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INVESTIGATING THE INTERSECTION BETWEEN INTELLECTUAL PROPERTY RIGHTS AND COMPETITION LAW IN INDIA

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INTRODUCTION

The convergence of competition law and IPR has gained prominence in recent years, particularly with the advancement of technology and innovation. While competition law endeavors to uphold fair competition and deter anti-competitive conduct, IPR aims to stimulate innovation and originality by bestowing exclusive rights upon creators and innovators.

Nonetheless, instances arise where the exercise of intellectual property rights could impede competition. For instance, if a company wielding a dominant market position utilizes its patents or copyrights to unjustly exclude competitors, it may constitute anti-competitive behavior. In such cases, competition authorities intervene to ensure a delicate equilibrium between safeguarding intellectual property rights and fostering competition.

Likewise, mergers and acquisitions involving firms possessing substantial intellectual property assets may raise competition apprehensions. Competition authorities may scrutinize such transactions to ascertain whether they might detrimentally impact competition by curbing innovation or restricting consumer options.

In essence, striking a balance between safeguarding intellectual property rights and deterring anti-competitive conduct is vital for nurturing innovation, enhancing consumer welfare, and preserving a competitive marketplace. Achieving this equilibrium necessitates meticulous deliberation and cooperation between competition authorities and holders of intellectual property rights.

A conflict arises between IPR and competition law, as IPR grants exclusive rights that may result in monopolistic behavior, conflicting with the aims of competition policy. While it's essential to incentivize inventors and creators, maintaining market competitiveness is equally vital. However, there are instances where they complement each other, as IPR stimulates

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technological innovation, leading to increased product diversity and dynamic market growth, which aligns with competition policy objectives.

Market regulation employs diverse mechanisms, including both free market and regulated operations, to reconcile the interests of innovation and competition, fostering their mutual development within the marketplace.

INTELLECTUAL PROPERTY LAW AND COMPETITION LAW

In the past, IPR and competition law were viewed as separate domains. IPR laws acted as mediators, seeking to strike a balance between the rights of owners and societal interests within each nation's trade and economy. They provided protection for intangible assets like trademarks, patents, inventions, and creative works, shielding them from unauthorized use without the owner's permission. Conversely, competition law focused on regulating market dynamics by promoting competition and looking after the appreciable adverse effect on competition along with consumer welfare and overseeing mergers and acquisitions.

However, this perspective has evolved over time. Both IPR and competition law are now employed together to govern market dynamics. They serve to enhance consumer welfare and facilitate the transfer of technologies. Together, they are instrumental in maintaining a lively and competitive marketplace.[2]

IPR represent the set of entitlements held by creators of various innovative inventions. When an individual conceives an innovation, they are granted complete ownership rights over that creation. IP acts as a motivational tool for individuals to generate further innovative ideas, setting their creations apart from others', and expanding consumers' options for goods and services.

IPR serves to safeguard the legal rights of these inventive owners who produce a variety of designs, symbols, images, and other elements utilized in commercial and trade contexts. The exclusive right to utilize these creations is bestowed upon the sole owners.These rights are categorized into two primary groups: industrial properties and copyrights. Industrial properties encompass patents for industrial designs, service marks, trademarks, and similar entities, while copyrights cover artistic and literary works. Copyright regulations protect the rights of owners of novels, poems, musical compositions, plays, films, and all other literary and artistic works, including drawings, paintings, architectural designs, sculptures, photographs, and more.

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[2] Lianos, I., & Dreyfuss, R. C. (2013). New Challenges in the Intersection of Intellectual. Property Rights with Competition Law. A View from Europe and the United States.

Competition law oversees market operations with the goal of promoting competition while thwarting the emergence of unauthorized monopolies. It upholds fair trade and business conduct by discouraging anti-competitive practices among companies. Through the surveillance of market policies and regulations, it aims to prevent the adoption of unfair marketing tactics, thereby enabling producers to engage in business activities fairly and empowering consumers to freely exercise their choices.

