Pay for Delay: A Comparative Analysis of India And Other Significant Countries

AavieralMalik[1]&PallaviTiwari[2]

Abstract

In the field of patent law and its litigation the practice of outside the court settlements is common. Maximum people are aware of the arrangements like pay for delay or reverse settlements and these are some of the examples of outside the court settlements. These are generally considered to be anti-competitive according to the anti-trust laws of various countries. This is what causes the intersection of competition law and IPR. There have been a large number of disputes regarding this interface and the recent Qualcomm judgment is an example of this. Through this paper the author discusses about the anti-competitive nature of the pay for delay settlements and how did they come into existence. The author also mentions that even though they have a number of anti-competitive disadvantages but there lies another side of the coin, which are the advantages of such settlements. One of them being that it helps to avoid the intricate and time consuming litigation methods. The paper also highlights the outside the court settlements of patent disputes or reverse payment settlements in various countries like United Kingdom, Canada, India, Australia, Switzerland, China and Germany. This comprehensive study will help the readers to understand the difference of the laws pertaining to anti-competitive settlements of patent disputes in these countries. At the end of the paper, the author suggests some measures that should be adopted by India, by focusing on the laws of the other countries discussed above.

[1]Student, Dr. Ram ManoharLohiya National Law University, Lucknow.
[2]Student, Dr. Ram ManoharLohiya National Law University, Lucknow.

Introduction

Majorly, intellectual property disputes especially including patent law get settled before reaching the courts for trial. Reverse payment settlement, pay for delay or patent clusters are common names in the pharmaceutical industry, these are some methods used by originator companies to keep themselves away from the generics. The competitors then stop giving major competition goals to other players in the market and regulate their prices accordingly. This leads to anti-competitive activities resulting from settlement of IP disputes without Court's intervention. For example a situation where Company A comes up with a merger with a generic company B who was initially putting up patent validity claims against the originator, this is not considered anti-competitive in nature although if company A gives up a huge amount to company B to stop interfering then it leads anti-trust activities.

Developed in the case of *FTC v. Actavis*[3] this concept of anticompetitive settlements have gained a limelight now and Justice Breyer here took a very general view to refer to such matters. He also had put forward that if the settlement is within the exclusion policy of the patent then the exclusionary principle comes forward to protect the anti-competitiveness of the settlement. Also observed that whether there is large payment involved which clearly shows that something is fishy in the dispute regarding the validity of the patent and thus here the patent and antitrust authorities should take stringent look. The article thus takes a look at advantages and disadvantages of such outside the court settlements and also how did the concept of anti-competitive settlements come up at the first place, internationally. In this paper, thus, we suggest a way to reconcile the interests of intellectual property law and antitrust law in evaluating intellectual property settlements by referring to similar circumstances and laws in different countries.

Genesis of Pay for Delay

Although there isn't any precise reason which can be attributed to the origination of this practice, but broadly speaking, the mutual consent and meeting of minds between the concerned parties, them being the original manufacturer and the generic producer, wherein the original manufacturer offers to pay to the generic manufacturer a certain sum of money, in lieu of which the generic manufacturer enters into a tacit agreement with the original manufacturer to not knock the doors of the court as regards the challenging of the patent of the original manufacturer, in the manner that seeks to invalidate patents protecting the product or prove that the generic version does not infringe those patents.

[3]Federal Trade Commission v. Actavis, Inc.,et.al. 570 U.S. 12-416 (2013).

Although this practice has been largely held as anti-competitive, yet the companies engaging in it always had this defense that by following this, they are majorly keeping the disputes away from the court and thus reducing the burden on the courts, yet the stark reality being that the end party who suffers the loss arising out of these agreements are the consumers of these commodities, since due to the collusion between the generic manufacturer and the original producer, the entry of the generic version of the medicine which is much more cheaper to its original counterpart and also feasible to the common populace is delayed, the end result being that the common populace is left with no choice but to buy the drug at exorbitant prices and the monopoly of the original manufacturer stays firm.

