
INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

Relation between Competition Law and IPR**Abstract**

The Competition Law and the IPR function differently, and their relationship must be more consistent. This Article talks about the relationship between Competition Law and IPR. It has been divided into phases, the phases describe how the various agreements and legislations helped India to reduce the gaps and conflicts between both laws. It states how both these laws complement each other.

Keywords

Intellectual property, copyright, patent, trademark, TRIPS, Section 3-ICA

Introduction

Competition laws and Intellectual Property Law work in different directions and have been designed to achieve other objectives. Therefore it is essential to comprehend the functioning of competition and Intellectual property laws.

Competition Law helps to regulate the activities which make an anti-competitive and hence make an unstable market and hamper it. At the same time, IPR lends the rights of monopoly to the holder. These contrasting regulations of both laws create a conflict of interest between the Competition law and IPR.

Here, the IPR helps the holder obtain and hold the monopoly rights, making it difficult for other players or competitors to enter the market. The sole holder moves towards monopoly, and the other players cannot even offer their products and services in the market, reducing competition. Therefore the Competition Laws have been enacted to put a check on the powers of monopoly which have been granted to the holders under the statutes.

But also, the intents of the IPR have mainly been acknowledged by the Competition Act of 2002. And therefore, such a balanced approach will help construct both the statutes of IPR and Competition laws harmoniously.

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Background:

The Competition Act of 2002 was sanctioned for the liberalization and efficiency of the economy. It was enacted to promote justice on various fronts, like social, political, and economic justice. It was ordained to rectify and balance out the mischief of the MRTP Act and the various TRIPS compliances. Section 3(15) has an exception clause for the agreements under IPR and promotes innovation and novel ideas in the market. And Section 4 mentions the regulation of the acts which lead to misuse of the power and abuse of the market.

The MRTP Act exhaustively listed out Monopolies and Restrictive Practices that were not performed by the organizations and had penal actions. Therefore, the Competition Act was brought forward and enacted in 2002, which had one primary objective of regulating the activities, agreements, and arrangements which affected the competition at a macro level.

Competition Act of 2002, therefore, has clauses of anti-competitive arrangements and agreements which regulate and restrict the activities which affect the “Healthy Competition” within India.

It also considered the Appreciable adverse effect of competition, where arrangements or agreements that cause abnormal results or hamper the competition within India will be prohibited and remedied.

Precedents showing the interface between both laws:

*Entertainment Network Limited v. Super Cassette Industries Ltd.*¹ The court observed that the copyright owners could monopolize the market. Still, it also observed that this right is not absolute as it may create hindrances in the market and violation of competition laws.

Aamir Khan Productions Pvt. Ltd. v. UOI., in this case, law, it was observed that the issues related to competition law and IPR could come under the CCI’s jurisdiction, and it was also held that the IPR is a statutory right but not sovereign.

¹ Entertainment Network Limited v. Super Cassette Industries Ltd., 16 May, 2008

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Meaning:

- COMPETITION-

Competition is a condition that indicates a gain or win by defeating or establishing a superior position over others.

In layperson terms, Competition refers to a contest, a rivalry, or an opposition that establishes a superiority or supremacy in a particular area, just like a tournament in sports.

The term 'Competition' has not been defined in the Competition Act 2002. Although in legal jargon, World Bank and the OECD have defined Competition as-

“A situation in a market in which firms or sellers independently strive for the buyers’ patronage to achieve a particular business objective, for example, profit, sales, or market share.”

- INTELLECTUAL PROPERTY RIGHTS-

Intellectual Property Rights are the rights given to people based on creations crafted from their minds. These rights usually provide the creators an exclusive right over their product.

The rights are based on the intellect of the individuals. It delivers rights to novel inventions, original artistic works, brand logos, etc.

Intellectual Property is of different kinds:

1. Copyright
2. Patent
3. Trademark
4. Geographical Indication
5. Design
6. Semi- Conductor Integrated Circuits Layout Design
7. Trade Secrets

Provisions of the Competition Act mentioning IPRs-

Section 3 of the Competition Act provides for regulating and managing Anti-Competitive Agreements. It states that any agreement concerning the production, distribution, supply, storage, or control of goods or provision of services which likely may cause an appreciable adverse effect on competition within India will be void as per the Legislation.

