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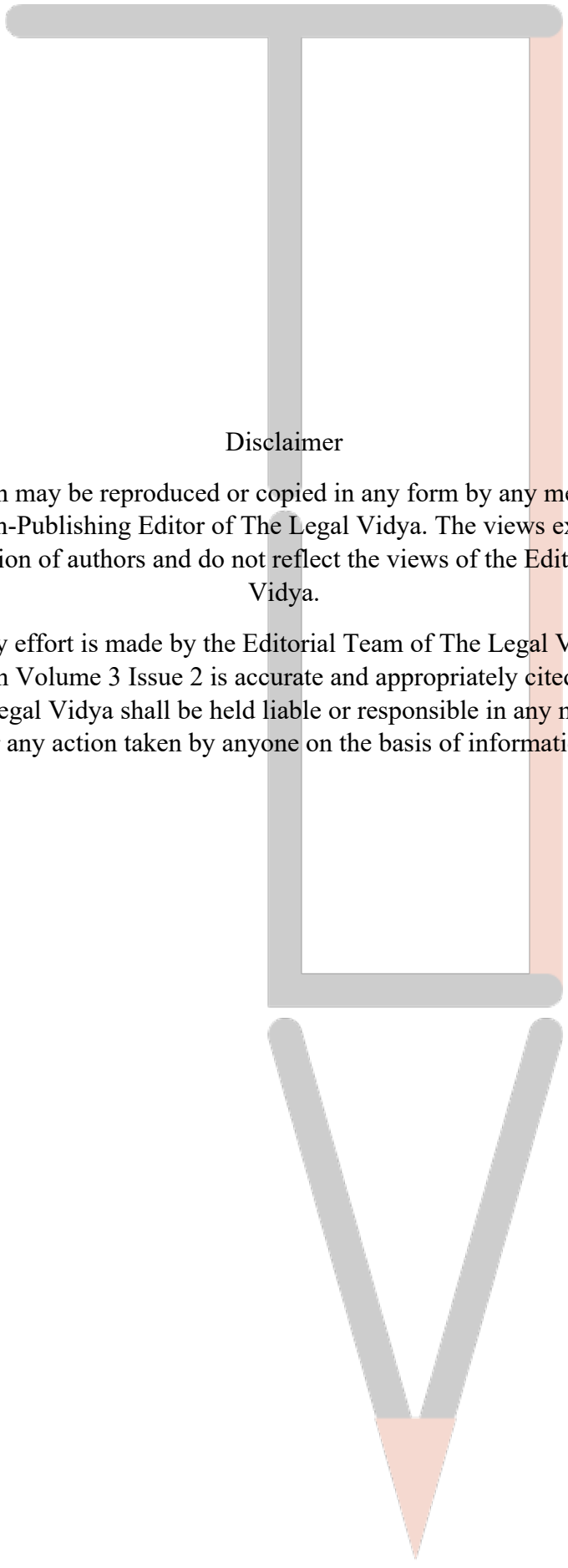

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Ma'am urges the young researchers to focus on the topics which are innovative and most importantly any field which interests their legal acumen.

Ma'am says that that research is at a very nascent stage in India, especially in the field of law and wishes to students that they should start focusing on improving their research skills and publishing quality papers."

ABOUT US

The Legal Vidya is a student(s) initiative run online journal (Two Issues Per Year) started in 2020 with the aim of reaching youths of the nation, buddying lawyers, students and academicians to bring forth the legal knowledge at your fingertips.

We are here to provide you with a lucid way of learning law with the help of daily blogs pertaining to the latest/other legal issues going on in the country.

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ANTI-TRUST ISSUES IN THE MEDIA, ENTERTAINMENT AND TECHNOLOGY INDUSTRIES

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1. INTRODUCTION

Competition laws are described as the Magna Carta of free enterprise. The need for Competition law arises due to the uncertain nature of market where it can suffer losses and challenges and many players are likely to resort to anti-competitive practices like bid rigging, cartels etc. which has an adverse effect on consumer welfare. The core principle of antitrust regulations is to safeguard competition as the most appropriate means of ensuring efficient allocation of resources. It also restricts abuse of dominance by an enterprise and prevents the threat of monopolization. The Film and Entertainment business is one of the highest contributors to the economy in both, India and America. Due to its glamorous demeanor, one would seldom pay no heed to anti-competitive practices in the said market, however these issues are deep rooted since the very inception of the Film Industry.

The Indian Film Industry, popularly known as 'Bollywood' has come a long way, running successfully for almost 120 years, starting from the first full length silent Indian movie, "Raja Harishchandra" in 1913 to now becoming a billion dollar industry and posing a strong threat to Hollywood and several entertainment industries across the globe. During the initial years, Bollywood operated as a fraternity more than an industry, where there was no formal finance system in place for production of films, producers relied on private financers and the ancillary costs and resources attached to film making were worked out between the top players in the market, discouraging new entrants in the market.

However Bollywood procured its 'Industry' status in 2000, which opened gates for International Investments and Bank Finance. The availability of formal sources of finance has paved the way for systematic time bound

production of movies and thereby reducing costs and burden on producers. It has also given newer independent producers, the opportunity to approach formal finance systems for producing their films, eliminating the age old traditional finance systems from private financers who charged exorbitant interest rates. Additionally, the Indian Government has permitted 100% FDI (Foreign Direct Investment) in the film industry[1] and Venture Capitalists (VCs) have expressed keen interest in investing in IT services like post-production, animation etc. The commercialization of the Hindi Film Industry has instilled the need for accountability and transparency. Procedures like licensing, broadcasting, cinematography etc. require a formal agreement to be set in place for determining rights and liabilities of the parties and ensuring time bound completion of processes to be followed.

These formal agreements however, are at times of such nature, wherein enterprises and productions enjoy undue advantage and do not keep the best interest of consumers in mind. These contractual obligations include price-fixing, refusal to deal, exclusive supply and distribution, resale price maintenance, etc. Such agreements are considered to be Anti-Competitive in nature as they have an Appreciable Adverse Effect on the market and are considered void under the prevailing competition laws in India. Within the entertainment sector, movies continue to be the most favored art form and, in numerous nations, seem to be the most extensively engaged in cultural activities. Technology is advancing every day, and there is still a long way to go in this area. More than a century after its founding, a turning point has been reached where new questions about competition are likely to arise.

These questions have to do with the horizontal and vertical concentration and integration of businesses involved in the film distribution markets, as well as the encouragement of the industry's growth. The Indian film industry established self-disciplinary associations or agencies as a means of self-discipline. Additionally, any contract a producer signs with a distributor for a certain zone must be registered with an association. The theory behind this is that in order to raise further funds, a producer wouldn't sell the film's rights to a different distributor in the same region. Furthermore, another distributor is typically chosen for a zone or two distributors would create a joint venture to finance the picture when the production involves a significant sum of money. As a result of the development of new technologies, the movement of the Indian diaspora abroad, and other factors, the market for Indian films has expanded across international borders. This gave the producers the chance to sell the movie's global rights, including those for DTH, satellite, and the internet.

The increased piracy and decreased producer earnings were further consequences of the new technology. Numerous single-screen theatres across India have closed as a result of these issues.

India produces more than 1,300 films annually, making it one of the world's top producers of motion pictures. However, India does not fare well in terms of theatre density, with only 12 screens per million compared to 117 in

[1] https://mib.gov.in/sites/default/files/Are_You_suprised__0.pdf

the USA. Due to this significant lack of infrastructure, an industry analysis projects that only about 12,000 theatres sell 4 billion tickets annually.

As a result, there is currently a trend where digital rights to films (including webcast, DTH, satellite, home video) are negotiated and sold well in advance of their theatrical debut. It may be argued that the availability of simulations would make it easier for people to pirate, which would reduce the money made from legal sources. This viewpoint is invalid for the straightforward reason that buyers of "pirated" (for want of a better term) items are unaware of the advantages of the legal market's pricing structure. No one would bother buying an original disc when they could buy a DVD for fifty rupees on the street corner or five times that amount from an authorized dealer, if any existed in their area.

Competition Law in India developed through The Monopolies and Restrictive Trade Practices (MRTP) Act 1969. It was the first legislation in post-independent India that primarily regulated Competition in the market. The crux of this act was to promote consumer welfare by restricting monopolistic, unfair and restrictive trade practices. However the MRTP Act could not stand the test of effective implementation of competition policy and the need for having a stringent enactment for the same arose. The Competition Act 2002 was enacted to fill the gaps that the MRTP regime left behind. The Raghavan Committee was the High Level Committee appointed by the government to look into the said matter and their recommendations led to the Enactment of this Competition Act.

The new Competition Act constituted Competition Commission of India (CCI)[2], a formal regulating and adjudicating body that prevents those malpractices that adversely affects competition. The Act confers upon it powers to scrutinize actions[3] of the enterprises they believe are having an appreciable adverse effect on the market, initiate an investigation by the Director General (DG) based on its findings, impose penalties and pass orders provided under Section 27 and 28 of the Act and provide interim relief. The Act also provides for the composition of its members, appointments and qualifications.

The MRTP regime frowned upon Dominance asserted by an enterprise in the market whereas the present act frowns upon abuse of this position of dominance and not merely dominance itself. No enterprise can be considered dominant on the basis of a big name. Dominance has to be determined as per law on the basis of market share, economic strengths and other relevant factors under s.19 of the Act[4]. Additionally the act entails combination regulations under Section.5 that regulate such mergers and acquisitions of enterprises that are likely to have appreciable adverse effect on competition in India. It also excluded the ambit of unfair trade practices and adopted

[2] Section 7, The Competition Act 2002
[3] Section 18, The Competition Act 2002
[4] *Ajay Devgan vs Yashraj Productions* [2012] Case no. 66/2012

the Rule of reason approach rather than the Rule of Law approach followed by MRTP Act. The Extra-territorial application of the current Competition Act, 2002 under s.32 and the provision for Competition Advocacy under s.49 are other major developments that contributed to significant improvement in fairness in businesses.

The dynamic interplay of Intellectual Property Laws and Competition laws has been discussed time and again, however it is crucial to throw light upon it in this context as the Film Business thrives over IPR protection through copyright over music, trademarks of different Media Companies, patents granted to soft wares that help with post-production. IPR helps in greater commercialization of inventions and competition law curbs such practices that tend to increase market power[5]

The recent developments in the digital space, namely the influx of OTT Platforms, Content Creation by independent artists has made massive success in terms of how people consume content today. COVID-19 Pandemic has accelerated the growth of these digital media platforms as during the lockdown, public did not have access to cinema, newer productions could not go on floor and several media and entertainment companies faced huge losses. However the audiences were kept entertained through digital content and as we came out of the pandemic, people were already used to the idea of consuming content through their personal gadgets. While competition law has a paramount role to play in all markets, it is crucial in digital markets that are expanding in size and significance. Tech giants like Facebook, Google, Amazon and Apple have already faced authority of such laws in EU. Tech companies in India have also been subjected to antitrust scrutiny.

Competition is the interaction between market players that is driven by rivalry, in which each actor attempts to maximize long term gains, sometimes at the expense of others. Market players compete on merits by attempting to outperform competitors by providing the best possible combination of price and service. Competition is promoted and safeguarded by the Competition Act, 2002. However, unrestricted market entry and exit, freedom of commerce and contract, an effective monetary system, protection from restrictive business practices, the presence of positive and negative sanctions and market transparency are all needed for the successful completion of the process. Competition encourages companies to try and cater to the needs of the consumers, ensuring that prices remain reasonable and that the quality of goods and services remains excellent.

