

Workshop on Competition Law and Policy

Investigation into the sub \$100 Mobile Device Industry from IPR + Competition law lens

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CIS' Pervasive Technologies Project

Researching IP environment for low-cost mobile technologies in India and China

Research Questions

What is the relationship between the production/deployment of pervasive technologies (hardware, software and content layers) and IP, and what are the policy levers that may be employed to protect access to these technologies?

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What lessons does this hold for the future of both IPR and A2K? Do these technologies have a future under Indian and Chinese IPR laws?

Research Outputs

List of Chapters

**Patent Landscaping for
the Indian Mobile Device
Market**

IP in Mobile App
development in India

**Competition Law and
SEP regulation in India**

Music on Mobile: Copyright
Management



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"#Competition policy can and must play an important role in the achievement of #SDGs"
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Patent Landscaping for the Indian Mobile Device Market

- > First comprehensive study of the Mobile device patent landscape
- > Top 50 holding companies: 12 Indian and remaining foreign multinationals
- > Patent technology categories included: Sound/Image/Video, Software, Sensors, Operational blocks, Memory, Energy storage, Display, Connectable interfaces, **Communication**, Body Design

Findings

- > **23,519** patents and patent applications found covering mobile devices in India
- > As of Feb 2015, only **18 applications and ZERO patents** belong to Indian companies (Spice digital, videocon, HCL)
- > Overwhelmingly skewed distribution of Indian patents among resident and non-resident firms: Indian manufacturers do not have large patent portfolios

Consequences

Triggered by initiation of Patent infringement action

> Ericsson and Vringo have asserted their SEPs against 6 Indian companies via patent infringement suits

Patent revocation petition filed

> Intex has filed applications for the revocation of Ericsson's patents

Discovery of a recourse under Indian Competition Act, 2002

> Indian companies filed complaint with the CCI arguing abuse of dominance against Ericsson [Micromax, Intex and iBall*]

Prima facie CCI Order held

> Ericsson indeed abused its dominant position; ordered a full investigation by the Director General

State of proceedings in CCI and Courts

Jurisdiction of CCI challenged

> Ericsson filed the challenge to prevent CCI investigation

Indian High Courts: Delhi HC (2016)

> Did not adjudicate on the issue of alleged anti-competitive conduct of Ericsson

> **Recognized authority of CCI to probe Ericsson** for its allegedly anticompetitive conduct [Justice Bakhru, in Ericsson v. Micromax]

Justice Bakhru in Ericsson v. Micromax

“In my view, there is **no irreconcilable repugnancy or conflict between the Competition Act and the Patents Act**. And, in absence of any irreconcilable conflict between the two legislations, the jurisdiction of CCI to entertain complaints for abuse of dominance in respect of Patent rights cannot be ousted.”

“A patent holder has a statutory right to file a suit for infringement; but the Competition Act is not concerned with rights of a person or an enterprise but the exercise of such rights.....”

Justice Bakhru in Ericsson v. Micromax

- > Mere provisions for **compulsory licensing** etc under the patents act does not oust the jurisdiction of the the CCI and a party could both apply for a compulsory license under the patents act as also initiate a complaint with the CCI alleging that the patentees' conduct is anti-competitive (see para 179)
- > There is nothing to prevent a party from both **challenging a patent** and instituting a competition complaint.
- > “It is also necessary to clarify that nothing stated herein should be construed as an expression of opinion – prima facie or otherwise – on the merits of the allegations made by Micromax and Intex; all observations made or views expressed herein are in the **context of the jurisdiction of CCI** to pass the impugned orders.”



India at UN, Geneva @IndiaUNGeneva

In India IPR & #Competition Law are viewed as complimentary.

The policy & legal framework w.r.t IP in India is a work in progress



Access to the sub \$100 device

An unfinished David v. Goliath saga

- > As of 2013, Ericsson claimed to hold a third of 2G SEPs, and a quarter of 3G SEPs
- > Indian manufacturers do not have large patent portfolios; cannot “set-off” and/or negotiate royalty rates
- > Lack of resources to pursue litigation: Huge pendency of cases and time for dispute resolution are daunting

