

What Could Stall India's Growing Smartphone Market

India's government questions incentives.



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Few countries have benefitted more than India from the explosion in connectivity provided by modern smartphones. It is no exaggeration to say the smartphone revolution has single-handedly connected a billion people across the sub-continent to each other and the world, erasing one of India's most problematic infrastructure hurdles.

Along with India's remarkable adoption of smartphones has come dramatic increases in handset competition, dramatically increased data rates coupled with dramatically reduced data transmission cost, and dramatically improved features and functions. In 2008, Nokia was the leading handset manufacturer in India by far—with a market share approaching 60%. Today, Samsung holds the top spot while relative newcomer Indian manufacturers Micromax, Intex and Lava and Chinese multinational Lenovo (LNVGY 0.91%) round out the top five spots. Nokia (since acquired by Microsoft, and sold back to Nokia just last month) has fallen to below 10% market share.

As the market has evolved, Indian consumers have enjoyed enormous benefits. Smartphone prices have plummeted, with the average sales price for a smartphone in India in 2014 at around 9,100 rupees—a 44% drop from 2010—and forecasted to fall another 25% to around 6,775 rupees by 2018. Today's Indian consumer can purchase a basic smartphone for under \$10. Smartphones are by far the most technologically sophisticated consumer devices ever developed, and yet they are among the most affordable. Like other consumers around the world, Indian consumers have benefited tremendously from this evolution, with a dramatic 99% decrease worldwide in the average cost per megabyte of cellular data between 2005 and 2013, and 4G network speeds reaching 12,000 times those available on 2G networks.

Given this extremely impressive record of consumer benefits, it would seem unlikely that Indian antitrust regulators would take aim at the key driver of the innovation enabling all of these benefits—intellectual property—questioning whether it is holding back competition in India's mobile telecommunications industry.

But that is exactly what India's regulators have done, with its Department of Industrial Policy and Promotion ("DIPP") publishing (in March 2016) an inquiry directed to the processes for setting standards and licensing intellectual property—specifically patents—for technologies including, prominently, mobile telecommunications. Global technology standards, such as Wi-Fi and Bluetooth, provide interoperability that allows systems and devices to work together—so that today's smartphones can call, text, email and Tweet from anyone in the world to anyone in the world in any location at any time. Standards are generally established by non-partisan groups that assess and balance the contributions and requests of innovators and implementers alike—a

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process that has functioned well for decades. The DIPP inquiry foreshadows potentially major regulatory intercessions, threatening not only to disrupt the balance of the Indian market by favoring implementers of standards while discouraging innovators, but also to put India in the tenuous position of asserting jurisdiction over multinational standard-setting organizations and the intellectual property regimes of other nations.

It is vital to understand that the backdrop against which DIPP's inquiry takes place is marked by strong intellectual property protection and effective standard setting, providing innovators with the confidence necessary to invest in technology improvements. Innovation is an extraordinarily risky undertaking. Estimates peg worldwide investment in mobile infrastructure and R&D at greater than \$1.8 trillion from 2009 to 2013. Without the potential for a return on investment promised by strong intellectual property protection, there is no reason to expect the sort of risk-taking that is a prerequisite to India's enjoying the breakthrough technologies of tomorrow. Indeed, the calls for intercession that prompted DIPP's inquiry originate from competitors who stand to benefit from cheap or free access to others' innovative creations. Doubtful it is that those competitors would have agreed to share in the many failures preceding the successful end-results. There is a name for this behavior: free-riding. While tolerated in the dog-eat-dog world of free-market competition, it certainly is not appropriate for government regulators to become facilitators.

And then there is the global nature of mobile telecommunications and standards development for the mobile industry. Any undertaking by DIPP to regulate patent holders must be viewed through a global lens, since the applicable standards, products, and patents are all inherently global. The adoption of Indian regulations controlling standards-setting would risk having a negative impact on standards development and innovation by hindering cooperation both within India and globally. Furthermore, most patentees own and license patents across many countries and negotiate global license agreements—all of which are governed by the laws of other nations. Any attempt to intercede in the terms upon which non-Indian patents are licensed raises serious extra-territoriality concerns. India has enjoyed the fruits of global innovation in the standards-reliant smartphone industry by remaining in step with global norms, not by stepping outside of them—especially not in ways that threaten to affect the functioning of global industries and the sovereignty of other nations.

With the world watching, India's DIPP must look past the rhetoric that dominates the debate over the role of competition authorities in regulating standards-setting and licensing processes. Calls for intercession are motivated by specific players seeking to advantage a business model that benefits from cheap access to patented technology—technology that was the product of significant investment by innovators. It is impossible to ignore the profound success of India's mobile industry, as measured by any metric—success that was driven by current policies and incentives. Despite the cries of opportunists, the mobile telecommunications industry has increased remarkably in competitive diversity and produced enormous consumer surplus, all against the backdrop of standards-setting processes operating on free market principles. Given the progress India and the world have experienced and continue to experience on the back of the smartphone revolution, it is hard to imagine it being advisable for the Government of India to tamper with the highly successful balance between innovation and marketplace competition that marks the mobile telecommunications industry. It is no exaggeration to say global interconnectivity may hang in the balance.

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