Albeit this practice since its inception is not limited to any particular commodity, but it has its origins in the United States, wherein the Federal Trade Commission is in charge of regulating and keeping a check on any such agreements which pose a harm to the competitive spirit prevailing in the market by disparaging the interests of the consumers and by establishing a monopoly by going against the tenets of the Sherman Act. Yet the jurisprudence of this concept is slowly and steadily spreading with Pay for Delay being permissible in some countries, while in some, not.

Advantaged and Disadvantages

If the pros and cons of reverse payment settlements have to be taken into due consideration, then the latter far outweighs the former, albeit the proponents of this practice contend that if a legally valid is violated, then the agreement which is culminated between the original manufacturer and the generic manufacturer as regards the curtailing the entry of the generic drug is in tandem with lawful competition.

So as to aim towards the friendly settlement of the dispute outside the court, the original manufacturer with a consensus with the generic producer pays the latter a certain amount of money so as to request the generic producer to not enter the market with the generic version, and also to restrict the scope of any impending case which may be filed by the generic producer, the premise behind this agreement being to keep the dispute outside the four walls of the court and this reduce the burden on the judiciary.

The arrangement is beneficial for both the parties as the patent holder is able to hold on to its monopoly, without any competition for a longer period of time; while on the other hand the generic maker is able to earn a decent amount of money without having to face the risk of penetrability and marketing of its drug. They are also able to cover the cost of research and innovation and avoid litigation. It’s a win-win situation for all except the consumers, who in

the process is denied access to a lower priced product. Therefore, pay for delay agreements violate anti-trust principles of fair play and competition in the market.

The tenets of fair competition and the patent principles propound that market monopoly is granted to the original manufacturer, though only for a certain period of time so that the original manufacturer can regain the costs and funds they have invested towards the development of the product after which the market should be open for other players to establish fair play and competition, but by deploying pay for delay, the original manufacturer uses and establishes its monopoly in an arbitrary manner.

On the other hand, the harmful and detrimental aftereffects of this practice eventually cause a humongous loss to the consumer by delaying the generic version of the medicine, which is more often than not cheaper and beneficial and this alleged collusion between both the parties harms the competitive spirit by establishing monopoly of the original manufacturer. When ideally, the brand name of a products patent goes beyond the expiry limit, the rate at which the medicine or that matter any product should decrease moderately due to the influx of the generic manufacturers, but this does not ensue since due to the agreement between the parties, the monopoly of the original manufacturer remains unquestioned.

Herein, the brand name and generic manufacturers essentially agree to mutually benefit while inflating prices, pay-for-delay contracts appear to directly breach these laws, with the end consumer suffering the brunt of the inflated prices.

United Kingdom

The pay for delay regime in the United Kingdom and the European Union primarily pertains to the pharmaceutical sector.

There has been drastic surge in the cases which fall under the purview of Pay For Delay, with the practice acquiring the attention of the United Kingdom and the E.U. post 2008, when an investigation was initiated by the Commission into the sector dealing with pharmaceuticals, which reported that the time period 2000 and 2018 had 57 such instances and cases which dealt with Reverse Payment Settlement.

After which, an extensive research and enquiry as regards this practice was launched as regards the approach in 2008 and its nexus with the pharmaceutical sector, whereby the European Commission tended more towards that genre of litigation involving patents which were associated with the delaying the generic form of the drug In the market, in furtherance of which the Commission put forth a plethora of “Statement of Objection” against the companies, the likes of some being Les LaboratoiresServier and Lundbeck which were

dealing with a famous drug named Citalopram, an antidepressant, and Perindopril, a cardio-vascular medicine.