This legal framework prohibits unethical behavior by any business entity, irrespective of its size. Adherence to the stipulations of competition law is obligatory to ensure smooth business operations devoid of obstacles. Various countries have outlawed a range of anti-competitive behaviors, including price fixing, bid rigging, predatory pricing, and dumping.

A significant goal of the competition law is to foster competition among aspiring innovators, encouraging them to develop fresh inventions. It's widely recognized that there's often a conflict between IPR and competition law. This arises from the necessity to define limits within which competitors can exercise exclusive legal rights (monopolies) over their inventions. These monopolies frequently clash with principles advocating for equitable market access and fair competition, especially those focused on curbing horizontal and vertical restrictions or preventing the misuse of monopoly power.

A key aim of the competition law is to promote competition among emerging innovators, motivating them to create new ideas. There is a well-acknowledged conflict between IPR and competition law, primarily due to the need to establish boundaries for competitors' exclusive legal rights (monopolies) over their inventions. These monopolies often contradict principles advocating for fair market access and competition, particularly those aimed at limiting horizontal and vertical constraints or preventing the abuse of monopoly authority.

"COMPETITION" –IPR VS. COMPETITION LAW

The contrast in the interpretation of 'competition' between IPR &competition law is marked. In the realm of IPR, issuance of licenses primarily serves the dual purpose of fostering competition among potential innovators while also exerting regulatory control over competitive dynamics through various mechanisms. These licenses are bestowed upon owners for a designated period, after which the individual's exclusive rights expire, transitioning the intellectual property into the public domain and thereby concluding the competitive aspect.[3]

[3]Azyu, H. P. (2020). A Study of Competition Law and IPR.

Conversely, within the domain of competition law, the fundamental aim is to combat abusive practices prevalent in marketplace, foster & sustain a climate of competition, and guarantee that consumers have unfettered access to a wide array of products characterized by reasonable pricing and heightened quality standards.

Exploring IPR and competition law reveals an initial perception of contrasting objectives. Initially, they may appear incompatible, seemingly at odds with each other. However, despite potential overlaps in principles, they ultimately converge towards a common goal. Both IPR and competition law are primarily focused on safeguarding consumer welfare, promoting access to high-quality goods and services, and nurturing innovation within the market economy.[4]

IPR grants holders the exclusive privilege to utilize their products for a specified duration. During this period, patent owners enjoy full autonomy to exploit and monopolize their innovations. Such dominance, under the purview of IPR, typically does not violate antitrust regulations.

To grasp the complexities arising from the interaction of IPR & competition law, it is essential to examine legal framework within specific jurisdictions, such as India. Understanding how competition is defined and structured within Indian legislation provides valuable insights into how potential conflicts between IPR and competition regulations are identified and addressed.

INTELLECTUAL PROPERTY RIGHTS UNDER THE COMPETITION ACT, 2002

i. Tie In Arrangements

- Section 3(4) of the Indian Competition Act, 2002, was implemented to forbid tying agreements, which arise when a seller links the sale of a desirable product or service to the buyer's purchase of another, typically less desirable, product from the same seller.
- This provision is designed to encourage innovation, a core objective of IPR, while simultaneously promoting competition within the market economy.[5]

ii. Protection of Intellectual Property Rights Holder

[4] Sumanjeet, S. (2010, December). Intellectual Property Rights and Their Interface with Competition Policy: In Balance or in Conflict?. In *Communication Policy Research South Conference (CPRsouth5), Xi'an, China*.

[5] Gallego, B. C. (2010). Intellectual property rights and competition policy. *Research Handbook on the Protection of Intellectual Property under WTO Rules*, 226.

- Section 3(5) was introduced to protect the rights of IPR holders, affirming that competition law respects IPR rights. However, upon further scrutiny of Section 3(5) in conjunction with Section 4, it is apparent that it also acts as a check on IPR holders from exploiting their dominant position. Should such exploitation transpire, competition law comes into effect.
- This observation indicates that instead of contradicting, these sections harmonize, functioning together to maintain an equilibrium between safeguarding IPR rights and averting the abuse of dominant positions.

