

Exceptions – Section 3(5)

Nothing contained in this section shall restrict – The right of any person to restrain any infringement of, or to impose reasonable conditions, as may be necessary for protecting any of his rights which have been or may be conferred upon him under:

- The Copyright Act;
- The Patents Act;
- The Trade Marks Act;
- The Geographical Indications of Goods (Registration and Protection) Act;
- The Designs Act; and
- The Semi-conductor Integrated Circuits Layout- Design Act.

IPRs related Competition Issues

- 1) Exclusionary terms in the licensing of IPRs, specifically the inclusion of restrictive clauses such as territorial restraints, exclusive dealing arrangement, tying or grant back requirements in licensing contracts
- 2) Use of IPR to reinforce or extend the abuse of dominant position on the market unlawfully.
- 3) IPRs as an element of mergers and co-operative arrangements.
- 4) Refusal to deal

Relevant Market

- When rights to intellectual property are marketed separately from the products concerned to which they relate, the **relevant technology market** has to be defined as well. Technology markets consist of the intellectual property that is licensed and its close substitutes, *i.e.* other technologies which customers could use as a substitute (*EC Guidelines on Technology Transfer Agreement*)

- Technology markets consist of the intellectual property that is licensed (the “licensed technology”) and its close substitutes – that is, the technologies or goods that are close enough substitutes significantly to constrain the exercise of market power with respect to the intellectual property that is licensed. When rights to intellectual property are marketed separately from the products in which they are used, the Agencies may rely on technology markets to analyze the competitive effects of a licensing arrangement. (*Anti-trust Guidelines for the Licensing of Intellectual Property issued by the Department of Justice and the Federal Trade Commission*)

Refusal to Deal

- Article 31 (b) of the TRIPS Agreement refers to the refusal of a voluntary licence as a condition for the granting of a compulsory licence
- WTO Secretariat has expressly recognised the possibility of articulating a “refusal to deal” as grounds for granting such licences
- United States v/s Microsoft the District Court held that “copyright does not give its holder immunity from laws of general applicability, including the antitrust laws”