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COMPETITION ACT

NCLAT Draws Red Line: CCI Can’t Police Patent Abuse, Only Patent Office Can

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Can the Competition Commission of India investigate a Swiss pharmaceutical giant for keeping a patented drug scarce and costly, or does the Patents Act provide the exclusive playground? In October 2025 the National Company Law Appellate Tribunal (NCLAT) faced this collision head-on while hearing Mr. Swapan Dey's appeal against CCI's refusal to act against Vifor International (AG) for its iron-deficiency injection Ferric Carboxymaltose (FCM). The Tribunal's answer was emphatic: once the subject-matter is the exercise of patent rights, the Competition Act takes a back seat. What followed was a dismissal that carries far-reaching consequences for sector regulators, drug-licensors and every entity that meshes intellectual-property with competition strategy.

Table of contents

The journey from dialysis ward to courtroom

Swapan Dey, CEO of a hospital that runs free dialysis under the Pradhan Mantri National Dialysis Programme, noticed that two-thirds of his patients develop iron-deficiency anaemia. The quickest fix is an FCM injectable developed and patented by Vifor International, Switzerland. Yet only two Indian firms, Emcure (licensee-manufacturer) and Lupin (licensee-importer), were selling differently branded but chemically identical vials at prices that, according to Dey, were beyond most patients' reach and far higher than the same molecule in neighbouring Bangladesh. Believing this to be a textbook case of dominance plus restrictive licensing, Dey filed an information with CCI on 12 January 2022 alleging contravention of Sections 3 and 4 of the Competition Act, 2002.

CCI's swift closure and the trigger for appeal

The Commission examined agreements between Vifor and its Indian partners, noted that the basic patent would expire in October 2023, saw no long-term foreclosure and concluded that licensing terms were reasonable to protect an active patent. In an order dated 25 October 2022 passed under Section 26(2) it closed the case, holding that no prima facie violation of Section 3(4) or Section 4 was discernible. Aggrieved, Dey travelled to New Delhi and instituted Competition Appeal (AT) No. 5 of 2023 before the NCLAT principal bench, invoking Section 53B of the Act.

Rival scripts before the appellate tribunal

Counsel for the appellant argued that CCI had ducked the mandated "relevant market" exercise and had applied an ex-ante snapshot instead of probing how output ceilings, territory carve-outs and high royalties were denying market access and keeping prices artificially raised. He stressed that Section 4(2)(c) expressly treats denial of market access as abuse and that Section 3(5) does not give patentees a free pass but only shields "reasonable" conditions.

Vifor, countered that the Competition Act must yield to the special and later legislation ie., the Patents Act, 1970, whose Chapter XVI (Sections 83 to 90) is a complete code for judging unreasonable licence terms or abuse of patentee status. It placed special emphasis on Section 3(5)(i)(b) of the Competition Act which saves the patent holder's right to impose "reasonable conditions" necessary to protect his invention. The company added that the patent had already expired in October 2023, pushing the molecule into the public domain, so any continued grievance was academic.

The Competition Commission, defending its order, submitted that it had applied the correct jurisdictional filter, had not ignored the IP carve-out and had merely found no prima facie case at the threshold stage; it relied on the earlier single-judge Monsanto judgment of the Delhi High Court which had allowed CCI to retain scrutiny.

A Division Bench of the Delhi High Court in Telefonaktiebolaget LM Ericsson (PUBL) v. CCI (LPA 247/2016, decided 13 July 2023 used the maxim generalia specialibus non derogant to hold that the Patents Act, being the later and special statute, prevails over the general Competition Act whenever the contest is about the exercise of patent rights. The court quashed CCI's ongoing investigations. The Commission rushed to the Supreme Court with SLP (Civil) No. 25026/2023; on 2 September 2025

the apex court simply dismissed the petitions, leaving the Ericsson ratio intact and signalling that patent questions must be addressed first under the Patents Act and only residually, if at all, under competition law.

NCLAT's analysis and final word

Justice Yogesh Khanna (Judicial Member) and Mr. Ajai Das Mehrotra (Technical Member) noted that the FCM patent was alive during the period under scrutiny but had since expired, making the molecule freely manufacturable. More importantly, they accepted Vifor's plea that once the subject-matter of the information is the bona-fide exercise of a statutory patent right, the Competition Commission's jurisdiction is ousted by the explicit language of Section 3(5) and by the comprehensive scheme of Chapter XVI of the Patents Act. The tribunal observed that the appellant could have sought a compulsory licence under Section 84 if affordability or public-health requirements were unmet, but could not short-circuit that route through a competition complaint. Following the now-binding Ericsson Division-Bench judgment and the Supreme Court's refusal to interfere, the NCLAT held that "there is no merit in this appeal" and dismissed it without any order on costs. All pending applications were simultaneously disposed of.

Concluding perspective

The ruling is a timely reminder that India's competition regulator must tread carefully when patent thickets are involved. For patentees it offers comfort that reasonable licensing restrictions will be tested first under the Patents Act's nuanced balancing of innovation incentives and public access. For complainants be they hospitals, patient groups or generic makers the message is equally clear: if a patented drug is pricey or scarce, the doorway is the Controller of Patents and a compulsory-licence plea, not the CCI's corridors. As biologic and new-chemical-entity disputes multiply, the NCLAT's short but sharp order will be brandished whenever sector-specific statutes clash with the general competition code, reinforcing the principle that special law prevails and the patent trump card is still very much in play.

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