Many observers regard the collection, processing and commercial use of personal data as a matter of consumer protection rather than competition law enforcement. On the other hand, recent high-profile mergers and acquisitions in the digital or entertainment industries, for instance the recent ongoing Disney-Reliance Merger, have aroused concerns about potential competitive impact of combining and controlling massive data sets, as well

[5] John E. Lopatka & William H. Page, *Economic Authority and Limits of Expertise in Antitrust Cases,* 90 Cornell L Review 617,633-34, 637-38 (2005)

as the need to learn more about the implications of consumers and markets. Consumer welfare and equitable allocation of resources are the appropriate perspectives to motivate competition policy, such approach is flexible and can take into account broader considerations than price, narrowly defined, and also include choice, quality and innovation, among other areas.

Anti-trust issues in the light of Media and Entertainment business is not something that has been discussed and researched upon depth in India even though the said industry is predominantly one of the highest contributors to the GDP. Similar subject matters have been very comprehensively covered in America. Hence, there is a need for discussion over the role of competition policy in the Film Industry to be integrated into a broader debate over the new value generation process in the era of digital capitalism and complex economy to which it has given rise.

1.1 **STATEMENT OF PROBLEM**

India's Competition Act of 2002 and America's antitrust laws serve as vital frameworks for addressing such challenges. These legislations empower regulatory bodies like the Competition Commission of India (CCI) and the Federal Trade Commission (FTC) to investigate anticompetitive behavior, impose penalties, and promote market competition. However, the effectiveness of these laws hinges on their enforcement and adaptability to evolving market dynamics. The interplay between intellectual property rights (IPR) and competition laws adds another layer of complexity, particularly in a digital environment where content piracy and data privacy are prevalent concerns. Antitrust issues in the film and entertainment business pose significant challenges to market competition and consumer welfare in both India and America. While regulatory frameworks exist to address these challenges, their enforcement and adaptation to digital disruptions remain critical. A comprehensive approach, encompassing competition policy, consumer protection, and innovation incentives, is essential for ensuring a fair and vibrant film industry in the digital age.

1.2 **AIM OF THE STUDY**

The objective of research on the said topic arises out of the fact that Media and Entertainment is a very niche and newly developed area of law. It consists of very limited regulations. However since media, films and now digital markets are the most influential mediums of business, being the highest contributors to the GDP of India, there is an urgent need to understand how it’s governed and more importantly how healthy competition is instilled in these industries.

The aim of this study is to:

1) Understand which agreements amount to anti-competitive behavior in the media and entertainment industry.

2) To identify the inherent gaps and flaws within the legislative framework of Competition Laws in the Media and Technology industries.

3) To identify if the existing competition laws are able to ensure healthy competition in the market and curb practices amounting to Appreciable Adverse Effect on competition by the TMT industry.

1.3 **HYPOTHESIS**

The existing Competition and Media laws are insufficient to protect the safety and rights of persons and industries engaged in the media business. Through various judgements of the Indian courts, jurisprudence around competition laws vis-a-vis entertainment industry has evolved.

1.4 **RESEARCH QUESTION**

The researcher attempts to answer within the scope of the present study, the following research question;

1) Whether the existing competition law framework is sufficient to ensure healthy competition in the Media and Entertainment Industry.

2) Whether the recently introduced Competition (Amendment) Bill, 2020,identify the legislation gap in protecting competition in the Media sector

3) if not, then how does the existing laws in competition and media and other associated legislation fails to prevent infringement of anti-competitiveness in the said market?

1.5 **RESEARCH METHODOLOGY**

The researcher has adopted a combination of descriptive and analytical research methods. The researcher has undertaken to analyze the data available as Parliament Bills, Committee reports, FAQs to understand the evolution of the law and the gaps it was intended to fill. Further a doctrinal method was used to study the existing provision of law which fails to cover the research gap. Thus, both quantitative and qualitative approach have been adopted for the analysis of scope of law thereby inferring the gap in law

1.6 SCOPE AND LIMITATION OF STUDY

The study is limited to finding anti-trust issues in the light of Media and Entertainment industry and its decided cases and developments. The study therefore is limited to the provisions relevant to competition law and IPR. This study does not extend to the other provisions of Companies Act 2013, Employment or labor law provisions in the said industry. This study uses the decided case laws in the said field of law and analyses them

In preparation of the dataset, reliance has been placed upon the information published as Committee Reports, Bills, and FAQs, published by the relevant authorities. Relevant case laws has also been used to complete the data set.

1.7 REVIEW OF LITERATURE

Sr No	Nature of Literature	Covered/Reviewed	Research Gap in Literature	Intended Research
	Research Article	The research article focuses on Antitrust issues in the Film and Entertainment industry in America. The Paper lays down the several anticompetitive practices such as vertical agreements, cartels, bid-rigging etc. that are existent in the showbiz with special emphasis on judicial pronouncements.	The judgements and case laws referred to in this paper are relatively outdated and there might be judgements in the said paper that may have been overturned.	In my dissertation, I intend on presenting contemporary challenges and initiatives in the entertainment industry with respect to Competition laws with the help of recent judgements.

	Journal Paper	This journal article focuses on anti-competitive issues in motion pictures. The Research paper entails judgements and challenges of the said in America.	The Journal article focuses on Antitrust issues in only the American Entertainment Industry and does not provide a comparison of any other nation	In my dissertation research, I shall present the antitrust issues in the light of media and entertainment industry in the Indian context
	Online Article	This Online Article discusses Antitrust issues in the Indian Entertainment Industry along with relevant case laws and provisions from the Competition act, 2002.	This article entails case laws and judgments only within the Indian Context, having no comparative analysis to other countries.	My dissertation shall entail a comparison of judgements and legal practices in the US and UK with India.
	Journal Article	This Journal article focuses on current questions of monopolization and restraints in the radio and television broadcasting industry.	This Journal Article lacks details about the interplay of Intellectual Property and Antitrust Laws which is essential while dealing with the Entertainment Industry	My Dissertation shall include discussion on Interlay of Both IPR and Competition Law.
	Journal Article	This Journal Article discusses the background of relevant antitrust law and its regulators. Part II will delve into the historically tumultuous relationship between the entertainment industry and antitrust law, citing relevant case law, regulations, and outcomes.	This Journal Article lacks the coverage technological advancements and recent digital market spaces.	My Dissertation shall include the discussion about the technology industry and recent digital advancements.

	Reports and Policies	This document includes an analytical note by Ms. Patricia Hériard-Dubreuil of the OECD, written submissions from Australia, the European Commission, Germany, Portugal, Switzerland, the United Kingdom and the United States, as well as an aide-memoire of the discussion with respect to competition policy and film distribution	This policy discussion a little outdated and not in consonance with the recent developments	My dissertation shall include recent developments in policies and reports of international organizations
	Online Article	This article discusses about the statistical data and figures of anti-competitive practices and regulations in India	It contains only concise data and regulations and not much about judicial pronouncements concerning the topic	My Dissertation shall include detailed records of the same.
	Online Article	This Online article discusses about a very controversial case of antitrust in Indian film industry	The article if only limited to one famous case law and does not delve into other nuances	My Dissertation shall include various judgements to get a wider view of issues in the same.
	Online Article	This online article includes Antitrust and Monopolistic issues in OTT networks within the ambit of entertainment industry.	This article does not provide a structured view of all entertainment mediums and focuses more on television and OTT.	All Aspects of entertainment law shall be covered in my dissertation.

	Journal Article	This Journal article talks about antitrust in Media in Europe, its challenges and contemporary initiatives	This Article lacks in providing enough judgements and case laws based on same.	My dissertation shall entail that.

1.8 CHAPTERISATION

1) CHAPTER ONE - INTRODUCTION

It deals with the introduction of this paper, research design, objectives and methodology used to answer the research paper. It also gives a detailed timeline of important events and the background of anti-trust issues in the media industry.

2) CHAPTER TWO – WHAT CONSTITUTES AS ANTI-COMPETITIVE PRACTICE IN THE MEDIA AND ENTERTAINMENT INDUSTRY

It gives insights about the practices in the form of agreements, cartels, abuse of dominant position etc. that are prevalent in the Media and Entertainment industry that may cause an appreciable adverse effect on the said market. It also entails judicial pronouncements pertaining to anti-competitive practices in the said industry.

3) CHAPTER THREE - INTERPLAY OF INTELLECTUAL PROPERTY RIGHTS AND COMPETITION LAWS IN THE MEDIA SPACE

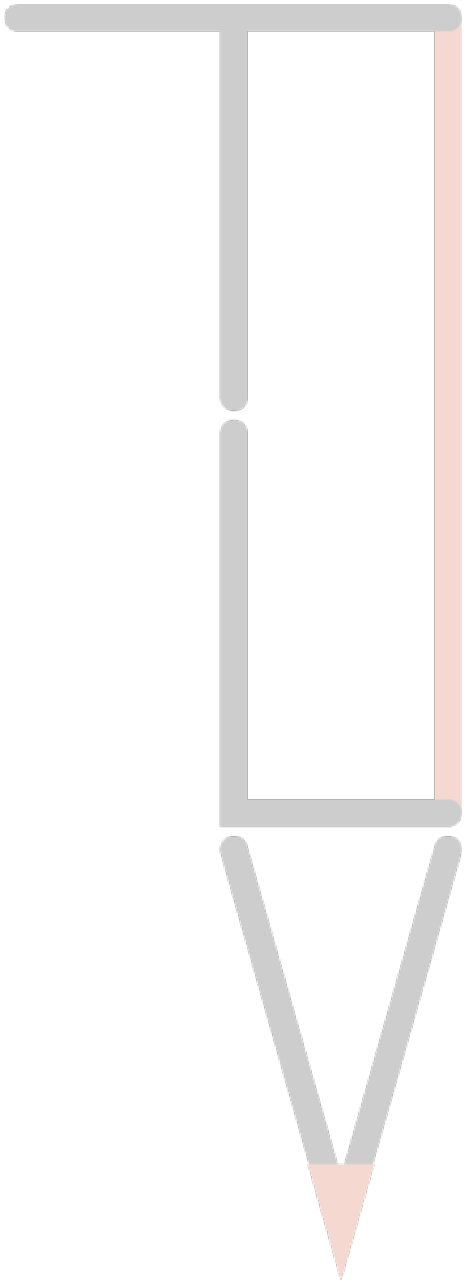
This chapter explores the interplay and contradictions pertaining to IPR and Competition laws and also discusses decided case laws to further explore the topic. Since IPR plays a pivotal role in the Media Industry as most works in the Industry are governed by Intellectual Property Laws (Copyright Act, Trademarks Act, Designs Act etc.), there is a need to understand about its protection and implication with prevalent competition laws. It also includes licensing and its anti-competitive aspects in the said market.

4) CHAPTER FOUR – RECENT MERGERS AND DEVLOPMENTS IN THE DIGITAL SPACE THAT FACED CCI SCRUTINY.

