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Interface Between IP Laws and Competition Policy: Safeguard Against Anti-Competitive Activities of IP Owners

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The interface between intellectual property (IP) laws and competition laws is a complex and often contentious area, where the rights granted by IP laws sometimes conflict with the principles of competition law. Intellectual property laws grant exclusive rights to creators and inventors over their creations or inventions. These rights typically include patents for inventions, copyrights for literary and artistic works, trademarks for brands, and trade secrets for confidential business information. The purpose of IP laws is to incentivize innovation and creativity by providing creators with a temporary monopoly over their creations, allowing them to profit from their efforts where whereas Competition laws, also known as antitrust laws, aim to promote fair competition in the marketplace and prevent anti-competitive behaviour by businesses. Price-fixing, collusion, market allocation agreements, misuse of dominant market positions, and mergers that significantly diminish competition are all prohibited by competition laws, which aim to maintain open, competitive, and free markets free from monopolies and unfair practices. In this article, the author attempted to analyse both aspects of the relationship between the laws. We will try to grasp India's viewpoint using case law. The paper then goes on to describe the 'Essential Facilities Doctrine'. It also explains CCI's jurisdiction over intellectual property problems. The paper also outlines measures against anti-competitive behaviour.

Keywords: *intellectual property rights, competition laws, incentivize innovation, antitrust laws, anti-competitive behaviour.*

INTRODUCTION

The traditional approach towards the interface of IP laws and Competition laws depicts a conflicting picture in terms of jurisdiction and scope of these statutes. If we go about this narrow line, we will find a very basic contention between the two, that is the IP laws aim for the right to exclusion and grant a negative right to the owner over the intellectual property as it is right against the entire world but when it comes to Competition laws it tries to maximise production as well as allocation of resources and increase competition in the market. This displays the inherent conflict between these policies. However, with a wider perspective, we would be able to analyse that both of these statutes not only co-exist but also complement each other. In the recent past, such a trend of shift of balance from divergence to convergence has been observed. The competition law and IP law both have a distinct operational area and functions and due to this separation, there is minimum conflict in a market economy. The primary aim of both statutes is to increase market efficiency and consumer welfare.

Intellectual property rights encompass the exclusive privileges granted to the originator or discoverer of creation, allowing them sole usage and enjoyment of their work. These rights extend to inventors and authors, providing safeguards against replication and granting them significant autonomy in how their intellectual property is utilized or licensed. Intellectual property serves as both a crucial catalyst and outcome of productive innovation, playing a pivotal role in nurturing a vibrant, expanding economy through the encouragement of competition in emerging products, markets, and technologies. Consequently, intellectual property is regarded as a prized asset and is subject to robust legal safeguards worldwide.

On the other hand, Competition law functions to uphold market competition, aiming to prevent monopolistic control of production and facilitate entry for competitors. It fosters an atmosphere where market forces operate freely and equitably. Competently crafted and enforced competition laws facilitate the establishment of a conducive business climate, enhancing both immediate and long-term efficiencies. This framework encourages optimal resource allocation and works to deter the misuse of market dominance primarily through fostering healthy competition.

While intellectual property law and competition law share a similar interface, their goals are inherently at odds with one another. However, innovators and artists are granted exclusive or monopolistic rights by intellectual property rights. These monopoly rights may result in significant market power that could be utilized to crush rivalry. The issuance of a right to intellectual property could hinder procedures in competitive markets. Therefore, the primary purpose of the law is to guarantee their coexistence by resolving any conflicts that may occur between competition law and intellectual property rights.

OVERVIEW OF LEGAL PROVISIONS

The legal interface between the competition regime and IPR is set out under section 3(5) of the Competition Act 2002[1]. The provision states as follows:

Nothing contained in this section shall restrict:

(i) 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:

a. Copyright Act 1957[2]

b. Patents Act 1970[3]

c. Trade and Merchandise Marks Act 1958[4] or Trade Marks Act 1999[5]

d. Geographical Indications of Goods (Registration and Protection) Act 1999[6]

e. Designs Act 2000[7]

[1] Competition Act 2002, s 3(5)
[2] Copyright Act 1957
[3] Patents Act 1970
[4] Trade and Merchandise Marks Act 1958
[5] Trade Marks Act 1999
[6] Geographical Indications of Goods (Registration and Protection) Act 1999
[7] Designs Act 2000

f. Semi-Conductor Integrated Circuits Layout-Design Act 2000[8]

[(g) any other law for the time being in force relating to the protection of other intellectual property rights.]

