
THE 'ESSENTIAL FACILITIES' DOCTRINE - A STUDY OF ITS RELEVANCE AND APPLICABILITY UNDER THE INDIAN COMPETITION LAW

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ABSTRACT

Essential Facilities Doctrine, a principle marking its origin in the U.S. Anti-Trust law, refrains a dominant if not a monopolistic entity from refusing its competitors, the access to such essential facilities which are wholly controlled by it, and the utilization of which can be neither dispensed nor accomplished through alternative means. The doctrine simply checks the anti-competitive behavior exhibited by dominant or monopolistic entities, especially the vertically superior ones. The concept has a remarkable history in both the US and EU regimes. However, it has been neither statutorily acknowledged nor expressly invoked under the Indian Competition law. Providentially, the scheme of the Competition Act has been comprehensive enough to include under its ambit, the fundamental principles of the doctrine. Section 3 and Section 4 of the Act are the express manifestations of the underlying principles of the concept. That coupled with the recent welcoming approaches adopted by the Competition Commission of India (CCI) has effectuated the domestic application and operation of the doctrine to a reasonable extent. However, the cases wherein the concept could be invoked are still popularly approached with the idea of 'abuse of dominance by denying market access' and the very fact marks the long journey that the concept is yet to embark in India. With the help of constructive approaches which sanction statutory recognition to the doctrine, 'essential facilities' could evolve to be a general rule under the Indian Competition law. For a country like India wherein there are several issues and concerns pertaining to the availability of infrastructural facilities and dearth in resource management, all the while having a huge and diverse market to serve and tend to, it is of utmost importance to implement the doctrine in as many modalities as possible.

Keywords: Essential Facilities, Monopolistic entities, Anti-Competitive behavior, The U.S. Anti Trust law, The Indian Competition law.

THE ESSENTIAL FACILITIES DOCTRINE- A SAFEGUARD AGAINST 'ABUSE OF DOMINANCE'

Essential Facilities Doctrine is a principle that fundamentally operates in the sphere of Competition law. The concept originated in a 1912 U.S. case¹ and got formally acknowledged in the judicial opinions of 1970s.² The principle refrains a dominant if not a monopolistic entity from refusing its competitors in that market or an adjacent market, the access to such essential facilities wholly controlled by it, the utilization of which can neither be dispensed with nor can be accomplished through alternative modes. The doctrine hence checks any anti-competitive behavior exhibited by dominant or monopolistic entities, especially the vertically integrated ones. However, it is necessary that the market to which the facility is related is the same market in which the competitors operate. In other words, the benefit of the doctrine could be claimed only for the purposes of relevant market.³

Though the 'refusal to deal' principle operates with the same objective, the EFD doctrine unlike the said principle doesn't mandate a prior business relationship between the dominant entity and the competitors, for it to be applicable in that case. By mandating the duty to share, what EFD essentially intends at is harmonizing the structural intricacies in a competitive market rather than regulating the business relationships between the market players.⁴

To put the principle in a rather explanatory way, the doctrine directs the dominant players to provide the other competitive players with the access to essential facilities on a very reasonable and non discriminatory basis. However, the doctrine operates only with respect to those cases wherein;

- The particular facility has to be utilized by the competitors in order to be able to compete in the market.⁵
- The dominant player who is in control of such facility is intervening with the competition in that market.⁶

¹ United States v. Terminal R.R. Association, 224 U.S. 383, 410 (1912).

² The term is discussed for the first time in the judicial opinions in Hecht v. Pro- Football, Inc., 570 F.2d 982, 992 (D.C. Cir. 1977), cert. denied, 436 U.S. 956 (1978).

³ See Lansdale v. Philadelphia Electric Co. 692 F.2d 307 (3d Cir. 1982); Drinkwine v. Federated Publications, Inc. 475 U.S. 108.

⁴ Christopher M. Seelen, *The essential facilities doctrine: What does it mean to be essential*, 80 Marq. L. Rev., 1117 (1997).