Although settlement agreements are undoubtedly subject to competition legislation, the evaluation of an agreement that is intended to settle a patent conflict, for any unlawful restrictive arrangements, does bring up a number of fundamental legal questions:

Albeit these agreements which on the face of it although as contended by the original manufacturer and the generic producer are effected to settle a dispute pertaining to patent, but if they are allegedly entered into with the aim of delaying the competition should be ideally and without a room for doubt be regulated by a competition pertaining statute, while taking of some quintessential questions, such as-

1. Does a settlement agreement of this kind amount to a violation of competition law as such?
2. Does the grant of benefits by the pharmaceutical industry to a generic manufacturer per se justify the suspicion of anti-competitive behavior?
3. If a settlement agreement does not contravene competition law by reason of the patentee's payments to the generic manufacturer alone, in what circumstances does the agreement become contrary to competition law?
4. Who bears the burden of providing evidence?
5. Is the settlement agreement justified according to the exemptions under Article 101 (3) T.F.E.U.?

In 2011, the Secretary of the United Kingdom for Health, filed a hefty case against Servier Laboratoriesamounting to £ 220 million in damages with the charge that the accused had used and exploited its dominant position so as to enter into a malignant settlement with the generic producers, which were later quashed by the United Kingdom High Court as a consequence to the investigation which was in process and being conducted by the European Commission.

Then, another of the famous and fairly recent case out the many which the authorities have been pursuing, which involved the renowned drug maker GlaxoSmithKline (G.S.K.) in April 2013 in which the Office of Fair Trading (O.F.T.) served a Statement of Objection against the company with the charge of abusing its position of dominance in the market by entering into a settlement with three other producers of the generic version of Paroxetine.

Settlements which fall under the domain of Pay for Delay/Reverse Payment are under the constant supervision of the regulatory authorities of the United Kingdom and the European Union, however since the law on this point is still in limbo and in the process of development, therefore as a necessary safeguard, the parties who enter into agreements

pertaining to this nature need to exercise due diligence in that regard that the agreements are in tandem with the law in development.

Canada

As regards the practice of the reverse payment settlements prevailing in Canada, the Competition Bureau's "Highlights: Competition Bureau Workshop on Antitrust Issues in the Pharmaceutical Sector" gives the definition of Pay for Delay/Reverse Payment Settlements as those settlements which entail the generic manufacturers entering into a tacit agreement with the original manufacturers to stall or delay the entry of a particular product (read "Medicine/Drug") in return for a payment from the side of the products innovator.

The view of the Bureau explicitly taken in the contribution of the enforcement of the law on competition in restraining the mal practices which ensue from the reverse payment settlements, which is evident from this recent white paper, wherein, the Competition Bureau has enshrined that these type of settlements should be put under the purview of the provisions which pertain to the "Criminal Conspiracy" under the Competition Act, them being-

1. Pay-for-delay agreements concern products that are not the focus of the patent litigation, or where these agreements delay the generic's drug's entry into the market beyond the term of the brand's patent; or
2. There is evidence that a settlement is simply a vehicle for a "naked restraint" on competition.
3. It is also pertinent to mention that as per the Bureau, these type of settlements fall under the civil provisions, most notably the Section 8 of the Competition Act, whereby which if outside the court settlements which pertain to patent litigation, entail a prima facie payment from the original manufacturer to the generic producer and the concerned "payment" is exceeding the amount which the generic producer would have claimed from the damages and the litigation costs, in aspect that the more is the payment, higher the is probability that the alleged settlement is anticompetitive and results in causing a detriment to the competition.
4. Such settlements have been the subject of attention from competition authorities in the EU and the U.S. It had been suggested that differences between the Canadian and U.S. regimes might limit consideration by the Bureau of such settlements in Canada. However, the Competition Bureau's view is that the following differences between Canadian and U.S. regimes do not obviate the need for Canadian oversight of settlement agreements:

