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## On the “non-discrimination” aspect of FRAND licensing: A response to the Indian Competition Commission’s recent orders

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### Abstract:

The Indian Competition Commission has recently challenged Ericsson’s practice of licensing its standards-essential patents (SEPs), relating to cellular standards, for percentage-based royalties based on the selling prices of the end-user licensed products. Ericsson had committed to the relevant standards-development organisation that it would license its SEPs on “fair, reasonable and non-discriminatory” (“FRAND”) terms. The Commission contends that such royalties are “prima facie discriminatory” in violation of the Competition Act, in the (novel) sense that different products selling for different prices pay different per-unit royalties. We analyse the broader implications of the Commission’s reasoning, concerned that if adopted, the Commission’s reasoning would disrupt common industry licensing practices.

**Short title:** On the “non-discrimination” aspect of FRAND licensing

**Keywords:** Patents; Licensing; Discrimination; Telecommunications; FRAND; Standards; Industry practice

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