⁵ "To be an essential facility . . . a facility must be essential." Blue Cross & Blue Shield United v. Marshfield Clinic, 65 F.3d 1406, 1413 (7th Cir. 1995), cert. denied, 516 U.S. 1184 (1996).

⁶ "Control of the facility carries with it power to eliminate competition in the downstream market." Alaska Airlines v. United Airlines, 948 F.2d 536, 544 (9th Cir. 1991).

- The competitors could neither replicate such facility nor go for alternative recourses⁷
- There is certain feasibility in granting the necessary access to the competitors.⁸

Many legal systems across the world, including the U.S. and U.K regimes, neither defined the doctrine formally nor demarcated what exactly would amount to an ‘essential facility’ universally. It is indeed difficult to restrict the scope of ‘essential facilities by virtue of a formal definition. However, the doctrine finds its irreplaceable place in cases pertaining to the denial of access to network and infrastructure- especially in regulated sectors.⁹

GENESIS AND EVOLUTION OF THE DOCTRINE IN THE U.S AND E.U. REGIMES

The doctrine originated as an underlying principle behind Section 1 and Section 2 of the U.S. Sherman Act which collectively prohibit any agreement effected by market players so as to deny the access of certain essential facilities to the other competitors.¹⁰ Though the statute doesn’t expressly refer to the doctrine, the legislative intent behind bringing such statutory safeguards was perceived to be the need to refrain the Standard Oil Trust from refusing its competitors, grant of access to the product transportation facilities and pipeline network facilities.¹¹

The first case before the U.S. Supreme Court that dealt with the application of the doctrine is however the case of *US v. Terminal Railroad Association of St. Louis*,¹² wherein an association of several rail companies exercised exclusive control over a railroad terminal and refrained the non members from accessing the terminal, the Court has recognized that the indispensable role played by the terminal in the railway activity of the non-member railway companies, and has emphasized the requirement to impartially and reasonably provide them the access to the facility in the interests of an equitable competition and free trade and

⁷ “And although the provision describing which elements must be unbundled does not explicitly refer to the analogous essential facilities doctrine, the [Telecommunications] Act [of 1996], in my view, does impose related limits upon the FCC’s power to compel unbundling. In particular, I believe that, given the Act’s basic purpose, it requires a convincing explanation of why facilities should be shared (or unbundled) where a new entrant could compete effectively without the facility, or where practical alternatives to that facility are available.” AT&T Corp. v. Iowa Util. Bd., 119 S. Ct. 721 (1999) (Breyer, J.).

⁸ City of Anaheim v. Southern California Edison Co., 955, F. 2d, 1373, 1380.

⁹ Ali A. Massadeh, *The Essential Facilities Doctrine under Scrutiny: EU and US Perspective*, UEA LAW WPS, 356 (2011).

¹⁰ Sherman Act of July 2, 1890, Chap. 647, §§ 1, 2 Stat. 209 (current version codified as amended at 15 U.S.C. Sections 1, 2 (1994 & Supp. 1997)).

¹¹ United States v. Standard Oil Co., 155 F. Supp. 121, 146 (S.D.N.Y. 1957).

¹² United States v. Terminal R.R. Association, 224 U.S. 383, 410 (1912).

commerce. Thus, emerged the idea of requiring a monopolistic entity in control of an essential facility to reasonably enable its competitors to access such facility, if it feasible to do so.¹³

Subsequently, in the *Associated Press case*,¹⁴ wherein the news collected by the associated press was shared to its members alone, who in turn were empowered enough to refrain any other outsiders from entering the association, it has been held that any policy that denies the access to essential facilities hence stifling any competition must be avoided and the associated presses was directed to share the news with the non-members too for public welfare. Interestingly, in this case, the doctrine of ‘essential facilities’ has been applied to the ‘membership of AP’, which is essentially a non infrastructural facility. There are a number of subsequent cases which could be considered as milestones contribution to the development of the doctrine.¹⁵

Coming to the position pertaining to the European Union, the doctrine is fundamentally a derivative of the theory of ‘abuse of dominance’ in completion law, as conveyed under Article 82 of the Treaty of Rome (the 1997 EC treaty).¹⁶ It’s not until the late 1990s, that the European court of justice gave formal recognition to the doctrine and its applicability in the cases of monopolistic behavior.¹⁷ However, in the last two decades, the European regimes has witnessed a steer development in the reforms pertaining to checking the anti-competitive behavior of the players in various sectors and mainly those pertaining to electricity, railways, telecommunications and the postal sector, etc.