5. Agreements of this nature have been in the purview of the authorities who regulate and control the competition in the European Union and the United States, but there are some noticeable differences between the viewpoint towards pay for delay between the two i.e. United Kingdom, European Union AND Canada, them stated as below-
6. Unlike the U.S., where all potential pay-for-delay settlements are reported to the antitrust agencies, Canada has no such requirement.
7. The 180-day exclusivity applies to the first generic(s) to file an A.N.D.A. with a paragraph IV certification. Some assert that this period of exclusivity provides a greater incentive in the U.S. to settle with the first generic challenger and that this incentive does not exist in Canada. However, the white paper indicates that evidence from Canada, the U.S. and the EU — including multiple generic challengers, the presence of authorized generics, and lack of such an incentive in the EU coupled with anticompetitive settlements — undermines this assertion and supports a need for Canadian enforcement.

Further, the Competition will also take in to due account if the Commissioner for Competition decides to put these type of settlements under the garb of the civil or criminal provisions with the some of the civil remedies being levying a penalty in monetary terms or in the worst case scenario, restraining the settlement in being effected and imposed, subject to the quantum of the adverse effects these settlements have, if they have on the competition by asserting the dominant position and its abuse. Herein, the Bureau will have to conduct a thorough scrutiny as to how these settlements would or could the effect of giving rise to Substantial Prevention or Lessening of Competition (S.P.L.C.).

The Bureau follows a "But-For" analysis for examining if or not there is a Substantial Prevention or Lessening of Competition (S.P.L.C.), according to which this analysis involves a "Scrutiny of the estimated date when the products' generic would have been released had there not been a settlement and the delayed date which has been agreed between both the parties for the late entry and the difference and variation between the prices which would have been exiting in each of the situations".

In Canada, since the reverse payment settlements are in contravention to the Section 45 of the Competition Actwhich enshrines "Conspiracy", the court under Section 36gives the power to the those people who fall in the domain of the largest group of customers who have been affected by this practice to file a civil suit in the court to claim the loss they suffered.

India

Much of the Indian perspective and status quo in the stand towards the current regime of Pay for Delay has been molded into shape keeping in light the United States take on this practice. I path breaking research conducted by the American Federal Trade Commission elucidated that the agreements of this nature cause a loss which roughly amounts to 3.5 Billion U.S.D.to the people of United States alone, which makes it all the more imperative for the Indian pharmaceutical industry to take the requisite steps to tackle this problem.

In Indian particularly, the Competition Commission of India is tantamount to the Federal Trade Commission and is the watchdog when it comes to gauging whether settlements which relate to patents deal with reverse payment settlements and in furtherance are illegal or not. Over the course of time, the these two regulatory bodies in India and United States have developed a synergy with each other, wherein the staff of the Competition Department of F.T.C. on many occasions has visited and aided Indian authorities to develop a robust mechanism to deal with this practice, as a result of which in 2012 a Memorandum of Understanding was signed between the two countries, which inter aliastipulates-

- The agencies will cooperate as agreed and work to keep each other informed of significant competition policy and enforcement developments, and
- That the agencies will consult on competition matters and communicate through regular meetings to exchange information on policy and enforcement priorities.

The C.C.I. is vested with the power to examine the efficacy of whether an agreement falls under the domain of Pay for Delay by analyzing whether they have a negative impact on the competition by imposing harming consumer interest, establishing arbitrary monopoly and affecting innovation. Under Order 23, Rule 3 of the Code of Civil Procedure, 1908, it is enshrined that the Court which has affected the compromise/settlement must pay due regard to the fact as to whether such compromise if a lawful OR unlawful nature.[4]

Moreover, Section 61 read along with Section 60 of the Competition Act expounds that the term “unlawful” has a very wide ambit and with the reason being that these settlements which pertain to Pay for Delay and very varied and diverse in nature and case specific. It is also pertinent to mention that as per Section 32 of the Act, the Commission is also given teeth to have a vast outreach so as to put under its ambit the extra territorial activities of the companies in question and to examine whether their activities could have the possibility of disparaging the competition in India. This stems from the famous case wherein the Commission had to initiate a suomoto enquiry against Unichem Laboratories Ltd., Matrix by

[4]BanwariLal v Chando Devi, A.I.R. 1993 S.C. 1139.