In the ***Valle Peruman and others v. Godfrey Phillips India Limited (2005)***[6] case, the Supreme Court examined the matter of trademark misuse, specifically when a trademark owner alters or distorts it. These actions were classified as unfair trade practices related to trademarks. In its ruling, the Supreme Court considered India's competition policy and underscored that various types of intellectual property can potentially violate competition regulations. Additionally, the court emphasized that while a trademark owner possesses the right to utilize their trademark, this usage must be reasonable and comply with any conditions set forth at the time of patent grant.

In the case of ***Aamir Khan Production Private Limited v. The Director-General (2010)***[7], the Bombay High Court affirmed that the Competition Commission of India has the authority to investigate issues pertaining to both competition and IPR. This stance was upheld by the Competition Appellate Tribunal in the Kingfisher v. Competition Commission of India (2012) case. The tribunal clarified that Section 3(5) does not limit the right of IP rights holders to pursue legal remedies for copyright, trademark, patent, and other infringements. Additionally, it was established that the CCI is empowered to handle cases referred to it by the Copyright Board. Thus, competition law does not hinder the application of other legal statutes in such circumstances.

iii. Abuse of dominant position

Section 4 aims to prevent the abuse of dominant positions, but it does not forbid the mere existence of such positions. Instead, it includes an exception for IPRs. This exception is justified for several reasons:

1. IPRs granted to holders may not always lead to monopolies in the market.

[6]Writ Petition (civil) 567 of 1994.
[7]WRIT PETITION NO. 358 OF 2010

2. Even if IPRs confer a dominant position, it does not automatically imply the abuse of market power; such abuse must be proven.

Section 4(2) outlines how enterprises should be treated if their actions are deemed abusive, and this provision equally applies to IPR holders. Sec. 4(3) deals with restraining any infringement of or imposition of conditions to protect one's Intellectual Property Rights granted by IPR laws. These laws encompass the Copyright Act, 1956; The Designs Act, 2000; the Patents Act, 1970; the Semiconductor Integrated Circuits Layout-Design Act, 2000; and the Geographical Indications of Goods (Registration and Protection) Act, 1999.

In conclusion, it can be inferred that both IPR and competition law can coexist harmoniously. Their objectives complement and supplement each other, operating independently without undue interference in each other's domains.[8]

PATENT LAW AND COMPETITION LAW

Patent law complements competition policy by promoting fair market practices, primarily by prohibiting the unauthorized production and sale of patented products, a key objective of competition policy. Competition concerns arise when a patent holder uses their innovation in a manner contrary to the goals of patent rights.

Granting rights to a patent holder does not inherently violate antitrust laws, but the misuse of these rights can contravene antitrust policies. Patents typically have a fixed duration, typically twenty years from the filing date. Extending these rights indefinitely would lead to monopolistic abuse, stifling competition by limiting product invention or innovation.[9] Competition law intervenes when exclusive rights are granted to a patent holder, preventing others from entering the market, and aims to address adverse market conditions.

SCOPE OF PENALTY

The CCI is tasked with ensuring that IPR agreements do not contain unreasonable conditions, as stipulated in Section 3(5). The CCI possesses the power to penalize any rights holder, business group, or enterprise found to have incorporated such clauses in their agreements. The Penalties are capped at ten percent of the average turnover for the preceding three financial years. In instances where the enterprise is a 'company', the directors may also be held responsible for including such provisions.

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[8] Gallego, B. C. (2010). Intellectual property rights and competition policy. *Research Handbook on the Protection of Intellectual Property under WTO Rules*, 226.

[9] Krishna, K., & Philip, S. (2015). The Path to Innovation: An Amalgamation of Patent Law and the Dynamic Competition Regime. *Christ ULJ*, *4*, 89.

