

CCI ORDER ON ABUSE OF DOMINANT POSITION IN GLOBAL PATENT LICENSING ARRANGEMENT & NDA

The Competition Commission of India (CCI) in its recent [order](#) dated May 12, 2015 in the matter of M/s Best IT World (India) Private Limited (iBall) (“**Applicant**”) vs. M/s Telefonaktiebolaget L M Ericsson & Anr.(“**Opposite Parties**”) decided that charging of different license fees to different customers for the use of the same technology and forcing a party to execute a Non Disclosure Agreement (“**NDA**”) in the given facts *prima facie* amounts to abuse of dominance in violation of Section 4 of the Competition Act, 2002 (“**Act**”). CCI further observed that the imposing of a jurisdiction clause debarring the party from getting the disputes adjudicated in the country where both the parties are engaged in doing business and vesting the jurisdiction in a foreign land *prima facie* appears to be unfair.

FACTS

In the instant case, Opposite Parties are one of the largest holders of Standard Essential Patents (“**SEPs**”) used in mobile communications like 2G, 3G and 4G patents used for smart phones, tablets *etc.* and they are also members of the European Telecommunications Standards Institute (“**ETSI**”) which produces globally applicable standards for Information and Communication Technologies, a standard setting organisation. The ETSI policy requires an IPR owner to grant irrevocable licences on prescribed terms to be applied fairly and uniformly to similarly placed players.

The Opposite Parties alleged that the Applicant was infringing upon certain of its patents pursuant to which the Opposite Parties asked the Applicant to enter into a Global Patent Licensing Arrangement for the patents, which were directly relevant to the Applicant. The Opposite Parties also asked the Applicant to enter into an NDA containing certain onerous terms. Further, all disputes are to be settled by way of arbitration in Stockholm, Sweden. The Applicant has filed this matter with CCI for conducting necessary investigation on the abuse of dominant position by the Opposite Parties.

ORDER

CCI held that since there is no other alternate technology available in the market in India, Opposite Parties *prima facie* appeared to enjoy a dominant position over its present and prospective licensees in the relevant market. CCI further held that royalty rate being charged by Opposite Parties has no linkage to the functionality of the patented product rather it has linkage to the final price of the manufactured product in which the patent is being used, thereby acting contrary to the terms prescribed by ETSI.

CCI has directed the matter for investigation by Director General with respect to allegation of abuse of dominant position under Section 4 of the Act.

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