E.C.C. In the Servier case so as to delve into the effects which the conduct of these companies was having on the market.

Australia

As seen above settlement agreements are a common phenomenon in pharmaceutical industries and now the author would portray some facts about such agreements with respect to Australia. Australia has a specific Productivity Commission which finds out the anticompetitive "pay for delay" or "reverse settlements" between originators and generics. The ACCC, that is the Australian anticompetitive regulator will look into the matter as a major issue and companies should be ready to tackle it.

Till now in Australia there has been no case for pay for delay settlement but if they do enter the market they are in all circumstances due to cause some loss to the competition market.Such situations may rise when:

1. Existence of cartel arrangements between generic company and Originator Company wherein restrictions were put up on the generic manufacturer to deal with some goods. The ACCC has already observed that these generic manufacturers are the real competitors in the market and asking them to stop supplying some products is anti-competitive in nature.
2. Apart from such cartel arrangements, there exists pay for delay arrangements which later result in lessening of competition or be in conflict with any of the provision of competition law.
3. There can be agreements wherein a specialized supplier of particular goods is restrained from entering the market and thereby also deterring the competition laws and the provisions of fair competition.

Australia while looking into these pay for delay settlements proposed the formation of a new monitoring scheme but it does not find place in the draft agreement. The productivity commission recommended such a measure because there have been no proof of such anticompetitive settlements in Australia which clearly shows the lack of methods which would monitor such activities and not the total absence of such agreements. With the help of such monitoring schemes, the authorities would get a better picture of the pay for delay agreements thereby dissuading these patent settlement agreements. They would also cover a wide range of agreements regarding those cases which occur outside Australia as well.

A recent development took place in September 2016 that the Australian government was handed over its final report by the commission regarding pay for delay settlements.

Although the Australian courts have not adjudicated many disputes regarding competition law and IP issues but the most relevant here being the 2015 decision brought against Pfizer by ACCC regarding the issue of the initiation of an exclusive supply arrangement with the pharmaceuticals with respect to Lipitor, prior to the expiry of its patent in 2012.[5]

The decision of the court was that pre-patent expiry tie-up of pharmacies, collectively with the making of bundled opportunities and a unique rebate fund available to pharmacists who entered into the special groups and arrangements or associations turned into not a misuse of market laws, because the conduct had been engaged in to enhance the possibilities of pharmacies persevering with to cope with Pfizer and its atorvastatin products in preference to returning straight away to their usual standard provider. The court ruled that the conduct carried on by Pfizer was not with the aim of discouraging or stopping an individual from participating freely the competition in the market, rather was just for making Pfizer an active competition.

A report was submitted by the Productivity Commission on its inquiry into IP settlements in Australia. Here the Productivity Commission raised pay-for-delay or reverse payment settlements as a capability trouble in Australia and recommended introducing a new scheme which would give a broad coverage technique and capable of tracking (administered via the ACCC) for pay-for-delay settlements. The introduction of the sort of regime could require pharmaceutical companies and the originator to resort patent agreement agreements with the ACCC, giving the ACCC extra visibility of the extent to which reverse settlements are being entered into in Australia, and the details of those agreements to be given to the ACCC.

Germany

Germany has well-known case laws which allow patent settlement agreements if the limitationsprovided in an agreement still come under the ambit of the objectives of the patent in issue.