Individuals or entities found culpable of including unreasonable clauses may face penalties and other forms of punishment. Moreover, the Commission is authorized to undertake the following actions:

1. Direct the parties to terminate the agreement and prevent them from entering into similar agreements in the future.
2. Mandate the modification of agreements to eliminate unreasonable clauses.
3. Instruct the concerned enterprises to adhere to the Commission's directives, including covering any associated costs.
4. Issue appropriate orders or directives deemed necessary by the Commission.

Additionally, under Section 4 of the Indian Competition Act, 2002, the Commission is empowered to mandate the division of an enterprise if it is found to be abusing its dominant position. This underscores the interdependent relationship between IPRs and Competition Law. Competition laws play a crucial role in safeguarding consumers from the adverse impacts of unreasonable conditions imposed during the exercise of IP rights.

LICENSING UNDER IPR

IPR and competition law work hand in hand to stimulate innovation by safeguarding the rights of intellectual property owners. This encourages individuals to create new inventions, fostering a robust and competitive marketplace. These legal frameworks are crucial for economic activity and market competitiveness, especially as digitalization and intangible assets become more prevalent in today's economy. Consequently, the application of IPR and competition laws has become more widespread in our daily lives.[10]

To bolster the protection of intellectual properties, licensing arrangements governed by IPR and competition law have become increasingly common. Such licenses enable IP owners to leverage their innovations, providing them with incentives to pursue new ideas and invest in further developments.

Article 31 of the TRIPS Agreement outlines circumstances where compulsory licenses may be granted, including those related to public health, national emergencies, and anti-competitive practices. This underscores the need to balance IPR protection with broader societal interests.

The interconnection between competition policy and IPR gives rise to various implications that require careful consideration. Regulatory bodies responsible for competition policy

[10] Yang, G., & Maskus, K. E. (2001). Intellectual property rights and licensing: An econometric investigation. *Weltwirtschaftliches Archiv, 137*(1), 58-79.

should evaluate each case involving IPRs with precision, taking into account the complex dynamics at play. Furthermore, abuse of dominance laws may extend to IPRs, necessitating appropriate remedies to address any potential misconduct.[11]

INTERLINK BETWEEN INTELLECTUAL PROPERTY LAW AND COMPETITION LAW

As the commercial landscape evolves, an intertwining of IPR and competition law has become apparent. IPR safeguards the rights of intangible asset owners by granting them exclusive rights over innovations such as trade secrets, trademarks, patents, and creative works. In contrast, competition law aims to safeguard commercial markets from anti-competitive conduct, ensuring consumers can freely choose among various brands.

Distinctive trademarks and product designs allow consumers to distinguish between products, a feature ensured by Intellectual Property Rights Laws. These laws prevent individuals from replicating trademarks owned by specific brands, as exclusive rights are vested in the trademark holder. Consequently, both IPR and competition law collaborate to uphold fair competition, deterring any unfair practices by individuals or businesses.[12]

IPR and competition law face complexities, particularly regarding non-differentiating features of brands like business or trade secrets, which contribute to a business's uniqueness. In such instances, IP laws may struggle to protect rights without potentially granting a monopoly. Conversely, Competition Law opposes extending Intellectual Property Laws excessively onto various business facets.

This nuanced scenario may lead to significant issues in commercial environments if IP laws are not enforced, potentially resulting in reduced competitiveness among businesses. Without IP law protection, businesses may struggle to maintain their distinctiveness, leading to imitation and product duplication by competitors. This could upset the balance between IP and Competition Law, necessitating effective enforcement of IP Laws to maintain equilibrium. This approach helps uphold producers' interests, fosters innovation, and ensures healthy competition in commercial settings.[13]

CASE: SHAMSHER KATARIA V. HONDA SIEL CARS LTD. (2011)[14]

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[11] Peeperkorn, L. (2003). IP Licences and Competition Rules: Striking the Right Balance. *World Competition*, *26*(4).