The *Commercial Solvents case*¹⁸ was the first case wherein the doctrine was recognized. A chemical company named Commercial Solvents stopped the supply of raw materials to all the downstream players except or its subsidiaries. The European Court of Justice has recognized the raw materials to be indispensable inputs in the line of such activity, to which all the players in the market should have access to. However, it is pertinent to note that the Court did not

¹³ Lipsky, Abbott B & J. Gregory Sidak, *Essential Facilities*, 51Stan L.Rev, 1187, 1187–248 (1999). <https://doi.org/10.2307/1229408>.

¹⁴ *Associated Press v. United States*, 326 U.S. 1 (1945).

¹⁵ See *Lansdale v. Philadelphia Electric Co.* 92 F.2d 307 (3d Cir. 1982); *Gamco, Inc. v. Providence Fruit & Produce Building, Inc.*, 194 F.2d 484 (1st Cir.), cert. denied, 344 U.S. 817 (1952); *Hecht v. Pro-Football, Inc.* 570 F.2d 982 (D.C. Cir. 1977), cert. denied, 436 U.S. 956; *Otter Tail Power Co. v. United States* 410 U.S. 366 (1973); *Aspen Skiing Company v. Aspen Highlands Skiing Corporation* 472 U.S. 585 (1985).

¹⁶ Treaty establishing the European Economic Community, 294 U.N.T.S. 3, 25th March 1957 (1st January, 1958). Accessed at: <http://treaties.un.org/doc/Publication/UNTS/Volume%20294/v294.pdf>.

¹⁷ In *Oscar Bronner GmbH & Co, KG v. Mediaprint Zeitungs- und Zeitschriftenverlag GmbH & Co. KG and ors*, Case C-7/97, (1999) 4 C.M.L.R. 112, the European Court of Justice has defined “essential facility” as a “facility or infrastructure without access to which competitors cannot provide services to their customers”.

¹⁸ *Commercial Solvents v. Commission*, ECR 223 (1974).

expressly invoke the essential facilities doctrine but rather held the practice to be unlawful, being an exception to the freedom of 'refusal to deal'. The doctrine was first mentioned by the Commission in the *United Brands case*,¹⁹ wherein, a dominant entity in the 'supply of bananas' was held to have infringed Article 86 of the Rome treaty by imposing discriminatory prices and refusing to supply a customer and distributor.

Further the noteworthy development that the European regime has contributed towards the evolution of the doctrine to its present form is its application in the sphere of intellectual property rights (IPRs).²⁰ The English principle of 'Exceptional circumstances' limits the privileges enjoyed by virtue of the ownership of IPRs and acts as a rule of exception in the cases such as compulsory licensing and the likes. In the English judgments of *Volvo*,²¹ *Magill*²² and *IMS Health*,²³ enough emphasis has been laid on the rule that the refusal to grant licenses for the access and use of IPRs can only be done in case of 'exceptional circumstances'. Especially, licensing is not allowed to be denied in circumstances wherein;

(1) The grant of license is required for introducing in the market, a 'new product', which the dominant entity is not intending to offer and for which there is a great consumer demand.²⁴

(2) By virtue of such refusal, the dominant entity is intending to reserve for itself a monopolistic position in a secondary market or associated merchandise.²⁵

(3) The refusal to grant license is based on arbitrary and unreasonable basis.²⁶

Though the European approaches have contributed significantly towards ascertaining the applications of the doctrine, it is important to observe that, unlike the liberal approach adopted by the U.S. system, the European approaches restricted the operation of the doctrine to the cases where there are significant downstream externalities affecting the market harmony. More importantly, the operation of the doctrine has been extended to the cases where the entities are

¹⁹ *United Brands v. Commission* ECR 207 (1978).

