainant/informant HT Media Limited, which operates the radio station Fever 104 FM, claimed that Super Cassettes Industries ("T Series") was

abusing their dominant position in the market by imposing unreasonably high licencing fees and requiring radio stations to sign a contract requiring minimum commitment charges (MCCs) whether or not their songs were played. The Competition Commission of India concluded that the "market for licencing Bollywood music to private FM radio stations for broadcast" was the relevant product market and that the "relevant geographic market" is the "territory of India" when determining the relevant product market based on consumer preferences.

The Commission concluded that Super Cassettes Industries Limited violated the Competition Act's section 4(2)(a)(i) by imposing unfair conditions of MCC on private FM Stations through its existing agreements, as the imposition of unfair or discriminatory trading conditions has been explicitly declared to be abusive conduct.

Licensing arrangements examined by CCI

#### **Shamsher Kataria vs. Honda/Volkswagen/Fiat India and Others**<sup>384</sup> ('Shamsher Kataria case')

The Original Equipment Suppliers (OESs) supplied spare components to the Original Equipment Manufacturers (OEMs) for both assembly line and aftermarket requirements. However, an investigation by the Director General (DG) revealed that OESs were prohibited from directly distributing spare parts to the aftermarket without prior approval from the OEMs. This restriction stemmed from the fact that OESs utilized designs, technical specifications, and know-how supplied by the OEMs to produce the spare parts.

The OEMs justified their limitations on OESs' spare parts sales under section 3(5)(i) of the Act's exemption, asserting their intellectual property rights (IPRs) over the spare parts. The Competition Commission of India (CCI) assessed two factors to determine the validity of this exemption:

<sup>383</sup> *M/s HT Media Limited v. M/s Super Cassettes Industries Limited* Case No. 40 of 2011, decided on October 1, 2014

<sup>384</sup> *Shamsher Kataria vs. Honda/Volkswagen/Fiat India and Others* 2014 SCC OnLine CCI 95.



1. Whether the rights claimed by the OEMs qualify as intellectual property.

2. Whether the legal requirements for granting the IPRs are met.<sup>385</sup>

The CCI found that the OEMs failed to provide sufficient evidence to demonstrate that the required IPRs had been granted in India for the spare parts in question. Despite the OEMs' claims of obtaining IPRs through technology transfer agreements (TTAs) with their foreign parent companies, the CCI ruled that territorial nature of IPRs requires compliance with Indian statutory provisions listed under section 3(5)(i) of the Act for the OEMs to benefit from the exemption.<sup>386</sup>

Furthermore, the CCI addressed the OEMs' copyright protection claims over technical manuals and engineering drawings, classifying them as "literary works" under the Copyright Act. However, it refrained from delving into the question of whether these works qualified for protection under the Indian Copyrights Act during the proceedings.

The CCI concluded that the OEMs' argument for IPR exemption under section 3(5)(i) lacked merit. It noted that the sale of finished spare components by OEMs on the open market did not necessarily jeopardize the intellectual property rights, as per the terms of the OEM-OES agreements.

In formulating remedies, the CCI directed OEMs to allow OEMs to sell spare parts on the open market. Additionally, it permitted OEMs to levy royalties or fees through contracts for parts over which they held IPRs, without imposing restrictions on the specific amount of royalties charged, acknowledging the importance of not interfering with business decisions or acting as a pricing regulator.

<sup>385</sup> K D Raju, 'The inevitable connection between Intellectual Property and Competition Law: Emerging Jurisprudence and Lessons for India' (2013) 18 Journal of Intellectual Property Rights 111-122 <<https://nopr.niscpr.res.in/bitstream/123456789/16395/1/JIPR%2018%282%29%20111-122.pdf>> accessed 23 March 2024.

<sup>386</sup> Antonio Capobianco, 'Licensing of IP rights and competition law – Note by India' (OECD, 6 June 2019) <[https://one.oecd.org/document/DAF/COMP/WD\(2019\)4/en/pdf](https://one.oecd.org/document/DAF/COMP/WD(2019)4/en/pdf)> accessed 24 March 2024.