This chapter gives insights about recent developments and mergers in the digital space that have faced CCI Scrutiny. This includes the Media Sector, Digital Applications, and E-Commerce Platforms and draws parallels between similar cases in America.

5) CHAPTER FIVE – CONCLUSION AND SUGGESTIONS

The final chapter deals with conclusion of the state of Competition Laws and Media Industry and also suggests recommendations and betterments for curbing anti-competitive practices and adopting newer advancements for the same. Amendments pertaining to the Competition Act, 2002 have also been deliberated upon.



CHAPTER 2

WHAT CONSTITUTES AS ANTI-COMPETITIVE PRACTICE IN THE MEDIA AND ENTERTAINMENT INDUSTRY

Ever since the 'Hindi Film Industry' got its 'Industry status in 2000, there was a compelling need to have contracts in place while entering into business transactions, in order to determine the rights and liabilities of the parties. It was also done with a view to protect their works under IPR. Entering into agreements became a standard practice overtime and it ensured systematic functioning of the Movie Business. However, through certain cases, the issue of anti-competitive agreements in Bollywood came into light wherein Producers, Distributors and Agencies were involved in eliminating competition and capture market share. CCI has exercised its power of scrutiny in many such cases in determining whether such alleged practice was hampering competition or not.

One of the earliest cases to deal with this issue was the American Case of Paramount Pictures[6] in 1948. It was a landmark antitrust case heard by the US Supreme Court that determined whether or not film studios could own their own theatres and exercise their exclusive right to choose which theatres would screen their productions. It would also alter the distribution, exhibition, and production of Hollywood films. In this instance, the Court determined that the current distribution plan violated US antitrust laws, which forbid some forms of exclusive trading.

The case is significant for American antitrust law as well as for movie history. In the former, it is still regarded as a landmark ruling in situations involving vertical integration; in the latter, it is considered the first blow to the once-mighty Hollywood studio structure.

The Federal Trade Commission[7] started looking into cinema businesses for possible violations of the Sherman Antitrust Act of 1890 during the silent era, which is when the legal difficulties first arose. The major film studios, either as joint ventures or as sole owners, controlled the cinemas in which their films were screened. As a result, certain theatre chains only screened movies from the studio that controlled them. In other words, the studios were vertically integrated, resulting in a de facto oligopoly. The studios made the films, employed writers, directors, producers, and actors ("under contract"), owned the film processing and laboratories, made the prints, and distributed them through the theatres they owned.

By 1945, the studios accounted for 45% of the country's film rental earnings, owning either all or a portion of 17% of the cinemas.

[6] *United States v. Paramount Pictures*, Inc., 334 US 131 (1948)
[7] 15 U.S.C. §§ 41-58, as amended

The U.S. Department of Justice ultimately sued all of the major motion picture studios in 1938 due to allegations of unfair trade practices by the studios. Interestingly, the first significant action taken by producers against exhibitors was brought in 1942 by the Society of Independent Motion Picture Producers, an organization headed by Mary Pickford, Samuel Goldwyn, Walter Wanger, and others. The complaint was filed against Paramount Detroit Theatres.

The 1938 lawsuit brought by the federal government was resolved in 1940 with a consent decree that permitted the agency to reopen the case in three years if it continued to not receive sufficient compliance. The consent decree stipulated the following terms in addition to others: The Big Five studios were unable to

(1) block-book short film subjects with feature films (a practice known as one-shot, or full force, block booking); and
(2) Block-book features, but only up to five films may be included in a block.
(3) Now, "trade showing," (special screenings every two weeks where representatives of all 31 theatre districts in the United States could see films before they decided to book a film), would take the place of blind buying (the practice of theatre districts purchasing films without first seeing them); and
(4) An administration board would be established to enforce these requirements.
(5) As the film industry failed to comply with the consent decree's stipulations, the government was forced to bring the case back three years later, in 1943, as promised. On October 8, 1945, a few months after World War II ended, the case proceeded to trial with all eight of the Big Eight now named as defendants.

In 1948, the case made its way to the US Supreme Court. The movie companies were forced to sell their networks of theatres as a result of the ruling that went against them. Along with Paramount, the defendants included the American Theatres Association, Loew's, RKO Radio Pictures, Inc., 20th Century-Fox Film Corporation, Columbia Pictures Corporation, Universal-International, Warner Bros., and W.C. Allred (the latter of which is no longer a film studio).This resulted in a dramatic decline in the cinema industry, which was not to be reversed until 1972 with the publication of The Godfather, the first modern blockbuster, along with the introduction of television and the ensuing decline in ticket sales.

The Court ruled 7-1 in the government's favor, affirming much of the consent decree (Justice Robert H. Jackson took no part in the proceedings). William O. Douglas delivered the Court's opinion, with Felix Frankfurter dissenting in part, arguing the Court should have left all of the decree intact but its arbitration provisions. The Paramount Case is a bedrock of entertainment and anti-trust law, and as such is cited in most cases where issues of vertical integration play a prominent role in restricting fair trade. Before looking at cases of competition law in India regulating the film business, discussion on types of agreements that are considered anti-competitive and provisions of the Competition Act, 2002 relating to anti-competitive agreements should be taken into account.

Judgements delivered by the Indian Judiciary have also identified various anti-competitive practices that movie industry is engaged in.

2.1 SECTION 3 OF THE COMPETITION ACT, 2000

The objective of Section 3 is to prohibit agreements that have the potential to restrict or distort competition within India. Section 3 prohibits certain types of agreements which have an appreciable adverse effect on competition within India. These agreements are categorized as follows:

1) Horizontal Agreements[8]: Agreements between competitors, which are likely to cause an appreciable adverse effect on competition, are prohibited. These may include agreements related to price-fixing, bid-rigging, market allocation, and output restrictions.

2) Vertical Agreements[9]: Agreements between enterprises operating at different levels of the production or distribution chain, such as agreements between manufacturers and distributors or retailers, are prohibited if they cause an appreciable adverse effect on competition in India.

3) Other Agreements: Any other agreements that may cause an appreciable adverse effect on competition within India are also prohibited under Section 3

An agreement must have an appreciable adverse effect on competition to be prohibited under this section. The Competition Commission of India (CCI) determines whether an agreement has such an effect by considering factors such as market share, market power, entry barriers, and potential impact on consumers. Section 3 provides for certain exemptions where agreements that would otherwise be prohibited may be allowed if they contribute to improving production or distribution of goods or to promoting technical or economic progress while allowing consumers a fair share of the resulting benefits. These exemptions are subject to specific conditions and criteria. For instance, Section 3(5) provides for reasonable protection on the use of IPRs.

Violations of Section 3 can lead to penalties imposed by the Competition Commission of India (CCI). Penalties[10] may include fines, injunctions, or other corrective measures to restore competition in the affected market. The enforcement of Section 3 is primarily the responsibility of the CCI, which has the authority to investigate and take action against anti-competitive agreements. Parties aggrieved by the decisions of the CCI can appeal to the Competition Appellate Tribunal (COMPAT)[11] and ultimately to the Supreme Court of India[12].

2.2 SECTION 2(C), COMPETITION ACT, 2002

[8] Section 3(3) of Competition Act, 2002
[9] Section 3(4) of Competition Act, 2002
[10] Chapter VI of the Competition Act, 2002
[11] Section 53B of the Competition Act, 2002
[12] Section 53T of the Competition Act, 2002

According to Section 2(c) of the Act, a cartel is defined as an organization of producers, sellers, distributors, traders, or service providers who, through mutual agreement, attempt to restrict or limit control over the creation, distribution, sale, or price of goods or the rendering of services.

Section 3(1) of the Act, read in conjunction with Section 3(3), prohibits cartels. Agreements between businesses, individuals, associations of businesses, or individuals regarding the production, supply, distribution, storage, acquisition or control of goods, or the provision of services, that have the potential to have a significant negative impact on competition in India are prohibited by Section 3 of the Act and are void.

Section 3(3) of the Act is the specific substantive provision which prohibits anti-competitive agreements in India, including horizontal agreements (and cartels), between enterprises that:

1) directly or indirectly determine purchase or sales prices;
2) limit or control production, supply, markets, technical development, investment or the provision of services;
3) allocate geographic markets or customers; or
4) directly or indirectly result in bid rigging or collusive bidding. Such agreements are presumed to have an AAEC and are consequently void.

FICCI- Multiplex Association of India vs United Producers and Distributors Forum, **2011**[13].In this case, Informant FICCI- Multiplex Association of India alleged that the respondents, namely United Producers Distribution Forum (UPDF), The Association of Motion Pictures and TV Programme Producers (AMPTPP) and Film Television Producers Gild of India Ltd. (FTPGI) were behaving like a cartel. It was further alleged that UPDF had instructed, all producers and distributors, not to release any new films to the members of the informant for the purpose of exhibition at multiplexes operated by the members of Informant.

It had alleged that the notice was sent to the members of UPDF because of the conflict between the producers/distributors and members of the informant on revenue sharing ratio. It was alleged that the average sharing ratio was 40 percent to 44 percent which was paid to the producer/distributor by the multiplex industry but since 2009, the producers have been demanding unreasonable sharing ratio. The informant alleged that the members of UPDF who were competitors controlling almost 100 percent of the market for production and distribution of Hindi pictures in multiplexes in India (relevant market), were clearly acting in concert to fix prices in infringement of Section 3(3) of the Act, and also limiting/controlling supply by refusing to release Hindi films for exhibition in Multiplexes. CCI was of the opinion that there existed a prima facile case of infringement of provision of the Act and directed the Director General (DG) to investigate into the matter. DG submitted that there was cartel like behavior and anti-competitive activities by the UPDF.

[13] MANU/CO/0018/2011

Commission after considering culminating effect of all the mitigating factors was of the opinion that ends of justice would be met if penalty of Rs. 1, 00,000 (Rupees One Lac Only) was imposed upon each of the parties involved in UPDF under Section 27(b) of the Act in addition to cease and desist order under Section 27(a) of the Act.

The Competition Commission of India (CCI) had to determine whether the association of producers qualified as an entity for the purposes of section 2(h) of the Act in the case of **Motion Picture Association v. Reliance Big Entertainment Pvt Ltd**[14]. They received the same negative response from CCI, but it was determined that they might be considered individuals or a group of individuals. Under the provisions of the association's agreement, every distributor was obliged to register with the organization. This was so unreasonable and unfair that those who would not comply would either face penalty or be completely prohibited from conducting business. The CCI claims that because the organizations restrictions limit the production, distribution, and ownership of the films, they are anti-competitive. The Competition Appellate Tribunal (COMPAT) heard a challenge to the ruling and found that the association did qualify as an "Association of Persons" or an "Enterprise." Furthermore, COMPAT maintained the CCI's ruling since the association's actions were deemed restrictive.

Film organizers, distributors, and manufacturers are all concentrating on this problem. The percentage of shares to be divided in accordance with the terms and conditions is chosen independently by each party. Similarly, the percentage of shares allotted to members is decided by associations and is then implemented consistently. We'll examine a few Indian competition situations where a dispute has emerged here. These arguments were centered on revenue-sharing concerns. An independent, nonprofit organization representing the film industry, the Film Guild of Producers, sued the government[15]. Those who create films and earn money from them are members of the motion picture industry. On significant matters impacting the film industry, it engages in negotiations with the government. Additionally, it collaborates with the Association of Multiplexes and multiplex operators, such as PVR, INOX, and Fun Cinemas, to resolve trade issues both within and beyond the sector. The Association's members withhold information such as the film's release date, and until the very last minute, the public is typically unaware of the film's theatre assignment.