(ii) The right of any person to export goods from India to the extent to which the agreement relates exclusively to the production, supply, distribution or control of goods or provision of services for such export.

A simple reading of the above section is that India's framework for competition guarantees that laws do not aim to interfere with the routine exercise of rights protected by different intellectual property rights (IPR) statutes.

This is not how things are. Legal doctrine has proven without question that Section 3(5) does not just absolve intellectual property rights. The Competition Act 2002[9] also takes precedence over other concurrently applicable legislation, even if competition law does not exclude the implementation of other laws.

In India, the body of jurisprudence pertaining to the substantive issues of the interplay between intellectual property rights and competition law is still developing.

TRIPS PROVISIONS RELATING TO IPR AND COMPETITION LAW

TRIPS can be regarded as a fundamental principle in international law concerning the governance of intellectual property rights (IPR) issues. It has played a crucial role in harmonizing and standardizing intellectual property rights on a global scale. Furthermore, TRIPS includes provisions that regulate IPR within the context of competition policy, prioritizing broader market and consumer welfare interests.

The Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement governs how intellectual property rights (IPR) and competition interface on a global scale. According to

[8] Semi-Conductor Integrated Circuits Layout-Design Act 2000
[9] *Ibid*

Article 8(2) of the TRIPS Agreement[10] and paragraph 1 of the preamble, member states are able to enact measures that are compliant with TRIPS in order to stop rights holders from abusing their intellectual property. In accordance with the 'Doha' declaration, compulsory licenses may be granted under Article 31 of TRIPS in a number of situations, such as public health emergencies, national emergencies, low patent usage abroad, anti-competitive actions by patent holders or their assignees, and general national interest.

Furthermore, restrictive licenses that harm competition can be curbed by members implementing measures like exclusive grant-back conditions, clauses prohibiting challenges to validity, and coercive package licensing, as long as they comply with other Agreement provisions. Article 40 of the TRIPS Agreement,[11] which addresses anti-competitive practices within contractual licenses, makes this possible. Furthermore, members may create restricted exceptions to patent rights under TRIPS Article 30[12]. As 'abuse' is specifically mentioned in Article 8 of TRIPS[13], Article 30 can also be interpreted as a pertinent clause enabling members to address abusive methods in obtaining and using IPRs.

ARES OF CONFLICT BETWEEN IPR AND COMPETITION LAW

The following anti-competitive behaviours highlight the distinctions between IPR and competition legislation by utilizing both of them:

Abuse of Dominant Position: According to Section 4 of the Indian Competition Act 2002,[14] no business is allowed to misuse its dominant position. India has a number of examples that demonstrate the contradiction between competition law and intellectual property rights (IPRs). It was subsequently determined that the Competition Commission of India (CCI) will address these issues in order to remedy them. Aamir Khan Productions Pvt. Ltd. v Union of India[15] made

[10] Trade-Related Aspects of Intellectual Property Rights, art 8(2)
[11] Trade-Related Aspects of Intellectual Property Rights, art 40
[12] Trade-Related Aspects of Intellectual Property Rights, art 30
[13] Trade-Related Aspects of Intellectual Property Rights, art 8
[14] Indian Competition Act 2002, s 4
[15] *Aamir Khan Productions Private Limited v Union of India* WP 358 and 526/2010

this claim. The CCI went on to state that intellectual property laws do not completely supersede competition law.

Refusal to Grant a License: This idea is founded on the complementing objectives of competition law and intellectual property law. Although the right holder cannot forbid its development, they can stop others from abusing the legally granted, limited-duration right. This element of the link between IPR and competition law was covered in the case of Entertainment Network (India) Limited v Super Cassette Industries Ltd[16]. According to the ruling, the copyright holder enjoys freedom of monopoly, but if the terms are too harsh, it would be tantamount to rejection. It was thought that this license refusal was anti-competitive.