### **K Sera Sera Digital Cinemas Limited vs. Pen India Ltd. And Others** <sup>387</sup>

The informant, K Sera, a digital cinema services provider, alleged that the producers and presenters of a film, along with other digital cinema service providers, entered into an anti-competitive agreement. This agreement aimed to supply the film's content only to those digital cinema service providers, excluding the informant. The opposing party, one of the digital cinema service providers, expressed concerns about delivering the film to the informant due to their history of copyright infringement, citing a press story about previous copyright violations involving Viacom18.

Viacom18, the movie studio, developed an internal security mechanism to combat online piracy and track the source of leaks. They found that the copy delivered to the informant for digital integration was the source of pirated copies of a previously released film. The informant did not dispute these findings, leading the CCI to conclude that the opposing parties' decision to withhold their films from the informant's digital service was a preventive measure against piracy losses. Consequently, the CCI dismissed the case, noting that the decision seemed reasonable given the informant's history of piracy issues.<sup>388</sup>

### CHAPTER 5: CONCLUSION & SUGGESTIONS

Achieving a delicate balance between upholding Copyright and enforcing Competition Law is imperative. While Intellectual Property (IP) rights are crucial for driving innovation and efficiency, there exists a risk of anti-competitive behavior that cannot be overlooked.

Indian courts have acknowledged the Competition Commission of India's jurisdiction to handle cases involving IP issues. However, it's important to note that the exemption granted

<sup>387</sup> *K Sera Sera Digital Cinemas Limited vs. Pen India Ltd. And Others* Case No. 97 of 2016.

<sup>388</sup> 'Anti-Competitive Agreements & Combinations: K Sera Sera and Real Estate Brokers Association Case' (Bulwark Solicitors, 9 July 2017) <<https://www.bulwarksolicitors.com/competition-law/anti-competitive-agreements-combinations-k-sera-sera-and-real-estate-brokers-association-case/>> accessed 26 March 2024.

to IP rights under Section 3(5) of the Competition Act isn't absolute. This exemption comes with limitations, as outlined in both the Act and Indian court rulings. IP holders are not entitled to impose arbitrary restrictions beyond what is reasonably necessary to protect their rights.

For instance, when issuing a copyright license in the entertainment industry, the terms of the license must include reasonable restrictions to safeguard the rights of the licensor. Such restrictions, if reasonable, would not be deemed anti-competitive under Sections 3(1) to 3(4) of the Act.

Furthermore, actions constituting abuse of dominance under Section 4 are subject to a reasonability assessment. While the specific exemption provided under Section 3(5) applies explicitly to cases under Section 3, a similar scrutiny for reasonability is implied for cases falling under Section 4. This ensures that competition concerns are adequately addressed in all relevant cases.

The Supreme Court of India in *Competition Commission of India v Steel Authority Of India & Anr*<sup>389</sup> observed: "The main objective of competition law is to promote economic efficiency using competition as one of the means of assisting the creation of market responsive to consumer preferences. The advantages of perfect competition are three-fold: allocative efficiency, which ensures the effective allocation of resources, productive efficiency, which ensures that costs of production are kept at a minimum and dynamic efficiency, which promotes innovative practices. These factors by and large have been accepted all over the world as the guiding principles for effective implementation of competition law."

There is a need for clarity regarding what constitutes "reasonable conditions" under Section 3(5) of the Competition Act, especially in the context of the entertainment industry.

Clear guidelines are required to avoid conflicts in interpreting competition law and intellectual property rights.

Clear guidelines should be framed by the Commission to address interactions between the entertainment sector and sectors like finance and insurance, ensuring smooth industry functioning. Film associations should actively participate in competition compliance programs to avoid unintentional violations of the Competition Act.

Effective competition enforcement can help reduce piracy by providing low-cost access to creative works. Harmonious interpretation of competition law and IP law is necessary to reconcile conflicting interests and achieve common goals.

Guidelines focusing on IP-related aspects of the entertainment industry should be formulated to provide clarity and guidance to stakeholders. Conduct of IP owners considered anti-competitive should be categorized under guidelines to raise awareness and reduce violations.

Competition authorities should consider the creative aspect of copyright cases while maintaining a balance between intellectual property and competition law. These recommendations aim to promote fairness and efficiency in the copyright-based entertainment industry while ensuring compliance with competition law.

<sup>389</sup> *Competition Commission of India v Steel Authority of India & Anr* (2010) 10 SCC 744.