The Association's members withhold information such as the film's release date, and until the very last minute, the public is typically unaware of the film's theatre assignment. The fact that the multiplexes deduct the entertainment tax from revenue shares even in states where the levy has been repealed presents another issue. Additionally, it

[14] 2013 CompLR 466 (CompAT)
[15] *M/s Cinemax India Limited (now known as M/s PVR Ltd) v. M/s Film Distributors Association (Kerala),* Case no. 62 of 2012.

was stated that the multiplex association's members do not make their required upfront payments. Multiplexes only contribute around 25% of the total revenue, according to the Association, allowing producers to bargain for the remaining amount.

A copyright can be used whatever the owner pleases according to the Copyright Act of 1957. One type of work that would fit under that category is a film. In other words, artists are free to display their creations however they see fit. At this instance, no multiplex theatre operator may stipulate the circumstances under which the movie must be screened commercially or insist that it be presented at their theatres.

The business of movie theatres does not care about the revenue model or share of each party. Since there was no proof of it, the multiplex group hasn't asked its members to deal with film distributors or producers directly. Regarding films like "Delhi Belly" and "Buddha... Hoga Terra Baap," the producers and theatre operators have stated that associations had no role in negotiating the terms of their agreements with one another or the theatres. Due to insufficient evidence, the commission determined that the group did not constitute a cartel and that its actions did not violate articles 3(3) (a) and 3(3) (b) of the Act.

2.3 ASSESSMENT OF DOMINANCE

Section 4 of the Competition Act, 2002: The primary objective of Section 4 is to prevent entities with significant market power from abusing their dominant position to the detriment of competition and consumers Section 4 prohibits abuse of dominant position by an enterprise or a group of enterprises. Dominant position implies a position of strength enjoyed by an enterprise in the relevant market, which enables it to operate independently of competitive forces or affect competitors or consumers in its favor. Section 4 prohibits various forms of abuse of dominance, including:

1) Charging unfair or discriminatory prices.
2) Imposing unfair or discriminatory conditions in purchase or sale of goods or services.
3) Limiting or restricting production or technical development.
4) Denying market access to new entrants.
5) Predatory pricing.
6) Tying or bundling of products/services.
7) Any other conduct that may be determined to be abusive by the Competition Commission of India (CCI).
8) The list is not exhaustive, and the CCI has the authority to determine other forms of abuse based on the circumstances of each case.

Determining dominance involves analyzing various factors, including market share, size and resources of the enterprise, market structure, entry barriers, countervailing buyer power, and the extent of vertical integration. The CCI considers relevant product[16] and geographic[17] markets to assess dominance. Certain exemptions may apply where abuse of dominant position contributes to improving production or distribution of goods or to promoting technical or economic progress while allowing consumers a fair share of the benefits. Exemptions are subject to specific conditions and criteria.

Violation of Section 4 can lead to penalties imposed by the CCI, including fines, injunctions, or other corrective measures to restore competition. Individuals responsible for the conduct may also be penalised.The enforcement of Section 4 is primarily the responsibility of the CCI, which has the authority to investigate complaints, conduct inquiries, and take action against entities abusing their dominant position. Parties aggrieved by the decisions of the CCI can appeal to the Competition Appellate Tribunal (COMPAT) and ultimately to the Supreme Court of India.

Section 4 aims to ensure a level playing field in the market by preventing dominant entities from engaging in practices that harm competition, consumers, and smaller competitors. By promoting fair competition, Section 4 contributes to consumer welfare, innovation, and economic efficiency.

The Act's Section 4 addresses those who abuse their position of authority for personal benefit. There is no one definition of market dominance that is agreed by everyone. The "ability of a company to take a strategic position in advance that limits the options available to competitors" is how it is commonly defined, though. They can take use of this edge by promising something believable, which will frighten off their competitors and restrict the range of what they can do. According to the Act, the company can injure clients or rivals by standardizing industry terminology, manage its own operations, and prevent effective competition in the market it operates in. An organization would only evaluate its dominance inside the market it operates in. This is due to the fact that the extent of dominance is geographically or product-specific and cannot be infinite. Knowing the market in which a firm operates is essential to determining whether it is misusing its power. The process of determining dominance begins here. Section 2(r) of the Act defines the relevant market.

The CCI has the authority to decide what kind of market it will discuss. An entity would just assess its supremacy inside the industry it functions in. This is because the level of domination cannot be unlimited and is limited by geography or product. Determining whether a company is abusing its power requires understanding the market in which it competes. This is when the process of figuring out dominance starts. The relevant market is defined in Section 2(r) of the Act. The CCI has the power to select the market segment it will cover. In order to determine the

[16] Section 2(t) of the Competition Act, 2002
[17] Section 2(g) of the Competition Act, 2002

relevance of a market, it must be demonstrated that consumers are willing to switch between goods and services that have comparable features, costs, and uses.[18]

A geographic market must have a distinct area where products and services are marketed together, and this area must differ greatly from the area next door. The firm's perceived excessive influence is directly impacted by the commission's definition of the relevant market. In cases involving the film industry, the test of dominance's applicability is not as important as whether or not the Associations to whom the dominant cases are to be applied are enterprises as defined by section 2(h) of the Competition Act. This section would define associations' legal status according to the Commission's definition and then look into the enterprise dominance statutes to determine how they should be interpreted.

Reliance Big Entertainment v. The Karnataka Film Chamber of Commerce (KFCCC)[19] is a case where the association discriminated against presenting Kannada and non-Kannada films, giving Kannada films a higher priority. First and foremost, it's important to support regional art and culture. Secondly, big-budget movies like Hollywood and Bollywood have market power and hence control a larger portion of the market. Third, Bollywood movies are widely seen while Kannada films are limited to Karnataka and probably a few other South Indian states. For this reason, Karnataka should impose restrictions on the latter. Associations may restrict the services that are available in the market for cultural reasons, as permitted by Sections 4(2)(a)(i) and 4(2)(b)(i) of the Act; however, this cannot be done at the expense of other people. As to the Indian Constitution, discrimination on the basis of caste, creed, or language is strictly forbidden.[20] The organization should concentrate more on enhancing film quality, etc., rather than imposing restrictions on other market participants in the industry.

Another issue that divides the organization and its members is the digital rights to a film. Owing to the limited runtime of films in theatres, television distribution of the film provides an additional revenue stream. Regarding DTH satellite rights, there isn't a clear holdback period for dominant abuse. This time is restricted to three months in certain situations, six months in others[21], and five years in yet other situations[22] because of this, producers frequently rush to release their films ahead of time, to which the Commission reacts by preventing the defaulting producer from releasing any more movies, depriving them of access to the market. In the later stages of this project, an acceptable duration should be decided and recommended, taking into account the interests of all stakeholders.

[18] Section 2(t), Competition Act, 2002
[19] 2012CompLR269(CCI)
[20] Article 15, Constitution of India
[21] Rules, Motion Pictures Association, Delhi
[22] Rules, Motion Pictures Association, Bihar and Jharkhand

Ajay Devgan Films Competition Case[23], in this case, Ajay Devgan Films, the informant, sued Yash Chopra's Yash Raj Films Pvt. Ltd., the only privately held film studio in India, arguing that the movie "Jab Tak Hain Jaan" had to be shown on Diwali so that Yash Raj could release the highly anticipated star-studded picture "Ek Tha Tiger" on Eid. They claimed that there were unfair and discriminatory terms associated with the acquisition of goods or services as a result of the tie-in arrangement. The commission came to the conclusion that, at the time of its decision, Yash Raj's works were not a dominant force in a relevant market on an indeterminate date. Despite its widespread recognition and great filmography, the production firm cannot assert its invincibility[24] in certain situations, the requirement for a fast-track proceeding may prevent the acquisition of crucial facts. According to the corporate website, Yash Raj Studios has been a significant player in the Indian entertainment industry since its founding in the 1960s. Among the company's accomplishments since its establishment in 1970 are some of the highest grossing films in the business and one of India's most esteemed film libraries.

[23] Case no. 66 of 2012.
[24] Sec. 19(4) (b), Competition Act, 2002.

CHAPTER 3

INTERPLAY OF INTELLECTUAL PROPERTY RIGHTS AND COMPETITION LAWS IN THE MEDIA SPACE

Intellectual property rights (IPR) and competition law are sometimes referred to as "friends in disagreement." Despite having conflicting theoretical goals, in actuality they cooperate to maintain both static and dynamic market efficiency and advance the interests of consumers.

It is possible to conceive, from a commercial standpoint, that competition law aims to establish a boundary between legitimate company practices and IPR misuse. Often, the question is when and how a line is crossed. One could argue that intellectual property rights (IPRs) are government-approved monopolies designed to promote innovation and safeguard consumers. As such, early intervention by competition law disciplines would defeat the fundamental rationale for granting IPRs. However, late-arriving interference from competition legislation and other IPR-related behavior may hurt market dynamics more than they help innovation and consumer protection.

Internationally, the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement[25] governs the relationship between IPR and competition. Members are permitted to take reasonable steps in accordance with the TRIPS Agreement to stop rights holders from abusing their intellectual property rights, as per the general principles in paragraph 1 of the TRIPS preamble and Article 8(2) of the TRIPS Agreement. Article 31 of TRIPs allows for the issuance of mandatory permits in a number of circumstances, such as:
The interest of public health;

1) National emergencies;
2) Nil or inadequate exploitation of the patent in another country (under the famous ‘Doha’ declaration
3) Anti-competitive practices by the patentees or their assignees; and
4) Overall national interest.

Article 40 of the TRIPS Agreement addresses anti-competitive practices in contractual licenses. Members may implement suitable measures, in accordance with the other provisions of the Agreement, to prevent or control restrictive licenses that negatively impact competition. Examples of such measures include exclusive grant-back conditions, conditions barring validity challenges, and coercive package licensing. Given the specific reference to "abuse" in Article 8 of the TRIPs, one can also consider Article 30 to be a relevant provision enabling Members to

[25] Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299, 33 I.L.M. 1197 (1994)

address abusive practices in acquiring and exploiting IPRs. Furthermore, Article 30 of the TRIPs permits Members to create limited exceptions to patent rights.