²⁰ Albertina Albors-Llorens, *The 'Essential Facilities' Doctrine in EC Competition Law*, 58 Cambridge L. J., 490,490–92 (1999). Accessed at: <http://www.jstor.org/stable/4508596>.

²¹ *Volvo v. Veng*, ECR 6211(1988).

²² *Radio Telefils Eireann v. Commission*, ECR 1-743 (1995), see Simon M. Taylor, *Copyright versus Right to Compete: The Judgment of the ECJ in Magill*, 1(3) Comp. TELECOMM. L. REv. 99 (1995).

²³ *IMS Health GmbH & Co. OHG v. NDC Health GmbH & Co. KG*, ECR 1-5039 (2004).

²⁴ Massadeh, supra note 9.

²⁵ Cave, Martin & Peter Crowther, *Competition Law Approaches to Regulating Access to Utilities: The Essential Facilities Doctrine*, 103 Rivista Internazionale Di Scienze Sociali, 141–157 (1995). Accessed at: <http://www.jstor.org/stable/41623874>.

²⁶ Massadeh, supra note 9.

perfectly able to and are in fact intending to introduce a particular facility in the market either by themselves or in cooperation with the other players, hence satisfying the consumer demand.

THE HISTORIC DEBATE PERTAINING TO THE APPLICABILITY OF DOCTRINE IN INDIA

The economic, legal and political milieu of India has always been significantly different from that of the western jurisdictions. It is therefore important to examine the historic question of applicability of the doctrine in the Indian scenario.²⁷ The history of the existence and application of the principles of the doctrine in India can be traced back to the 1990s. The independent India remained to be a closed economy until the early 1990s. The entry of private industries were very strictly regulated by the Governmental policy and the public sector enterprises were given significant importance so as to facilitate healthy enterprising. With the introduction of the new economic policy and subsequent liberalization, deregulation took place. However, the public sector enterprises and very few private well established private enterprises had a competitive leverage due their very own infrastructural facilities already available from earlier and such Essential Facilities were not readily available to the newly entered private players.²⁸ At this point the entities which either intended to enter the Indian markets or expand their sphere of operation in the Indian market anticipated access to such infrastructural facilities which were already established by the PSUs and the well established private entities that existed from earlier. Thus arose the question of granting such new competitors with the access to the necessary facilities so as to catalyze their entry and secure their position in the market.²⁹

However, one could say that despite the omnipresence of the underlying or fundamental principles of the doctrine of essential facilities in the Indian legal system and market economics, the doctrine by itself has not been formally acknowledged or legally invoked before the Courts for a very long time. Such hesitance resulted from two questions that centered the debate of the 'legitimacy of the operation of the doctrine in India'. While the first question was regarding the applicability of a doctrine which has its genesis derived from the American anti-trust law (which itself did not legally acknowledge the doctrine unequivocally) which was perceived to be substantially different from the Indian Competitive regime, the other principle question was pertaining the spheres in which the doctrine could actually be applied in India, if

²⁷ Singh & Jaivir, *Is there a Case for Essential Facilities Doctrine in India?* CIRC WPN. 4. CUTS Institute for Regulation and Competition (2013). Accessed at: <https://circ.in/working-papers>.

²⁸ Clarius Law Associates, *Final Report: A Study on Competition Concerns in Concession Agreements in Infrastructure Sectors* (2009). Accessed at: <https://www.claruslaw.com/insights-cat/infrastructure>.