Although there have been none pay for delay cases in Germany but a careful reading of the German laws would make us believe that such settlements are allowed in Germany. Here, the competition law would eagle eye the reach of the patent and on the conjecture that the patent validity is not determined; such a reverse settlement would succeed the antitrust issues. The CJEU abandoned the long drawn German approach and thereby going by the path of the German Federal Supreme Court's decision in the case of *Bayer v Süllhöfer*.[6]In this case the

[5]Australian Competition & Consumer Commission v. Pfizer Australia Pty Ltd,[2015] F.C.A. 113 (Austl.).
[6]Bundesgerichtshof [B.G.H.] [Federal Court of Justice] Sept. 27, 1988,European Court Reports [E.C.R.] 5249, 1988 (Ger.).

court observed that there is no difference between settlements focusing on putting an end to litigation or who have other objectives, also strictly adhering to a stringent formula to fight pay for delay settlements.

The European Commission although shares the ideology of German courts in such settlements which use the non-challenge clauses. In the Süllhöfer case it had advised the use of non-challenge clause and allows such settlements of some patent disputes which are genuine in nature. The Commission observed, "In the context of a settlement agreement, non-challenge clauses are generally considered to fall outside article 101(1) of the Treaty. It is inherent in such agreements that the parties agree not to challenge ex post the intellectual property rights which were the center of the dispute. Indeed, the very purpose of the agreement is to settle existing disputes and/or to avoid future disputes."

Apart from going into litigation tedious methods another effective way to fight patent disputes is by agreements or settlements. In cases of patent settlement where the IP rights in controversy are open to license or cross license in exchange for the pull down of the order of dissolution of the right, are considered correct in the eyes of competition law. The issue is regarding the settlements where there is money or value transfer or in other words the reverse payment from the licensor in exchange of limiting the licensee's access to market, thereby unlawfully restricting competition.

Here, in Germany following the European Union model, these agreements are analyzed on the basis of the Technology Transfer Block Exemption (EU). These are some guidelines which lay down the standards which renders licensing some agreements to be anticompetitive. It is not automatically rendered void rather needs to be assessed carefully. The Commission considers these pay for delay clauses in settlements as undesirable non-permissible in which the licensor entices the licensee to not to attack the patent or obstruct the arrival of a new product in the market, thereby reducing the options in the market and being anticompetitive.

As there is a lack of such cases in Germany, they thereby seek help from European Commission, which has always looked at it very strictly. Agreements of pay for delay nature between generic and originators are criticized to great extent by the Commission.

1. In the case of Lundbeckthe Commission imposed a fine on a pharma company named Lundbeck and some other fines on generic producers. The Commission decided, which was later affirmed by the General court alsothat such pay for delay settlements affect the antitrust rules. The generic companies here agreed with Lundbeck to stay out of competition for some value and other incentives although there was no patent

dispute. Thus, this was a clear picture of restraining competition and they were not justified.

2. In December 2013 the Commission fined American pharmaceutical organisation Johnson & Johnson and Novartis of Switzerland for the belief of an anticompetitive settlement to put off the marketplace introduction of an inexpensive generic adaptation of the painkiller Fentanyl inside the Netherlands, thereby infringing article 101 TFEU. The Fentanyl choice became no longer appealed.
3. Fine imposed by Commission on French pharmaceutical company Servier and five generic producersin the case of Preindopil. They entered into agreements to protectServier's product perindopril, from whatever the price imposed by generics. Servier introduced some patent settlements through which it tried to stop these competitiors from entering the market and stopped the entry of generic medicines, violating article 101 AND 102 of TFEU.

In the seventh report on the monitoring of patent settlements, by European Commission, there is a case of potential risk originating from such settlements where an originator gives values to generics to restrict their entry into competition. But if the settled right has some objective indications and the restrictions imposed remain within the purview of ambiguity then such antitrust provisions cannot strike a hammer.

China

There have been a lack of cases in China regarding such anti-competition law regarding patent settlement disputes and there have been no precedents set in this respect. The law in this area is at its developing stage and therefore its implementation in IPR is difficult. Looking into a settlement agreement intersecting an IP infringement matter, the competition authorities look into whether the person holding the license has violated the monopoly laws either by abusing their dominating position or changing their rates of selling their products. It is observed that while looking into a settlement agreement putting out an IP dispute relating to infringement if the licensor according to competition authorities has violated the Anti-monopoly law by abuse of dominant position, charging exhorbitantroyalties; tie up agreements or exclusive dealing without any proper cause.