3.1 SECTION 3 OF THE COMPETITION ACT, 2000

The licensing methods listed below provide an example of the kinds of conditions that could give rise to legal issues related to competition:

1) Patent pooling, in which companies in the manufacturing sector choose to combine their patents, guarantee not to license them to outside parties, and set pricing or quotas simultaneously.
2) A tie-in contract that forces a licensee to buy specific goods from the patent holder only, limiting off chances for other manufacturers
3) Agreement providing that royalty should continue to be paid even after the patent has expired or royalties shall be payable in respect of unpatented know-how as well as the subject matter of the patent.
4) Clauses that limit R&D competitiveness or forbid licensees from using competing technologies.
5) Requiring a licensee to agree not to contest the legitimacy of the in question IPR
6) Fixing the price at which the licensee should sell;
7) Requiring the licensee to return any knowledge or intellectual property (IPR) obtained to the licensor and not to grant licenses to anyone else.
8) Licenses that restrict the licensee geographically or based on categories; licenses that demand payment based on total sales (regardless of how the licensed IPR is used)
9) Forcing the licensee to accept many intellectual property licenses, even when they may not require them all.
10) Attaching quality control requirements to the patented product that go beyond what is required to ensure the efficacy of the license.
11) Limiting the licensee's ability to resell the licensed know-how to individuals other than those approved by the licensor. › making licensees usage of trade marks mandatory.
12) Licensor's indemnification for costs and actions incurred in infringement proceedings
13) Imposing excessive limitations on the licensee's operations. For instance, if a drug's area of use specifies that it must only be used as medication for people and not animals—despite the fact that it can be used for both—this could place restrictions on the licensee.
14) Limiting the extent to which the licensee may use the patented invention; requiring the licensee to hire or use personnel chosen by the licensor; and requiring cross-licensing (i.e., the inter-change of intellectual property rights between two or more parties) in cases where the technologies licensed are substitutes rather than complementary.

According to Indian law, restricted monopolies created by intellectual property rights (IPRs) are not inherently anticompetitive or overly exploitative. However, they may assume anticompetitive characteristics if the IPR holder seeks to expand those rights beyond their appropriate and intended boundaries or if those monopolies artificially split markets among businesses and potentially obstruct the development of new products and services. A cursory reading of the aforementioned section suggests that the Indian competition framework guarantees that the Act does not aim to impede the regular exercise of the rights granted and safeguarded by various intellectual property rights regulations. The current situation is different from the earlier one created by the Monopolistic and Restrictive Trade Practices Act of 1969 (MRTP Act) and the competition regime.

The law has recognized that Section 3(5) does not just absolve the CCI of its authority to hear issues pertaining to intellectual property rights[26]. Although other laws can still be applied in conjunction with competition law, the Act now in effect supersedes previous laws.

In India, the body of law addressing the substantive questions surrounding the intersection of IPR and competition law is still in its infancy. Starting in the latter half of 2013, the CCI has rendered definitive findings that expound on the correlation between competition and intellectual property rights, as well as delineate the circumstances under which the requirements of the Competition Act, 2002 may be breached.

In the case of **M/s HT Media Limited v. M/s Super Cassettes Industries Limited**[27], the CCI was given the terms and conditions of a license to FM radio stations so they could play music producers' copyrighted works. In that case, the Competition Commission of India (CCI) ruled that requiring private FM radio stations to contractually pay a minimum guarantee, also known as minimum commitment charges, is anti-competitive because it prevents other competitors from gaining a sizeable market share. CCI's logic was based on the idea that a private radio station would be more inclined to broadcast the quantity of music for which it has paid a pre-determined price because it is legally required to pay music authors and producers a minimum guarantee. This would unavoidably prevent other music business competitors from competing for this predetermined play-out, of which 30–50% was already reserved, and prevent them from airing their songs.

The case of **Entertainment Network (India) Ltd. v. Super Cassette Industries Ltd**[28] is a significant illustration of compulsory licensing. In this instance, Super Cassette Industries owned the rights to the music that Radio Mirchi was playing. The recording company requested a long-term injunction. The FM operators requested the issuance of a compulsory license under Section 31(1) (b) of the Indian Copyright Act from the Copyright Board while the

[26] *Amir Khan Pvt Ltd vs Union of India, 2010(112)* Bom LR3778
[27] Case No. 40 of 2011, decided on October 1, 2014
[28] *Entertainment Network (India) Ltd. v. Super Cassette Industries,* 2008(37) PTC 353 (SC) Para 71,78,84,89-91

lawsuit was still pending. Here, the question was whether or whether issuing a compulsory license in such a specific circumstance was feasible.

The broadcasters, or Radio Mirchi, contended that since AIR and Radio City had already been awarded licenses, there was no justification for refusing Radio Mirchi's license. According to the Court, an obligatory license may only be issued under the conditions outlined in Section 31A of the Indian Copyright Act—that is, only in situations where the public has been refused access to the work. In this instance, Radio City and AIR had already received the license. As a result, it was neither protected from nor prohibited from public access. As a result, Radio Mirchi's defense is unconvincing, and they were held accountable for violating the same copyright.

The Supreme Court has held that the copyright holder's monopoly is not absolute and that if it disrupts the operation of the market economy, it would be liable for a breach of competition law resulting in the cancellation of a license. In limited circumstances, the CCI has given the privilege of this carving-out in cases where it has determined that the holder of the IP has valid grounds for enforcing such restrictions. To sum up, it is necessary to strike a balance between the lawful exercise of the intellectual property rights of the holder and the interests of the customer. While copyright owner has complete freedom to charge royalty on work thru issue of license, such right is not absolute.

In **K Sera Digital Cinemas Limited vs. Pen India Ltd**[29], The informant had claimed that the makers of the film "Kahani 2" had made an anti-competitive agreement in order to limit the movie's supply. As the producers, they have the authority to choose how best to market and distribute their movies and to take precautions against leaks, according to the CCI. Thus, the CCI came to the conclusion that Section 3(5) (i) (a) of the Competition Act supported the producers' efforts in preventing unauthorized use of their work.

In accordance with the Competition Act, the CCI examines each licensing agreement independently to assess if it constitutes anti-competitive behavior. The provisions under Sections 3(1) to 3(4) of the Act will not apply if the licensor, by way of an agreement, imposes a reasonable restriction for safeguarding any of the rights recognized under Section 3(5) of the Act.[30] The Supreme Court has not yet resolved the matter, nevertheless. Although Section 3 of the Competition Act allows for the legitimate exercise of intellectual property rights, Section 4 does not provide the same exception.[31] On the other hand, the Competition Law Review Committee study suggests that Section 4 should also include a special IPR defense. It is noteworthy that there are three more categories into which the AV content market can be divided: film material, sports content, and non-film and non-sport content[32]. Based

[29] *K Sera Sera Digital Cinemas Limited v. Pen India Ltd.*, Case No. 97of 2016 (CCI)
[30] OECD, Licensing of IP rights and competition law – Note by India.
[31] CLRC, Report Of Competition Law Review Committee, India, MCA, 2019
[32] Eros International Plc, STX Film works, Inc. and Marco Alliance Limited; The Walt Disney Company and TWDC Holdco 613 Corp (Combination Registration No. C-2018/07/583).

on the language used in the text, each of these can be separated, but the precise distinction would vary depending on the circumstances.

As seen in **Harshita Chawla v. WhatsApp Inc.**, the market for attention may include the AV material as well, but the CCI is unlikely to recognize such a wide market. The CCI rejected the claim that WhatsApp competed in a much wider market under the heading of the "market for user attention," arguing that since the apps were not operationally interchangeable, they would be classified in different markets[33]. Users might not view the products as an alternative to one another given the differences in characteristics among the many competitors in the attention economy. As a result, these players would not be involved in the same pertinent market.

3.2 SCOPE OF IPR EXEMPTION UNDER SECTION 3(5)

Unregistered intellectual property rights, such as unregistered trademarks or trade secrets, are not protected by Section 3(5). The language of Section 3(5) of the Act suggests that it contains two distinct exceptions with regard to registered intellectual property rights: first, the right to prevent infringement of the relevant IPRs, and second, the right to impose reasonable conditions to safeguard the rights granted by the relevant IPR legislations mentioned in Section 3(5) of the Act.[34]

The absence of the definition or explanation of the term "reasonable conditions", confers upon CCI, the power to determine what constitutes reasonable conditions on an individual basis. For example, in Multiplex Association case[35] the film makers contended that the decision to withhold all releases was legitimate under Section 3(5) since it was a reasonable measure to safeguard their copyright in the films. According to the CCI, competition law is not completely superseded by intellectual property legislation. It was decided that the Act only exempts the anti-competitive agreement requirement in specific situations—namely, to safeguard the rights granted by the applicable IPR statutes.

The aforementioned ruling implies that each case's unique facts and circumstances will determine what is reasonable or unreasonable. Common sense and logic both demand a factual analysis.
The clause seems to be meant to strike a balance between upholding fair and competitive markets and exercising the exclusivities protected by different intellectual property laws. A "balancing" act of this kind inevitably means that neither of the laws may be rendered unnecessary or ineffectual by the standard or test to be used. Although the

[33] *In Re: Harshita Chawla v. WhatsApp Inc*., Case No. 15 of 2020 (CCI).
[34] CCI emphasized upon the need to produced sufficient documentary evidence in-order to successfully establish the grant of applicable IPR in India
[35] *FICCI – Multiplex Association of India v United Producers Distributors Forum and others*, Case No. 1 of 2009 decided on 25.05.2011

CCI has produced an illustrative/indicative list of practices (such to the one discussed above) that may be inappropriate under Section 3(5), they have also offered very clear ex ante guidance in their advocacy measures.

Agreements for exclusive licensing, such as exclusive cross-licensing (including grant backs) between companies having a combined amount of market power.

1) Patent pooling, in which businesses pool their patents and agree to fix prices and quotas while also prohibiting licenses to third parties;
2) Making licensees purchase specific goods (unpatented materials, such as raw materials) from the patentee alone, thereby closing doors to other producers. This suggests that there is a tie-in.
3) Royalty payments made when a patent expires.
4) Clause banning the use of competing technologies or restricting competition in R&D.
5) Imposing on a licensee the requirement that the IPR in question's validity cannot be contested.
6) Exclusive grant-back agreements, in which a licensee can be obliged to return any derivative know-how or intellectual property rights (IPR) only to the licensor.
7) The prices at which the licensee is required to sell may be set by the licensor.
8) Restrictions based on consumer categories or territory may apply to the licensee.
9) Even while the licensor may not require every intellectual property license, it is nevertheless possible for the licensee to be forced to accept multiple licenses. The term "coercive package licensing" describes this.
10) It is probable that indemnifying the licensor for costs incurred in infringement cases will be viewed as anticompetitive.
11) A condition requiring the licensee to employ or use personnel chosen by the licensor.
12) An undue restriction on the licensee's ability to conduct business, such as field of use restrictions.
13) A restriction on the maximum amount of use the licensee may make of the patented invention.

It's interesting to note that Section 140 of the Patents Act, 1970 expressly forbids specific license agreements. These can be summed up as follows:

1) Requiring the licensee to purchase any article other than the patented article or an article made by the patented process from the licensor or his nominees, or prohibiting him from purchasing or restricting his ability to purchase from any source or from purchasing any article from any source other than the licensor or his nominees;
2) Limiting the licensee's ability to use or restrict in any way or to the extent the licensee's right to use an article other than the patented article or an article other than that made by the patented process, which is not supplied by the licensor or his nominee;
3) Limiting the licensee's ability to use or restrict in any way or to the extent the licensee's right to use any process other than the patented process;

4) Requiring exclusive grant back;
5) Preventing challenges to the validity of Patent; and
6) Coercive package licensing

3.3 REFUSAL TO GRANT IP LICENSE

Without talking about the competition difficulties in non-licensing, discussions on licensing-related competition issues cannot be considered comprehensive. It is plausible that market participants may decline to grant licenses for their technology, thereby leading to a notable negative effect on competition within the Indian market. In this situation, requiring the technology's owner to grant licenses would be a suitable remedy that would resemble forced licensing ("CL"). When such refusals are restricted to the choices of a single business, they must be investigated under Section 4 of the Act; however, when the refusals encompass many entities, as in the case of a "group boycott," the investigation may be conducted under both Sections 3 and 4.