Excessive Pricing: Refusal to grant a license has a tight relationship with the ideas of predatory pricing and exorbitant prices. The Monopolies and Restrictive Trade Practices Act, 1969 (MRTP Act) [17]classifies predatory pricing as a restrictive trade practice. However, overpricing patented goods does not violate any laws pertaining to competition. CCI found that pricing differentially for the same product under different types of licenses is typical in any industry after looking into a number of cases. To create a level playing field for emerging industries, it is imperative to achieve a balance between IP protection and competition-related policies in all markets.

Tying Agreement: The Competition Act's S 3(4) forbids tying agreements. In this scenario, a seller consents to sell a very useful good or service, but only if the customer also buys a less useful good or service[18]. In summary, while the goals of antitrust and patent laws may not always align, they are complementary and share the shared objective of promoting innovation, industry, and competition.

COMPLEMENTARY NATURE OF IP LAWS AND COMPETITION LAWS

Typically, intellectual property rights (IPRs) are viewed as exceptions within the realm of Competition Law. This stems from the prevailing notion that competition laws should generally refrain from intervening in market dynamics, as it is believed that such interventions might

[16] *Entertainment Network (India) Limited v Super Cassette Industries Ltd* Civ App No 5114/2005
[17] The Monopolies and Restrictive Trade Practices Act 1969
[18] Competition Act of 2002, s 3(4)

dampen incentives for innovation—something that IPRs aim to safeguard. This enforcement stance is particularly wary of competition authorities intervening in cases of exclusionary practices by one competitor against another unless there is evidence of harm to consumers.

However, the foundational principles of prevailing approaches, particularly those advocated by jurisdictions with strong patent systems, regarding the interface between patents and competition, emphasize that the incentives to innovate fostered by the patent process are vital and should be upheld, regardless of developmental considerations. Under this perspective, Competition Law is primarily utilized to regulate or adjust the exploitation of patents and the rewards granted to patentees. Nevertheless, contemporary literature increasingly questions the assumed strength of the link between patent protection and innovation incentives.

Competition Law permits only 'reasonable restrictions' by IP holders in exercising their IPRs. To harmonize both legal frameworks toward the shared objective of fostering innovation and to delineate the boundaries beyond which the exercise of IPRs could potentially harm competition, policymakers in inexperienced jurisdictions have formulated specific policy guidelines regarding the application of competition/antitrust law to IP licensing. Furthermore, courts and competition authorities have established significant precedents through adjudicatory actions, aiming to reconcile the interface between IPRs and competition.

Most commonly, competition-related concerns regarding IPRs arise due to the 'abuse of dominance.' Cases concerning Standard Essential Patents (SEPs) and licensing under Fair, Reasonable, and Non-discriminatory (FRAND) terms are frequently addressed within the purview of Competition Law. Subsequent sections will discuss specific case examples in this regard.

ESSENTIAL FACILITIES AND REFUSAL TO DEAL

A building or infrastructure that is necessary for competitors to be able to offer their consumers services is known as an essential facility. When the owner(s) of an ‘essential’ or ‘bottleneck’ facility is required to grant access to that facility at a ‘reasonable cost’ is known as the ‘Essential Facilities Doctrine’ (EFD). The concept of necessary facility differs greatly throughout legal

systems since there isn't a single, widely accepted definition of it. In MCI Communications Corp. v AT&T, the Seventh Circuit Court established the four requirements required to make a claim under the essential facilities theory for the first time[19]. Here, AT&T, a powerful telco, declined to link MCI to Bell operating companies' local distribution centres, so restricting the services available. The court held that 'A monopolist's refusal to deal under these circumstances is governed by the so-called essential facilities doctrine. Such a refusal may be unlawful because a monopolist's control of an essential facility can extend monopoly power from one stage of production to another and from one market to another. Thus, the antitrust laws have imposed on firms controlling an essential facility the obligation to make the facility available on non-discriminatory terms.'[20]

The idea that a facility's owner has monopoly power is the foundation of the essential facility notion. When the owner of the 'facility' does not have monopoly power, it is incorrect to apply the necessary facilities theory because antitrust laws and remedies cannot be applied in the absence of monopoly power. The discipline imposed by such competition will be sufficient to govern the facility owner's behaviour if the facility must compete for users with other goods or services that are viable alternatives to access the facility. Furthermore, the market for the service that the excluded claimant is pursuing must be the same as the market in which the facility holds a monopoly.