Such settlement of IPR disputes in China are new and thus they have learnt to tackle them from EU and US where generally originator pharma companies enter into agreements with generic to pay them some value to monopolise their position in the market.Such an activity is

considered as a horizontal monopoly as it would divide the market or obstruct the introduction of new products.

Another case which came up in China is the Qualcomm case where the company was accused of monopolizing its position. It also abused its dominant position to restrain competition in SEP licensing and chip markets. The following orders were made where it was asked to stop the tie in agreements of non-wireless SEPs and they should stop imposing unreasonable and unfair conditions in agreements of licensee. Such as force payment of royalties, or coercive cross licensing, tie in agreements with regard to potential licensees. Another order was that it should not impose the non-challenge clause on licensees and no such restrictions should be imposed upon any company which is under the control of Qualcomm.[7]

One recent decision in 2016 talked about a similar agreement wherein two companies agreed to fix the price of vitamin C, where the Chinese Ministry of Commerce argued that there was a price fixing formula that had to be agreed upon by the companies and thus there was no antitrust violation. The Judges Panel also agreed to the same.

Switzerland

IP rights agreements comprising of their operation, licensing or transfer when contain some clauses which impose restrictions on competition are considered to be violating the competition law. Although the Swiss law considers them to be lawful only on one condition that they come under the ambit of Block Exemption Regulation and the guidelines of the EU Commission on technology transfer. There has been no swiss decision regarding such pay for delay or reverse settlement disputes in patent pools and such payments are justified if done to solve an actual dispute.

The above mentioned patent pools mean price fixing cartel system composing of interchangeable technologies and it is criticized if it forecloses these alternatives. In the case of Dynamic Currency Conversion[8]the Competition authority decided these patent pools should give licenses related to technology to third parties if these parties depend on such technologies. Such agreements in which a party agrees with another to not to deal with another with respect to a specific product, should always follow the Swiss Competition law. It mainly bases its decisions on the European Model to deal with such issues.

Conclusion and Suggestion

[7]Eleanor Tyler, *Qualcomm's EU Antitrust Appeal Likely to Take a While,* BLOOMBERG LAW(Feb. 06, 2018), https://www.bna.com/qualcomms-eu-antitrust-n57982088418/.

[8]Peter J.Levitas, *Intellectual Property & Anti-Trust,* GETTING THE DEAL THROUGH: KELLERHALSCARRARD(Dec. 02, 16, 09:58 AM), https://www.kellerhalscarrard.ch/upload/prj/employee/GTDT_IPAT2017Switzerland3.pdf.

The brand and generic manufacturers tend to indulge into settlements which aim to end the matters as soon as possible rather than taking these matters to the Court. These settlements include conditions which bar the generics from entering the market or the originator pay them off with huge amount to keep them off the market. These settlements result in anti-competitive practices and the the issue which lies here is how to analyze such anti-competitive settlements which obstruct the generic entry into the market directly affect the consumers and economy of the country. The originator companies pay off the generic drug producers when they challenge their weak patents, thus find an anticompetitive way to keep off other players from the market. Looking at the perspectives of different countries regarding anti-competitive consequences of resolving the disputes out of the court, it is required that pharmaceutical industry should be conscious that the reverse settlement agreements or pay for delay settlements are constantly under the radar of the competition law authorities. This thereby provides that a balance has to be maintained between competition law and patent law and both should go hand in hand.

There is some clarity lacking in the aspect that anti-competitive settlements are different from settlements that aim to enhance the productivity of the firm, where the former should be curtailed but not the latter. None of the countries have a particular system that would deal with the anti-competitive effects of the patent settlements and thus some uniform guidelines should be adopted by all the nations to refer to such matters.