In addition to the absence of any CCI rules, this is a topic covered by several intellectual property laws, which adds to the complexity of the situation. In the event that the patented invention does not meet the "reasonable requirements of the public," is "not available to the public at a reasonably affordable price," or is "not worked in the territory of India," for example, the Controller of Patents may, under Section 84 of the Indian Patents Act, 1970, grant a compulsory license after the period of three years from the date of patent grant.[36]

Though with a more limited reach, such restrictions can be found in the Copyright Act, 1957. In accordance with Copyrights Act, 1957, Section 31(1) (b), a compulsory license may be granted. When the Copyright Board determines that the copyright owners' reluctance to permit public communication is unreasonable, it may be granted. This clause only applies to specific kinds of copyrighted works—not all of them. In a highly contentious ruling in Music Broadcast Pvt Ltd v. Phonographic Performance Limited (2010), the Copyright Board recently granted mandatory licenses to musical works in support of the FM radio industry on a revenue-sharing basis, meaning that each FM radio station would set aside 2% of its net advertisement earnings to pay the music providers.[37]

There are no such clear provisions in other intellectual property laws. Legislative overlaps may give rise to possible concerns, given the stated methods under specialized intellectual property systems. It remains to be seen if the presence of such specialized compulsory license regimes might obliquely limit the authority of the CCI. It is

[36] *Natco Pharma v. Bayer Corporation, Controller of Patents Mumbai, March, 2012* available at: http://www.ipindia.nic.in/iponew/compulsory_license_12032012.pdf; Bayer Corporation v. Union of India ia & Ors., IPAB, Chennai, 4 March 2013, available at: http://www.ipab.tn.nic.in/045-2013.htm

[37] *Music Choice India Pvt Ltd v. Phonographic Performance Limited,* Copyright Board (Second Order), 2010

important to remember that, despite comparable provisions in IP legislation, competition regulators in other countries have awarded CL under the competition sections of their own statutes. As a result, one could reasonably argue that the Act's provisions warrant the granting of CL. Even though the law in this area is still developing, the CCI will unavoidably have to address these issues in the near future. Whether the CCI would try to include the considerations taken into account by the pertinent IP authorities and fit them within the Act's purview, or if the CCI would disassociate itself from such elements and evaluate the matter under other criteria, would be a test of time. Of course, under Section 21A of the Competition Act of 2002, the CCI also has the option to report such problems to pertinent IP authorities. Such questions will only have definitive solutions in due course.

However, the European Court of Justice (ECJ) has stated that in "exceptional circumstances," a refusal to license intellectual property rights to competitors may amount to abuse of dominance, even though IP holders are not generally required to do so under EU law. Refusals pertaining to goods or services that are necessary for carrying out a specific activity on a neighboring market, rejections of a nature that precludes any meaningful competition on that market, and rejections that obstruct the launch of a new product for which there may be a market for them are examples of these exceptional circumstances.[38]

3.4 EXCESSIVE PRICING

In the previously mentioned case of M/s HT Media Limited v. M/s Super Cassettes Industries Limited, the CCI also addressed the issue of determining whether a licensing fee qualifies as "excessive pricing" because of the licensor. In that ruling, the CCI stated that cost data analysis is necessary. The cost of a sound recording, which is included in the purchasing price paid to the owners as "royalty" or "recording expenses" if music is composed internally, would be included in the cost data analysis. Additionally, some sound recordings could be expensive to acquire, but the music might not be successful, and vice versa. When calculating the license price, these considerations also need to be taken into consideration.[39]

3.5 COMPETITION (AMENDMENT) BILL, SECTION 4(A), 2020

While Section 3(5) of the Competition Act, 2005 only applied to anticompetitive trade agreements, it does not grant IPR holders in situations of dominant power the IPR Safe Harbour. The Committee states that, subject to reasonable limitations and constraints, IPR owners ought to be protected in cases where a dominant position is abused. It was believed that, even in cases where dominant position was abused, there was no reason not to provide the IPR Safe Harbour to IPR holders who were shielded from anti-competitive actions. Section 4A of the Competition (Amendment) Bill, 2020 requires that IPR holders be covered by the IPR Safe Harbour in cases of

[38] *Radio Telefis Eireann v. Commission*, 1991 ECR II-485, Paragraphs 52-56
[39] Case No. 40 of 2011, decided on 1 October 2014, Paragraphs 198, 199

abuse of dominant position, in lieu of the Committee's recommendations. Since the government released the draft bill, however, a number of industrialists have expressed opposition to the aforementioned section, arguing that it would negatively impact the efficient operation of the markets and grant IPR holders' unrestricted rights to use their dominant positions.

Before making any judgments on the possible effects of Section 4A of the Competition (Amendment) Bill, 2020, keep in mind that international legal principles involving dominant positions and intellectual property (IPR) should be consulted, as Indian competition law is still in its infancy. In the **Parke, Davis & Co. v. Probel** decision, the European Court of Justice held that although awarding a patent to an inventor does not constitute unfair business practices, misusing patent rights can lead to the exploitation of the effective functioning of the markets as a whole[40] In fact, the Court went on to say that when it comes to circumstances involving dominating position, intellectual property rights are a reasonable consideration. Furthermore, the court observed in one of the most important cases, **Commission of the European Communities v. Radio Telefis Eireann and Independent Television Publications Ltd**., that in certain extraordinary circumstances, the holders of intellectual property rights may use their rights in a way that results in an abuse of dominant position.

With the provision of Section 4A in the Competition (Amendment) Bill, 2020, the Ministry has successfully addressed the conundrum that the IPR rights are a relevant consideration at the time of making judgments in connection with misuse of dominant power. However, granting IPR holders' unrestricted access to utilize this seemingly comprehensive provision would be counterproductive to the objectives of competition law. To guarantee that the objectives of competition law and intellectual property rights law are appropriately matched under Indian law, the rule of reason, the notion of exceptional circumstances, and Section 4A of the Competition (Amendment) Bill must all be applied holistically and harmoniously.

[40] *Parke, Davis & Co. v. Probel,* 29 February 1968.

CHAPTER 4

RECENT DEVELOPMENTS AND MERGERS IN THE DIGITAL SPACE THAT FACED CCI SCRUTINY

The Competition Commission of India (CCI) is adjusting its approach to the requirements of the developing digital economy in India as competition authorities throughout the world tighten their examination and regulation of key technology businesses. The cost of error is high: according to a 2023 report by the Indian National Association of Software and Service Companies, with over 27,000 active tech start-ups of which over 1,300 were introduced in 2022 alone. India is currently the third-largest host country for tech start-ups worldwide, behind the United States and China. Global antitrust authorities are finding it difficult to keep up with how quickly businesses are innovating and competing. The CCI in India has been charged with promoting competition and facilitating market adjustment without impeding growth and innovation. It has evaluated transactions and antitrust issues in the last few years in a number of digital economy categories, such as digital payments, travel booking platforms, and digital advertising, looking at the actual level of contestability in each case.

In order to bring the 14-year-old Indian Competition Act, 2002 into line with global best practices and handle new challenges pertaining to the digital market, the Indian government recently modified it. In addition to the country's current competition law framework, the Indian government is considering implementing an ex ante regulatory framework for "Systemically Important Digital Intermediaries" (SIDIs) that may be modelled after the Digital Markets Act (DMA) of the European Commission.

4.1 THE CCI'S ASSESSMENT OF DOMINANCE IN DIGITAL MARKETS

The CCI authorized Facebook's purchase of a 9.99 percent stake in Jio Platforms Limited (Jio), a rival telecommunications company, in 2020. The CCI noted that while there were strong incentives for the parties to share complementary user data, any anticompetitive behavior resulting from this data sharing could be investigated as antitrust later on (Facebook/Jio).[41]Subsequently, the CCI granted its approval for Google's investment in Jio, enabling the company to obtain a 7.73 percent stake, board representation, and further affirmative action and information rights. Consistent with its methodology in the Facebook/Jio case, the CCI observed that any anti-competitive behavior arising from the deal may be subject to scrutiny at a later time, irrespective of the CCI's endorsement of the same (Google/Jio).[42]

[41] Combination Registration No. C-2020/06/747.
[42] Combination Registration No. C-2020/09/775.

The CCI authorized Google's acquisition of 1.28 percent of Bharti Airtel Limited in 2022. Bharti Airtel Limited is a significant telecommunications company and Jio's rival.[43]The CCI encountered a new issue in digital marketplaces during its transaction review: the degree to which user data is considered the competitively sensitive information (CSI) of the holding company. The CCI voiced fears that Google's acquisition of Airtel's information rights, along with its current investment in Jio, might make it easier for CSI to move between the two companies. In the end, it approved the deal after Google promised to install a firewall to stop Jio from receiving CSI data and explicitly stated that neither Google nor Airtel had any intention of exchanging user- or customer-specific data. The CCI's ruling in the Google/Airtel case represents a change from its previous strategy of viewing user data sharing as solely an ex post issue.

When authorizing Amazon Asia-Pacific Resources Private Limited's acquisition of a 76% stake in Prione Business Services Private Limited, the parent company of Cloudtail India Private Limited (Amazon/Cloudtail), the CCI also considered possible antitrust issues.[44] Prione, which operated Cloudtail, was an online retailer with a focus on retail sales, and Amazon previously owned a twenty-four percent equity stake in the company. Simultaneously, Amazon was the subject of an investigation into claims of preferential treatment for certain purportedly linked vendors.[45]

A third-party trade group filed an application to have the acquisition banned because it will worsen Cloudtail's alleged preferential treatment to the detriment of other merchants on Amazon's platform, based on this ongoing inquiry. The CCI noted Amazon's submission that Cloudtail would be discontinuing its online operations in order to comply with foreign investment regulations, rather than rejecting the possibility of antitrust harm at the outset. The CCI concluded that the issue of alleged preference did not affect the assessment of the transaction and, therefore, did not warrant a remedy. The proposed acquisition of IndiaIdeas.com Limited by PayU Payments Private Limited was approved by the CCI in 2022. This was the first time the CCI had ever approved a transaction without requiring a show-cause notice, which required the parties to provide an explanation for why the transaction shouldn't be the subject of a thorough investigation in Phase II. This approval demonstrated the CCI's in-depth knowledge of the digital payments industry, pragmatic approach, and dedication to considering each case on its own merits.

With over 50 million users, over 4 billion tracks sold, and the largest music catalogue in the world with over 6 million songs, Apple's iTunes store has now overtaken Wal-Mart to become the top music retailer in the US[46]. In

[43]Combination Registration No. C-2022/03/913.
[44] Combination Registration No. C-2021/12/893.
[45]Case No. 40 of 2019.
[46] Press Release, iTunes Store Top Music Retailer in the US, 3 April 2008, available at http://www.apple.com/pr/library/2008/04/03itunes.html.

the meantime, almost 90% of digital music player sales in the US are accounted for by Apple's iPod. The absence of interoperability between the iPod and other online music retailers is, at least in part, responsible for this concurrent success in both the software and hardware markets.