Linking rewards for invention to the value of the creation is an important and desired feature of legal systems that protect intellectual property. The owner of intellectual property is granted a monopoly. In the rare instances when a single word is sufficient to grant monopoly power to the owner of the exclusive rights to the production, monopoly power must be tolerated under patent, copyright, and other intellectual property systems. In order to crush competition, a monopolist in the market is more likely to misuse his dominant position. This can be achieved by simply refusing to supply the good to rivals. Refusing to deal in this way can be abusive and anti-competitive.

[19] *MCI Telecommunications Corp. v American Telephone & Telegraph Co.* [1994] 512 US 218
[20] *Ibid*

TECHNOLOGICAL TYING AS A REFUSAL TO DEAL

One tactic a monopolist may use to reduce competition in the market is technological tying, often known as the refusal-to-deal approach. Technological tying occurs when a monopolist creates a product that can only be utilized in tandem with its own complimentary items. When it comes to the way the courts handle cases involving technology tying in specific, as well as cases involving tying in general, it is critical to comprehend why a company could decide to tie electronically and the conditions under which customers might profit from such behaviour. In the recent Microsoft trial, the software company was accused of electronically linking its browser (Internet Explorer) to the Windows operating system. These verdicts from district and circuit courts make this especially true.

It was discovered that Microsoft dominated the PC operating system market. Following a five-year investigation on a Sun Microsystems complaint, the European Commission declared on March 24, 2004, that Microsoft had broken Article 82 of the EC Treaty[21] by declining to license key data on its Windows operating system to competitors. Sun Microsystems was unable to get its work group server operating system, Solaris, to function with Windows-based personal PCs. Sun sought information on the Windows TM interface from Microsoft in an attempt to resolve this issue, but the company turned it down. Nevertheless, two weeks following the Commission's ruling, Sun Microsystems and Microsoft came to an agreement to make their operating systems software compatible and to pay royalties for each other's technologies. Microsoft contended that any mandatory licensing policy would negatively impact its investment incentives. The commission stated that the question of whether the obligatory access will hurt the industry's overall investment incentive—rather than the dominant firm what matters when determining whether or not it should be implemented. Mandatory licensure was anticipated to raise the motivation for Microsoft's competitors to spend money on workgroup server solutions.

Microsoft and the commission conversed about the pricing concerns as well. Additionally, Microsoft maintained that the reason for the market acceptance of its Internet Explorer browser

[21] Treaty establishing the European Community 1957, art 82

was its superior product. On the other hand, critics of Microsoft claimed that Internet Explorer benefited from Microsoft's exclusive practices related to the distribution and use of its widely used Windows operating system, including the technological tie of Windows and Internet Explorer.

In this instance, the European Court of Justice (ECJ) contended that abuses may occur in different situations and that EC judgments do not fully define the term 'abuse of dominant position'. Furthermore, the Commission argued that any intellectual property rights did not cover Microsoft's protocols. Regarding this, the court first reiterated that there must be extraordinary conditions in order for a dominant party's simple refusal to license its intellectual property rights to be considered abuse.

Finally, the court dismissed Microsoft's last argument, which claimed that the existence of IPRs objectively justified its reluctance to enter into a settlement. It pointed out that Microsoft had not shown that its capacity for innovation was diminished, nor that the existence of IPRs alone provides an objective justification.