²⁹ Singh & Jaivir, *supra* note 27.

at all it could in fact be applied under the Indian competitive jurisprudence. Another problem was pertaining to the concept of special responsibilities of the Dominant entities in the market, which was alien to India. Unlike in Europe, where the doctrine finds its basis in the 'special responsibility of the dominant entities to protect the common market',³⁰ India could offer no such theory for the doctrine to down root itself in our legal system. One thing which however, supported the gradual and informal incorporation of the doctrine in the Indian legal system was the increasing necessity for the development of common infrastructural facilities so as to cater to the demands of the wide and diverse India market.³¹

Besides the regime of the Indian Competition law, wherein the doctrine remains to act as one of the driving principles against abusive dominance, all the while remaining to have not been statutorily acknowledged in an explicit manner, the principles of the doctrine have been manifested in many Sectoral regulatory frameworks such as the Telecom Regulatory Authority of India (TRAI) Act, 1997, the Electricity Act, 2003 and the Petroleum and Natural Gas Regulatory Board (PNGRB) Act, 2006, etc. Another noteworthy area is the regime of Intellectual Property Rights. The Indian Patents Act, 1970 has in fact provided for compulsory licensing, hence extending the ambit of the principles of the doctrine over the IPR regime similar to the above discussed European approach. However, it is pertinent to note that, in India the fundamental application of the concept of 'essential facilities' is limited to the sphere of infrastructural facilities only.

THE DOCTRINE AND THE COMPETITION ACT, 2002

As conveyed before, the doctrine of essential facilities has neither been statutorily acknowledged nor been expressly invoked under the Indian Competition law regime. If anything the cases pertaining to the principle are often referred to as abuse of dominance by denying market access. All in all, the implementation of the doctrine in spirit is at still at a very nascent stage. However, the scheme of the Competition Act which provides several inherent safeguards to check any anti-competitive behavior has been comprehensive enough to include under its ambit, the fundamental principles of the doctrine.

³⁰Lakshmi Kumaran and Sridharan, *The Destiny of Essential facilities in India* (2021). L&S_Web_Competition_Law_Article.pdf (lakshmisri.com).

³¹Kalyani Singh, *The Resurrection of Essential Facilities Doctrine and Its Applicability in India*, 1 CPI Antitrust Chronicle, (2016).

A brief overview of the Indian Competition Act, 2002,³² brings to ones notice, the provisions which have essentially provided within themselves, the modalities for affecting the essential facilities doctrine. Section 4 (particularly Section 4 (2) (C) read with Section 19 (4)) and Section 3 of the Act can be regarded as to express manifestations of the principles of the doctrine.

Section 4 of the Act defines dominance to be the firm's position of strength in a relevant market by virtue of which the firm operates in a manner that is independent from the other competitive forces in the market, or which affects the competitors or consumers or the market itself in the favor of the firm. Further a relevant market could either be relevant geographical market or relevant product market or both

Firstly, Section 4 (2) (c) prohibits practices which result in the denial of market access. The dominant firms are absolutely barred from resorting to any such practices which refrain the new players from entering to the markets. When broadly interpreted, one can clearly bring the EFD doctrine under the ambit of the provision. In fact, without any access to the essential facilities whose utilization cannot be dispensed with, it is not possible for the players to enter into a market and secure a promising position therein. Further, Section 4 (2) (e) also expressly prohibits a dominant firm from using its dominant position in one market to secure a dominant position in an upstream, downstream or any other adjacent market. The ascertaining of the dominant position of a firm should however be based on the criteria enumerated under Section 19 (4) of the Act. The provision directs the competition commission to decide upon the dominant position of an entity depending upon various factors like the size and market share of the firm, prevalence of other competitors, existence of entry barriers and resource barriers etc.

Another safeguard provided by the Competition Act that manifests the essence of the doctrine is Section 3 of the Act. However, the manifestation of the doctrine under Section 3 of the Act is quite different comprising of different elements than that of Section 4.

Section 3 of the Act deals with anti-competitive agreements. The Section invalidates certain agreements pertaining to tie-in arrangements, exclusive supply arrangements, exclusive distribution arrangements, and refusal to deal cases, resale price maintenance; which are likely to cause adverse impact on the competition in the market. Section 3(4) (d) specifically bars the

³² The Competition Act, 2002, No. 12 of 2003 (13th January, 2003).

dominant entities from resorting to ‘refusal to deal’ if the same could potentially result in detrimental effects to the competition. Further, refusal to deal is defined under Explanation (d) to Section 3(4) as any agreement which restricts any person or entity to whom the goods are sold or by whom the goods are brought, by using any method. The definition is evidently an inclusive one hence entitling the market players with wide safeguards in case of anti-competitive behavior of the dominant firms.³³ The doctrine, in a sense can be viewed to have been embodied in the clause.