Though some tracks are now available for a greater price without copy protection, the majority of songs on iTunes are restricted to iPod playback due to Apple's copy protection software. In addition to being the focus of potential class action lawsuits in the US, this lack of interoperability has been contested by European antitrust and consumer protection organizations, mainly in France and Scandinavia. Two California courts rejected Apple's moves to dismiss allegations of monopolization and an unlawful connection between iTunes and iPods during the pleading stage.[47] The plaintiffs said that Apple has monopoly power in the marketplaces for the selling of digital music players on portable hard drives and online through its iTunes/iPod brand. The main factual defense offered by Apple is that music downloaded from iTunes may be played on a variety of non-Apple computers and that the iPod can play music from CDs in addition to music downloaded from iTunes. Apple also claims that copyrighted property needs to be protected, and that protecting it is appropriate and requires its own digital rights management software.

A connected question is how much music distributors and suppliers can do to counteract Apple's monopoly on the market. For instance, in April 2008, the world's biggest and most well-known online social network, Myspace, announced the formation of a joint venture with Sony BMG Music Entertainment, Universal Music Group, and Warner Music Group. The goal of the venture was to bring together the world's most well-liked music community and the largest collection of online music content, revealing a variety of new music services and revenue streams.[48] Moreover, Amazon.com, which has already overtaken competitors like Wal-Mart and Real Networks' Rhapsody to become the second-biggest online store after iTunes, is reportedly in discussions to join this joint venture.[49]

4.2 ENFORCEMENT

[47] *Slattery v Apple Computer Inc,* WL 2204981 (ND Cal) and *Tucker v Apple Computer Inc,* 493 F Supp 2d 1090 (ND Cal). The cases were consolidated on 19 March 2007. A related class action complaint, Somers v Apple Inc, was filed on 31 December 2007 in the United States District Court for the Northern District of California, alleging various claims including alleged unlawful tying of music and videos purchased on the iTunes Store with the purchase of iPods and vice versa and unlawful acquisition or maintenance of monopoly market power.

[48] MySpace, Sony BMG Music Entertainment, Universal Music Group and Warner Music Group Partner, Reuters, 3 April 2008, available at https://www.reuters.com/news/archive/pressrelease

[49] Amazon: The Avis of digital music, CNN Money, 31 July 2008, available at https://money.cnn.com/2008/07/30/technology/amazon.fortune/

The CCI also looked at how data shapes the competitive landscape in online marketplaces. Big data's capacity to bolster market power and erect obstacles to entry puts it at the center of competition law concerns in the digital economy. There are two main themes that have come to light: first, the CCI has acknowledged that gathering data might be an abuse of a dominating position when it comes to consumers; second, it has acknowledged that withholding user data from distribution could also be an abuse of a dominant position when it comes to markets. The CCI launched an investigation into updates to WhatsApp's privacy policy in 2021 on its own motion.[50] It noted that, on the face of it, gathering copious and disproportionate amounts of user data and enforcing a "take it or leave it" policy that forces users to consent to sharing data with WhatsApp's affiliated businesses is an unfair term and, as such, an abuse of dominance with respect to users. The CCI further pointed out that under antitrust law, a user's loss of control over their personal data is equivalent to a decline in quality.

In 2022, Meta contested the CCI's authority to review the 2021 update in front of a Delhi High Court constitutional bench, claiming that the matter was already under review by the Supreme Court, which was investigating whether the 2021 update infringed upon the right to privacy guaranteed by the Constitution. Given that the CCI and the Supreme Court were looking into different questions and areas of violation and that the CCI has priority over competition issues recognizing that data is a non-price parameter of competition—the Delhi High Court rejected the challenge, refusing to impede the CCI's ongoing investigation.[51]

However, the CCI prioritized data accessibility over data privacy in cases involving claims of abuse of power and imposition of anticompetitive vertical constraints by a platform in respect to other stakeholders. In the following situations, the CCI seems to have viewed customer and usage data primarily as market intelligence, which stakeholders might use to enhance their platform offering or strengthen their negotiating position. For example, Google was recently fined 9.36 billion rupees (US$113.81 million)[52] by the CCI for abusing its dominant position in the Play Store[53]. The CCI found that, among other things, Google collects a significant volume and category of granular data about app users, including financial and personal transaction information, by making the Google Play billing system (GPBS) mandatory for certain transactions. The CCI noted that Google is abusing its dominant position by preventing app developers from successfully competing in their individual markets and from improving their services through the withholding of transaction data it obtains from the GPBS.

[50] Suo Moto Case No. 01 of 2021.

[51] *WhatsApp LLC v. Competition Commission of India*, 2022 SCC OnLine Del 2582.

[52] Penalty computed at 7 per cent of Google’s average relevant turnover in India.

[53] Case No. 7 of 2020, Case No. 14 of 2021 and Case No. 35 of 2021

Google made it clear that it was accountable for protecting the privacy of user data, and the CCI responded by ruling that, rather than refusing to share user data on its own, Google may protect privacy by entering into agreements with third parties. The CCI/Play Store order lays forth nine behavioral guidelines in addition to the penalty. These guidelines permit developers to use third-party billing providers and interact with consumers to advertise additional channels for purchase. The National Company Law Appellate Tribunal (NCLAT), the appellate tribunal, is now considering an appeal of the CCI's order. App developers started to claim that Google's new user choice charging policy violated the CCI's order and asked the CCI to launch a non-compliance inquiry against Google while the CCI's penalty order in the CCI/Play Store awaited an appellate hearing. Simultaneously, creators of apps that were about to be removed from the Google Play Store due to their noncompliance with Google's contested new payment policy petitioned the High Court to get temporary protection from Play Store removal.

The High Court rejected 14 out of 16 suits with an order dated August 3, 2023, stating that the CCI's jurisdiction over the implementation of its orders covered the subject matter of the suits. By its judgment, the High Court effectively ends antitrust-related litigation and upholds the CCI's primary authority to look into claims of competitive injury. The order is presently awaiting an appeal hearing before a higher-level High Court bench, nevertheless. A single judge bench of the High Court is currently hearing the final two of the sixteen suits individually, and they are currently sub judice.Since then, the CCI has started looking into Google's revenue sharing and ad exchanges. The Digital News Publishers Association filed a complaint with the CCI alleging that Google was abusing its dominance in a number of markets, including the online search advertising market, by withholding information about the revenue generated by news publishers' websites and links and using this information asymmetry to deny news publishers a fair share of digital advertising revenue. This came after the European Commission opened an investigation into AdTech in June 2021[54].

In January 2022, the director general (DG) was instructed by the CCI to look into the claims since it appears, on the surface, that there has been an abuse of authority. An incremental allegation that search results were displayed based on a predetermined algorithm instead of relevance was not added by the CCI to the DG's ongoing investigation in February 2022, despite the Indian Newspaper Society having filed a similar complaint[55]. The CCI determined that no evidence had been presented to support this point. Subsequently, in the year, the CCI included a third complaint to the ongoing investigation, filed by the News Broadcasters & Digital Association[56] This

[54]Case No. 41 of 2021.

[55]Case No. 10 of 2022.

[56] Case No. 36 of 2022.

complaint gradually claimed that Google was also abusing its dominance by favoring its advertisement exchange through the use of its advertisement buying tool, Google Ads/DV360.

Furthermore, the CCI discovered that Google was abusing its hegemony in India by using its control over the Android OS and Play Store to push Google Chrome and YouTube, and by requiring the pre-installation of its suite of apps in order to license its operating system. A penalty of 13.38 billion rupees[57] (US$162.58 million) was levied by the CCI. In addition, the CCI issued eleven behavioral directives on Google, which included altering its contracts with phone makers, terminating clauses granting Google exclusive rights to its search services, and permitting independent retailers on the Play Store. Following an appeal, the NCLAT partially upheld the CCI's ruling and overturned four of the eleven directives, including those requiring the unlimited side-loading of programs and permitting the listing of third-party app stores on the Play Store. Notably, the NCLAT's ruling established, for the first time, that the CCI must provide evidence of the abusive behaviors consequences in order to evaluate claims of abuse of power. The NCLAT's ruling was challenged by Google and the CCI, and the case is presently pending before the Supreme Court.

Online travel aggregators MakeMyTrip, its subsidiary Goibibo (collectively, MMT-Go), and Oravel Stays Private Limited (Oyo) have been found by the CCI to have abused their dominance in another platform market. These aggregators prevented listed hotels and chain hotels from offering lower prices on their own platforms or the platforms of other aggregators by enforcing broad price parity and most-favorable-nation obligations, and they penalized non-compliance by delisting or falsely representing the availability of rooms in negligent hotel providers.[58] It did point out that certain pricing parity requirements that only applied to hotel platforms and not to other travel aggregators were acceptable.

In addition to imposing behavioral directives, the CCI penalized MMT-Go 2.23 billion rupees (US$27.1 million)[59] and Oravel Stays Private Limited 1.68 billion rupees (US$20.41 million). It was also discovered that MMT-Go and Oyo had a vertical anticompetitive agreement in which MMT-Go agreed to remove Oyo's rivals from its platforms, depriving them of access to the market. The NCLAT is holding a hearing regarding the CCI's order. Oyo's delisted rivals, FabHotels and Treebo, submitted separate applications to the CCI over the course of the probe, requesting the temporary relief of being relisted on MMT-Go platforms. Utilizing resources within a post

[57] Penalty computed at 10 per cent of Google's average relevant turnover in India

[58] Case No. 14 of 2019 and Case No. 1 of 2020.

[59] Penalty computed at 5 per cent of their average relevant turnover in India

facto framework, the CCI provided temporary respite in order to address perceived competition issues in rapidly evolving digital markets.

The CCI has also started a number of market research within the last two years. The CCI released its market study on the cab aggregator market in 2022. It looks at several aspects of the cab and taxi aggregator business, such as pricing and the asymmetry of information that affects both drivers and customers. The CCI has suggested that self-regulatory measures be used within the industry to address information asymmetry and transparency concerns and bring about uniformity, based on the findings of the market analysis. Additionally, the CCI is researching the market for private equity investments and how they affect competition. This continuous market research encompasses important common ownership concerns that could impact information sharing in the digital era.

4.3 MEDIA AND ENTERTAINMENT SECTOR

Three of the top Indian television channel and over-the-top (OTT) video service operators—Culver Max Entertainment Private Limited (Sony), Bangla Entertainment Private Limited (a wholly-owned subsidiary of Sony), and Zee Entertainment Enterprises Limited (ZEE) filed the notice[60].The integration of ZEE and BEEPL into Sony was part of the deal. The CCI observed that the largest broadcasting house in India will be the combined entity, with ownership of about 92 television channels with significant market shares in four market segments: Hindi general entertainment channels (GEC), Marathi GEC, Bengali GEC, and Hindi films. It also noted that television advertising has the highest market penetration in India. The combined company would be able and motivated to raise rates for viewers and advertisers in the designated areas. Additionally, it would have the ability to set high charges and/or use "Distribution Platform Operators" (cable, DTH, etc.) to participate in discriminatory pricing and behavior.

In response to the CCI's SCN, the parties freely volunteered to give up ZEE's ownership of three Hindi-language channels and agreed not to give the channels up to Viacom 18 Media or Star India, the next two biggest rivals in the relevant market categories. Subject to these voluntary structural obligations, the CCI accepted this remedy and allowed the amalgamation without launching a Phase II examination.