INDIA'S POSITION: CASE LAWS

The conflict between intellectual property rights (IPR) and competition has been the subject of numerous judicial rulings. The legal notion that the Competition Commission of India (CCI) has jurisdiction over situations concerning competition when dealing with IPRs has been established by courts in a number of cases. For example, the Bombay High Court decided in the IPR case of Amir Khan Productions (P) Ltd. v Union of India[22], upholding the CCI's statutory power to hear cases involving both IPR and competition law. The court further underlined that any matter presented before the Copyright Board can be handled by the CCI. This demonstrates the ability of Indian courts to manage situations containing the complexity of both intellectual property rights and competition.

[22] *Aamir Khan Productions Private Limited v Union of India* WP 358 and 526/2010

Section 3(5) [23] serves as a comprehensive provision that underscores the dynamic interaction between intellectual property rights (IPR) and competition law, offering broad protection for actions taken to safeguard an IPR without constituting an anti-competitive measure. It allows for intervention only in cases where there is abuse of a dominant position leading to a significant adverse impact on the competitive market.

In the case of Microfibres Inc. v Girdhar & Co.[24], the court established the priority between Copyright, an intellectual property right (IPR), and competition policy. It ruled that the legislature's intention was to grant supremacy and enhanced protection to original artistic works under the Copyright Act while affording lesser protection to activities primarily of a commercial nature. Consequently, the legislature clearly articulated the fundamental principle that original artistic works hold a higher standing compared to commercial activities. However, the evolving market structure and instances of dominant market positions compelled the Competition Commission of India (CCI) to scrutinize any anti-competitive behaviour involving the abuse of dominance and the formation of cartels within the film industry.

The Supreme Court in Entertainment Network (India) Ltd. v Super Cassette Industries Ltd.[25], elaborated the interface between the IPR and the competition law on competition in the market. It very aptly described the refusal to deal with the principal, based on abuse of dominance, as an anti-competitive activity that is covered under the ambit of competition law. Although it recognized the absolute right and monopoly of the author on the copyrighted work, but limited the same by restricting it from any transaction that unreasonably taints or limits competition, leading to refusal.

CONCLUSION

From the extensive research that has been laid out, it is very likely that a middle path is being developed through the reading of statutes and the interpretation of statutes through court rulings, rather than studying both laws separately, in order to secure incentives for intellectual

[23] Competition Act 2002, s 3(5)
[24] *Microfibers Inc. v Girdhar & Co. & Anr* (2009) SCC OnLine Del 1647
[25] *Entertainment Network (India) Limited v Super Cassette Industries Ltd* Civ App No 5114/2005

property holders without compromising the welfare of consumers. The substantial study that has been done on the relationship between competition law and intellectual property rights has established a number of guiding concepts. Firstly, IPR shall not be subject to umbrella regulations. Interference with it should only occur when it negatively impacts market competition. Second, businesses handling intellectual property rights must be appropriately regulated to prevent any market strength concentration that could lead to misuse.

Thirdly, there needs to be adequate authority granted to the Competition Commission of India to make decisions in matters involving IPRs that impact competition. Fourth, the CCI's authority will be expanded to include complaints involving exorbitant prices as well as cases when the parties refuse to negotiate for petty or arbitrary reasons. The aforementioned debate suggests that understanding intersections between intellectual property rights and competition laws is directly related to either the goal of promoting competition or, in the case of the former, innovation enhancement. Formulating and implementing regulations both inside and outside of intellectual property laws—that is, substantive competition law—in a way that effectively fosters dynamic, competitive markets is the primary obstacle to achieving both consonance and fair market regulation.

As was previously mentioned, IPR law's pro-competitive stance encourages competitiveness. It is preferable to interpret IPR law in a way that promotes competition over undermining the validity of these rights. Legislation should be the foundation for extending intellectual property rights, not interpretation. In order to have a correct and coherent understanding, intellectual property rights (IPR) must be set in a way that supports market competition. Competition law tries to address the means and scope of exercising such rights, while intellectual property deals with the granting and operation of exclusive rights. Competition law should limit its attention to how the use of such exclusive rights affects the relevant market. Making general policies and specific policies should be kept apart. Such distinction is essential to achieving the goals set forth in the relevant laws. In conclusion, it is important to preserve the distinction between an economic and legal monopoly while coordinating the interaction between the two laws. Legal monopolies are covered by the IPR-related legal system, although competition law is responsible for the latter.