THE ROLE OF THE COMPETITION COMMISSION OF INDIA

Section 18 and 19 of the Act impose a duty on the Competition Commission to check the anti-competitive practices which adversely affect the market environment. Section 19 (4) provides for a list of factors which become relevant when while examining the question pertaining to the ‘dominant’ position’ of a firm. These include inter alia market share, size, resource, importance of competitor, dependence of consumer, market structure etc. However, Section 19(4) only provides for the criteria to determine the dominant position of the player, and the effects and impacts of such position, whether positive or negative should be ascertained separately by the Competitive commission depending upon the facts specific to the circumstances.

Though the Competitive Commission has been given elaborately defined responsibilities pertaining to curbing the abuse of dominance, there is no single policy framework laid down by it as of now, to provide legal sanctity to the equitable doctrine of essential facilities.³⁴ It is important for the commission, while exercising its statutory powers to frame a regulatory framework to affect a free and fair access of the entities to the essential facilities in such cases wherein it is deemed to be extremely necessary.

INTERPRETATION BY THE COMPETITION COMMISSION OF INDIA (CCI)

The doctrine has not been expressly invoked in many cases in India. The doctrine has been taken under serious consideration in three cases, thus far. In the case of *Arshiya Rail Infrastructure Limited*³⁵ (ARIL), the question was regarding the obligation of CONCOR, a

³³ Singh & Jaivir, supra note 27.

³⁴ Kalyani Singh, supra note 31.

³⁵ *Arshiya Rail Infrastructure Ltd v. Ministry of Railways and Ors*, Case No. 64/2010,02/2011 & 12/2011 (CCI, 09/08/ 2011)

cargo carrier and a terminal operator enabling the new Container Train Operators (CTOs) to access and use its terminal facilities. In this case, CCI strongly emphasized that as long as there is no strong ground as to why the CTOs cannot create a facility as such on their own, they cannot invoke the ‘Essential Facilities Doctrine’ or claim a relief under the same, as it would be grossly unfair to CONCOR which pioneered in the market with its own efforts.

Subsequently, in the case of *Shri Shamsher Kataria v. Honda Siel Cars India Ltd. & Ors*,³⁶ wherein the question was pertaining to the legality of the actions of a group of fourteen car manufacturing entities which refrained from selling the spare parts and diagnostic tools to the independent repairers, CCI considered if such actions have actually amounted to the abuse of dominance or not. The State has invoked the doctrine of Essential facilities and contended that the spare parts and diagnostic tools are essential facilities in the line of car repairing business and the repairers cannot perform their functions without the same. The contentions of the state have been upheld by CCI which opined that the independent repairers shouldn’t have been denied access to such essential facilities. The manufacturers have been fined for their anti-competitive behavior and abuse of dominance.

From an analysis of the above cases, one can easily infer that CCI has dealt with the cases on a case to case ad hoc basis, rather than relying on a substantive Rule of law, unlike the U.S. and European approaches. The problem resulted from the lack of explicit statutory sanctity to the doctrine, under the Indian regime of Competitive law. This lack of a driving Rule of Law pertaining to the doctrine could be a potential cause for the hesitance of the litigants in strongly invoking the doctrine before the relevant judicial forum.