A report titled **"Market Study on Film Distribution Chain in India: Key Findings and Observations[61]"** was released today by the Competition Commission of India, also known as the "Commission." According to

[60] Case No C-2022/04/923

[61] www.cci.gov.in/images/whatsnew/en/market-study-on-the-film-distribution-chain-in-india1665747371.pdf

stakeholders, the study identifies some of the most important competition-related problems in the movie distribution chain. In doing so, the study addresses the roles played by various associations at the production, distribution, and exhibition levels of the chain; the imbalances that arise from the superior bargaining power of certain entities; the bottlenecks at different levels; the unequal distribution of risks; revenue-sharing arrangements etc.

Drawing from the study's results and in accordance with its advocacy role, the Commission has suggested that the film industry formulate specific self-regulatory protocols for various stakeholder groups. Among the self-control measures are:

1) For Producers and Multiplexes: Customized agreements to be favored over templates for contracts. When it comes to revenue-sharing, aggregate agreements might be favored over the current sliding scale setups, which allow producers and multiplexes to split the total earnings made by a movie according to a pre-arranged percentage. Multiplexes may take into consideration offering producer’s fair and acceptable terms for promotions in exchange for sharing the promotion's expenses. Multiplexes should abstain from imposing any trade restrictions on exhibition that would restrict the freedom of commerce for producers.

2) Disclosure of Box Office Receipts Received: Using box office monitoring systems to create, document, and keep track of ticketing logs and reports; any stakeholder should not be allowed to modify the data that these systems gather. Producers ought to assign unbiased auditors to examine these monitoring systems and make sure they are operating correctly and aren't being tampered with.

3) Virtual Print Fee (VPF): Multiplexes' VPF payments may be phased down first. Because single-screens rely on a VPF-driven leasing arrangement for digital cinema equipment, VPF can be phased out more gradually. Digital Cinema Equipment (DCE) providers and producers should work out mutually agreeable VPF prices until the VPF sunset is decided upon and put into effect. They should also make sure that there are no interruptions to the film exhibition due to VPF.

4) Stakeholders Association: Associations are not allowed to engage in boycotts or bans, nor can they forbid business from doing business with non-members. Associations shall also refrain from any other behavior that the Commission has previously determined to be anti-competitive. In order to resolve any conflict amongst stakeholders, associations need to think about how alternative dispute resolution processes like mediation might be institutionalized. Organizations are encouraged to host programs informing their members about competition law awareness and the ensuing requirement for competition compliance.

5) Digital Cinema: Contracts that digital service providers' display with exhibitors or producers, as applicable, ought to allow for discussions aimed at lessening the disparity in bargaining strength. Long-term contracts with one-sided terms should also be avoided.

The Commission was grateful to all of the stakeholders who cooperated by sharing their insightful opinions on the different facets of the film's distribution, exhibition, and production. In addition, the Commission expressed its sincere expectation that constituents will minimize anticompetitive activities in the best interests of all parties, therefore minimizing regulatory intervention.

4.3 DISNEY-RELIANCE MERGER

The greatest merger in the history of the Indian media was announced by Walt Disney Co.'s Star India and Reliance Industries Ltd.'s Viacom18. With a combined value of over Rs 70,000 crore, or $8.5 billion, this partnership propels the combined company into an unprecedented position of power, especially when it comes to cricket broadcasting rights. With a combined total of 120 TV channels, the combined entity also has influence over two well-known OTT platforms: Jio Cinema and Disney Hotstar.

Due to the merger's enormous scope, the competition regulator is closely examining it, which has led to conjecture about the obstacles it would face before being approved. It is expected that the Competition Commission of India (CCI) will extensively examine the individual and combined market shares held by Viacom and Star in several entertainment industry areas, recalling its recent assessment of the now-abandoned Zee-Sony merger in 2022.Notably, market concentration was a worry raised by the CCI in its research of the Zee-Sony merger, especially in areas like Hindi movies and Hindi General Entertainment Channels (GECs). The lawyers, clarified the regulator's prior position by stating that Sony-Zee's combined market share in Hindi GECs varied from 40–45%, while the same figure in the Hindi films segment was 35–40%. Due to the alarming figures regarding the competition law framework, the CCI was prompted to require channel divestiture in order to reduce market concentration and address competition issues.

Experts in the field predict that the Viacom18-Star India merger will be closely examined in light of this precedent, with particular attention paid to the dynamics of market share in different entertainment categories. The competition regulator is prepared to analyze possible antitrust consequences and the merger's effect on market competition given the combined entity's strong presence in traditional TV channels, OTT platforms, and cricket broadcasting. The media business is preparing for a radical change as players await the CCI's decision. The

upcoming merger has the potential to reshape the parameters of competition and consolidation in India's dynamic media environment.

A very similar instance has occurred in the United States wherein, The US Department of Justice (DOJ) is conducting regulatory review of the proposed joint venture between Walt Disney, Fox, and Warner Bros. Discovery to introduce a new streaming service due to antitrust concerns. As soon as the streaming service deal is finalized, the DOJ intends to review its conditions. Insiders warn that there may not be any quick action taken from the assessment, even if the corporations involved have not yet received official notice of its planned arrival. The possible effects of the transaction on consumers, rival media companies, and sports leagues are anticipated to be carefully examined by the regulators. The joint venture, which made its announcement earlier this month, intends to launch a sports streaming service in the fall that caters to younger people.

This partnership takes advantage of the vast portfolio of professional and collegiate sports rights that the media conglomerates own. This portfolio includes major leagues like the NFL, NBA, MLB, FIFA World Cup, and numerous college competitions. Disney, Fox, and Warner Bros. Discovery's presence in the streaming market indicates a major concentration of content and distribution dominance in the sector. The joint venture has the potential to change the competitive landscape of the streaming business, since each company contributes a massive inventory of media products and sports rights. The DOJ's move to launch an antitrust investigation into the proposed streaming agreement is a response to mounting worries about market power concentration and possible anti-competitive practices in the media and entertainment industry. Regulators are keeping a close eye on industry practices to ensure fair competition and safeguard consumer interests as streaming services continue to grow and vie for consumers.

Although the conclusion of the DOJ's investigation is yet unknown, the review highlights the difficulties and complexities of navigating the quickly changing digital media and streaming platform ecosystem. The necessity of adhering to antitrust rules and regulations in an increasingly interconnected and competitive media ecosystem is highlighted by the fact that the media titans will probably be subject to increased scrutiny and regulatory control as they proceed with their preparations for the joint venture.

CHAPTER 5
CONCLUSION AND SUGGESTIONS

In conclusion, the exploration of antitrust issues within the media and entertainment industry, with a particular focus on the film industry in India, offers a comprehensive understanding of the complex dynamics at play. Through the lens of competition policy, intellectual property rights (IPR) considerations, scrutiny of mergers by the Competition Commission of India (CCI), and the assessment of anticompetitive practices, it becomes evident that the landscape of this industry is multifaceted and continually evolving.

The film industry in India stands as a prime example of a sector where competition and intellectual property rights intersect in intricate ways. India's vibrant film industry, often referred to as Bollywood, has not only captured the imagination of audiences domestically but has also garnered significant attention on the global stage. As a result, the industry has seen remarkable growth, marked by a diverse range of content production, distribution channels, and revenue streams.

However, alongside this growth comes the challenge of balancing competition with the protection of intellectual property rights. Content creators rely heavily on copyright protection to safeguard their creative works and ensure fair compensation for their efforts. In this context, the interplay between competition and IPR becomes particularly pronounced. While strong intellectual property rights incentivize innovation and creativity, they can also potentially create barriers to entry and impede competition, especially in markets where dominant players exert considerable control over key content.

The enforcement of antitrust laws in the media and entertainment industry, including the film sector, is further exemplified through the scrutiny of mergers and acquisitions by regulatory bodies such as the CCI. Mergers within this industry have the potential to reshape market dynamics, alter competitive landscapes, and impact consumer welfare. Consequently, competition authorities play a crucial role in evaluating the potential anticompetitive effects of such transactions and ensuring that they do not unduly restrict competition or harm consumers.

Several mergers in the media and entertainment sector have faced CCI scrutiny, reflecting the regulator's commitment to promoting fair competition and protecting consumer interests. Through rigorous assessment and scrutiny, the CCI aims to prevent the consolidation of market power, preserve market plurality, and foster innovation and consumer choice. By closely monitoring mergers and acquisitions, the CCI seeks to strike a balance between encouraging efficiency gains and preventing anticompetitive harm. Additionally, the assessment of anticompetitive practices within the media industry sheds light on various strategies employed by market participants to gain a competitive advantage. From exclusive content agreements to vertical integration and

predatory pricing tactics, the media and entertainment sector presents a myriad of challenges for competition authorities. Addressing these practices requires a nuanced understanding of market dynamics, consumer behavior, and the potential impact on competition and innovation.

The antitrust issues in the media and entertainment industry, with a specific focus on the film industry in India, underscore the intricate interplay between competition policy, intellectual property rights, mergers, and anticompetitive practices. As the industry continues to evolve in response to technological advancements, changing consumer preferences, and regulatory developments, policymakers, regulators, and industry stakeholders must remain vigilant in addressing emerging challenges and fostering a competitive environment that benefits both industry participants and consumers alike. By striking the right balance between promoting innovation and safeguarding competition, we can ensure a vibrant and dynamic media ecosystem that enriches cultural diversity, fosters creativity, and enhances consumer welfare.

Effective rivals prevent any company in the AV content industry from becoming oligopolistic or monopolistic. On the other hand, this could alter depending on how a very specific relevant market is defined. The Competition Commission of India (CCI) has evaluated licensing agreements in multiple cases and rendered individual decisions based on the Competition Act's framework. Furthermore, the Copyright Act has restrictions aimed at preventing market monopolization that limit the exclusive economic rights. If carried out correctly, these steps can provide fair competition. Since AV material permits the free flow of expression, any restrictions pertaining to this sector need to be well thought out. The Rajya Sabha study titled "Review of the Intellectual Property Rights Regime in India" suggests amending the Copyright Act to include provisions about statutory licenses and copyright societies. A thorough re-evaluation of the Act's provisions is required. In order to close any gaps, the copyright society clauses should be reviewed. If these laws are implemented correctly, they could further encourage fairness and competition in the AV Content licensing downstream market. Laws must also adapt to the rapidly evolving technological landscape.

Social media platforms will continue to have a significant influence on users' private and public lives in a world where technology is becoming more and more interconnected. This paper argues that social media platforms' complex and significant form of "digital dominance" should set the e-commerce industry apart from other electronic platform-based service providers. From the personal data collection and usage policies imposed on their users to their commercial strategies vis-à-vis their actual and potential competitors, a wide range of concerns have arisen from the behaviour of these technology behemoths around the world. Some of these issues are specific to competition, but others also involve different norms unrelated to competition, such as privacy and the regulation of free speech.

This study aims to clarify why competition law frameworks and competition agencies shouldn't be the main ones monitoring social media platforms' actions for the reasons mentioned above. Concerned policymakers should focus more on the development of ex ante regulatory tools that can provide a principled basis for restraining their conduct towards the various groups of platform users, rather than merely depending on the ex post enforcement of competition liability rules against these undertakings (including the expanded range of statutory prohibitions found in the European Union's DMA).