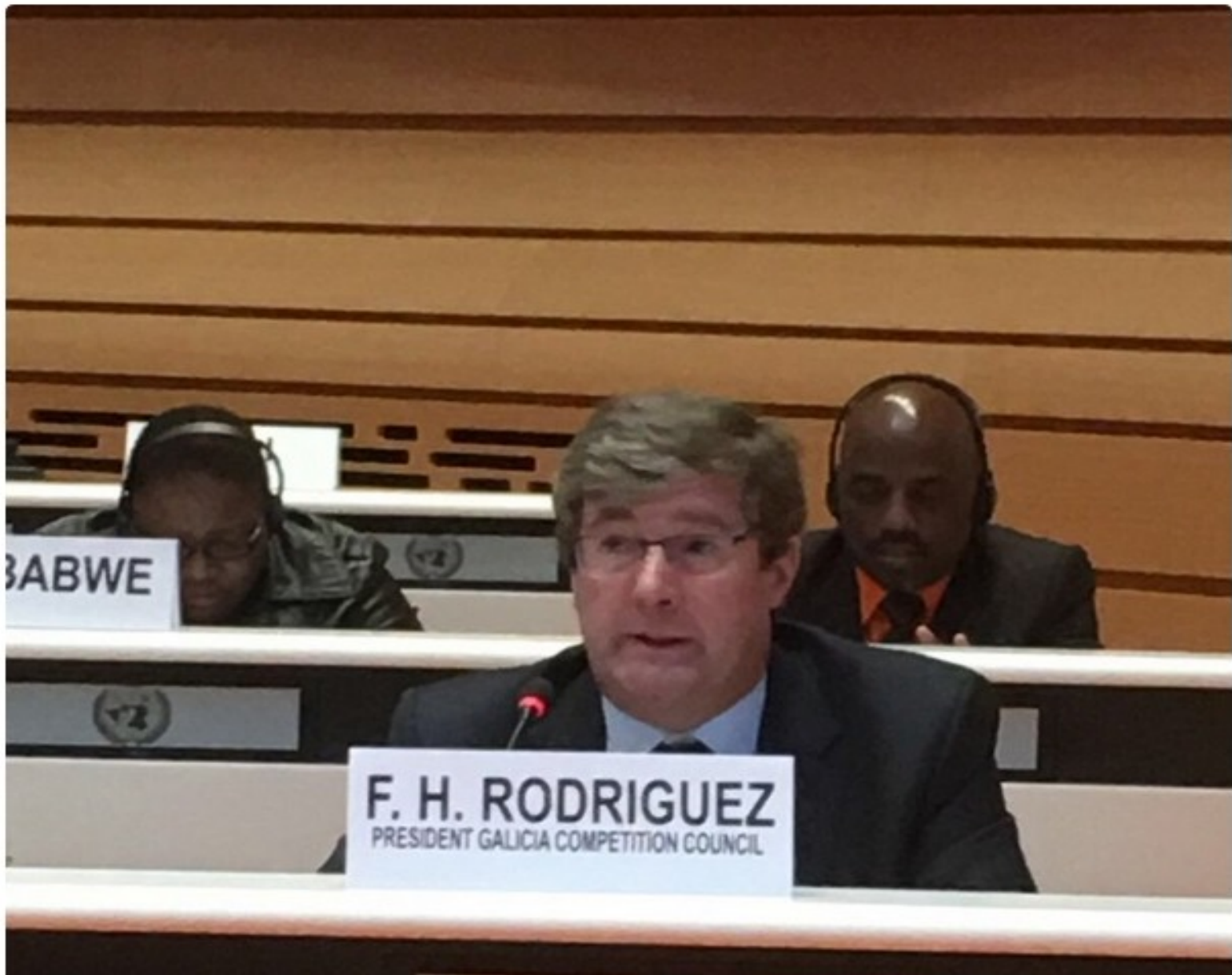
What Next?

- > Pending final orders from Courts, and investigation report by DG
- > Analysis conducted by CCI and Courts need to be backed by more sophisticated economic modelling
- > Government kickstarted a consultation process on SEPs and their availability on FRAND terms
- > Adoption of National Competition Policy, 2011?
“ The (draft) Policy is intended to be flexible and accommodate appropriate sensitivities in matters requiring special policies for weaker section of society or regions or needs of environmental preservation and other strategic issues of public policy; the only thing is that a conscious view will have to be taken by the concerned authorities in balancing the competing considerations.”



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F. Fernandez: "Objectives of competition law R many & divergent, how 2 fit IP rights is the issue to think about" [#competitionpolicy](#)



Thank you very much.

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