ESSENTIAL FACILITIES DOCTRINE IN INDIA — A RULE AND NOT AN EXCEPTION

The ad hoc and case specific manner in which CCI has dealt with the cases wherein the doctrine has been invoked (without relying on a substantive Rule of law), raises one important question that has become a subject of debate in the Indian Jurisprudence pertaining to the Competition law.-Whether the doctrine of essential facilities is a Rule or an Exception. Though CCI has not applied the English test for the application of doctrine, it has in its very own way examined the question of legitimacy of its application in every case. Therefore, the silver lining is that the doctrine has in fact been recognised as a principle in itself. Another noteworthy and appreciable development is the fact that the developing case-law is impliedly indicating the

³⁶ *Shri Shamsher Kataria v. Honda Siel Cars India Ltd. & Ors*, Case No. 03/2011 (CCI, 25/08/2014).

gradual shift of the Commission from a hesitant attitude to an active implementation of the doctrine in those cases wherein the parties have not expressly invoked the doctrine.³⁷

One reason behind such developments pertaining to the application of the doctrine is the increasing emphasis on the special responsibility of the dominant entities to protect the common market. The imposition of such an obligation would necessarily imply that the doctrine no longer remains to be an exception, but has in fact evolved into a general Rule, which mandates that the essential facilities are supposed to be shared by the players in the common market.³⁸ The recent trend in the approaches adopted by the CCI by and large portrays the doctrine as a Rule with a considerably wide scope that extends to both 'exclusionary' and 'exploitative' practices.³⁹ As a result, liability is not limited to those cases where the access to facilities is denied, but it rather extends to those cases where such access is provided on an unfair or discriminatory terms.

Such progressive priorities of the Commission in specific and the Indian Competition regime in general have the potential to strongly reinforce the application of the doctrine in the cases of 'abuse of dominance' in the coming future. However, for that to happen, it is necessary that the doctrine gains express statutory sanctity in our legal system.⁴⁰

THE WAY FORWARD- A UNIFORM RULE OF LAW TO GRANT LEGAL SANCTION TO THE EQUITABLE DOCTRINE

A holistic and flexible regime of competition law is a pre-requisite for any developing economy which intends on soaring heights. Such a regime should constantly and dynamically evolve to adapt and suit the needs of the contemporary world. The international developments, the contemporary challenges and the global market trends should be the driving factors that boost the developments in the domestic legal system especially that which pertains to the competition law. It is only with the help of such robust reforming measures, that an economy could survive and thrive. As far as the operation of the Essential facilities doctrine is concerned, one cannot avoid the undeniable need for a uniform rule of law to facilitate a convenient and justified decision making process. Therefore, it gets extremely and increasingly important for the

³⁷Ali A. Massadeh, *supra* note 9.

³⁸Kalyani Singh, *supra* note 31.

³⁹Kaur & Supreet, *Interface between Intellectual Property and Competition Law: Essential Facilities Doctrine*, SSRN Electronic Journal. 10.2139/ssrn.1802450 (2011).

⁴⁰Clarius Law Associates, *supra* note 27.

legislature and the relevant executive departments to formulate a general policy statement that provides statutory sanction to the doctrine.

One important development that needs to be effected in this regard is that the Commission, by virtue of the power conferred on it under Section 64 (1) of the Act and in the lines of its statutory obligation to eliminate anti-competitive behavior under section 18 of the Act, could frame a regulatory framework prohibiting the dominant firms in restricting the other competitors from availing free access to the 'essential facilities' in the market. Such a regulatory framework could hence affect a free and fair access of the entities to the essential facilities which are needed to survive in the market; in such cases wherein it is deemed to be extremely necessary.

All in all, it is the need of the hour that the Indian Competition law regime recognizes and statutorily acknowledges the sanctity and operation of the 'Essential facilities doctrine'. Though the controversy about the legitimacy of the doctrine is still very much prevalent across the jurisdictions, for a country like India wherein there are several issues and concerns pertaining to the availability of infrastructural facilities, dearth in resource management all the while having a huge and diverse market to serve and tend to, it is utmost important to implement the doctrine in as many modalities as possible. If efficiently implemented, the doctrine has the potential to become one of the cornerstones of the Indian competition law.

However, such incorporation of the doctrine into the Indian regime should be done while exercising the due care and caution. The policy framework should be comprehensive enough to address the wide ranging issues of concern. It should envision if the entities should simply be directed to share the essential facilities or if the essential facilities should be owned by the State altogether. The approach should be built upon a long-term vision only after an in depth analysis of the socio-economic conditions in the country and the trends in its domestic markets.