The proviso of Section 3 provides for some exceptions, which are stated in Section 3 (5). It says that nothing in the section will restrict any rights of any person supplied to them under the following Legislations-

1. Patents Act, 1970
2. Copyright Act, 1957
3. Trade and Merchandise Marks Act, 1958
4. Trademarks Act, 1999
5. Designs Act, 2000
6. Geographical Indication of Goods (Registration and Protection) Act, 1999
7. Semi-Conductor Integrated Circuits Layout Design Act, 2000
8. Any other law relating to Intellectual Property Rights.

Some of the case laws involved in a showcase of this relation are:

Valle Peruman and Ors. v. Godfrey Phillips India Limited is a case where the courts observed that competition could be infringed and disturbed by all kinds of IPR, including the trademark.

*Kingfisher v. Competition Commission of India*², in this case, the court held that the competition laws could not put a barrier on the other prevailing rules.

In the case of *FICCI Multiplex Association of India v. United Producers Distribution Forum*³, it was stated that the rights of the copyright holder are statutory but not absolute but qualified.

Two Mechanisms of Economic Mechanism

² Kingfisher v. Competition Commission of India, Laws(BOM)-2010-3-261

³ FICCI Multiplex Association of India v. United Producers Distribution Forum, 25 May, 2011

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- **Regulated market system:**

Under this system, businesses and all trade activities are governed by some regulatory authorities controlled and managed by the government. There is a check and balance for the powers in the market, so misuse of the energy in the market through different laws and legislations. Through this system, the producers produce standard goods and help contribute to society and the development and growth of the economy by reducing the misuse of power.

- **Free Market System:**

In this market system, the government has no role; it only scratches away the monopolistic behaviors and attributes of the producers and manufacturers. The manufacturers only identify the demand for the product, the quantity of the product, and whom to select as the target market and make pricing decisions. In this form of need, there is a chance of misuse of power by the manufacturers as there is direct contact between the manufacturers and consumers.

Objectives of Competition Law and IPR

The objectives of both Competition Law and IPR are different and conflict with each other. IPR provides holders access to their exclusive legal rights, such as monopolies, by using copyrights, trademarks, and patents for new inventions or novel ideas. And these objectives come in the path of the goals of Competition Law which are working towards healthy competition in the market.

The word competition is taken differently in both competition law and IPR. In IPR, competition among the top innovators is encouraged, and competition among others is restricted in ways; still, in competition laws, competitiveness is among the producers and manufacturers of the market who help make the economy grow.

Also, Article 10(b) of the Paris Convention states that any act contrary to the honest principles of competition and industrial matters will be termed unfair competition.

Competition Law and IPR: A Comparison

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The relationship between the Competition Law and IPR is always taken to be a conflicted one, but in reality, both of them complement each other well. The IPR gives the holder the right to be above the other competitors and exploit his product commercially for a definite period. The Competition law does not annul this monopolistic behavior, but it does put a barrier on the misuse of power by the monopoly holder and violation of anti-trust. But in these years, many acts and laws have been acted out to make these laws go hand in hand and for smooth functioning.

TRIPS Agreement:

The Trade-Related Aspects of Intellectual Property Rights (TRIPS) is an international agreement initiated by the WTO. During the meetings for these agreements, many countries delivered their problems about the abuse of the competition law due to the power of the IP holder. Article 40 and Article 40.2 state the disadvantages of licensing practices and the abuses the IP power holder can do with the counter. It also provides some anti-competitive practices; these provisions are permissible rather than prescriptive and are not exhaustive.

Also, Article 31 of the agreement mentions compulsory licensing in periods of national emergency or extreme situations and also for anti-competitive practices.

Competition Law and Patent Law:

The Patent Law acts as the helper of the Competition Law. It helps the Competition law to make an ideal market by preventing the unauthorized trade of patented products. It goes against the interest of competition laws only when the use of the patent rights is improper by the IP holder. In this case, giving the patent rights is not the problem; misuse of those rights will violate the Competition Laws. It also says that Patent rights are only for a definite period and therefore do not contradict the objectives of Competition Laws as there will be no misuse of monopoly.

So here it can be said that the laws, Competition Laws and IPR, supplement each other rather than conflict or contradict each other. This relationship has been growing in India and is slowly advancing and progressing.

Conclusion

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Competition Laws and IPR have different goals and objectives. Still, it can be concluded that India has taken various and numerous steps by bringing various legislations and Acts to make both these laws go hand in hand, and there are reduced or no conflicting interests.

The IPR gives the exclusive rights of monopoly to IP holders, and the Competition Laws act as a check and balance on the power of these exclusive rights.

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