[12] Sumanjeet, S. (2010, December). Intellectual Property Rights and Their Interface with Competition Policy: In Balance or in Conflict?. In *Communication Policy Research South Conference (CPRsouth5), Xi'an, China*.

[13] Douglas, E. (2021). Digital crossroads: the intersection of competition law and data privacy. *Temple University Legal Studies Research Paper*, (2021-40).

[14] Case Nos. 03, 11 & 59 of 2012.

Facts:

The petitioner lodged a complaint with CCI against Honda, Volkswagen, and Fiat, alleging that they were abusing their dominant market position. The complaint contended that their contractual arrangements violated Section 3(5) of the Indian Competition Act, 2002, which safeguards only reasonable conditions imposed by IPR holders. The defendants were accused of engaging in anti-competitive practices by exerting control over their service and workshop operations, limiting the availability of spare parts from Original Equipment Manufacturers (OEMs) in the open market, and charging inflated prices to consumers for parts and maintenance services.

Issues:

The central issue in the case was whether the defendants were indeed abusing their dominant position.

Judgement:

In its ruling, the Delhi High Court found that the defendants failed to substantiate their claims regarding Section 3(5). Consequently, they were held liable for violating Sections 3(4)(b), 3(4)(c), 3(4)(d), 4(2)(a)(i), 4(2)(c), and 4(2)(e) of the Competition Act. As a penalty, the OEMs were fined 2% of their total turnover and were not entitled to protection under Section 3(5). The court held that they could not claim protection as they violated Section 4(2)(c) of the Competition Act, 2002, by impeding market access for automobile repairers.

CASE: HT MEDIA LTD V. SUPER CASSETTES INDUSTRIES LTD. (2011)[15]

Facts:

The petitioner brought a lawsuit against the defendant, alleging non-compliance with the provisions of Sections 3 and 4 of the Indian Competition Act, 2002. The petitioner claimed that the defendant, involved in the production and publication of music and videos in India, held exclusive rights for the sale of Bollywood music to private FM radio stations in territories where Bollywood music is prevalent. The defendant provided its music collection to radio, television, and mobile companies not only in India but also in other countries. It was argued that the defendant abused its dominant position by controlling over seventy percent of recent Bollywood music, contrary to Section 4 provisions. Evidence showed that they

[15]Case No. 40 of 2011

charged exorbitant amounts for granting broadcasting rights, imposed minimum commitment charges (MCC) on the opposite party, and compelled them to accept license fees and MCC.

Issue:

Whether the defendant abused its dominant position by controlling over seventy percent of recent Bollywood music.

Judgment:

The CCI imposed a penalty of Rs. 2.83 crore on the defendant for misusing its dominant position, charging it under Section 4(2)(a)(i). The court ruled that the right holder's authority to perform and communicate with the public, or to make adaptations, could be considered as separate markets.

CASE: FICCI MULTIPLEX ASSOCIATION OF INDIA V. UNITED PRODUCERS DISTRIBUTION FORUM, 2011[16]

Facts:

The petitioner filed a lawsuit against the respondent, alleging that members of the United Producers/Distributors Forum were attempting to monopolize the market by stifling competition. These members controlled the production and distribution of almost all Hindi films and sought to dominate the Indian film industry. Moreover, they instructed their producers not to release films for exhibition in multiplexes, leading to a dispute between the petitioner and respondent, exacerbated by revenue-sharing issues.

Issue:

Does competition in the market impact the rights of the copyright holder?

Judgment:

The CCI ruled that IP laws do not possess absolute supremacy over Competition law. The court observed that the right granted to the copyright holder is not unconditional but is instead a statutory right under the Copyright Act, 1957. The language used in Section 3(5) of the Act supports this interpretation. It is evident from this provision that its scope is not absolute; rather, it only shields the rights holder from infringement by exempting them from

[16]CASE NO. 01 OF 2009

certain restrictive conditions of Competition Law. The European Courts of Justice similarly emphasized that the goal of IPR is to foster innovation across all sectors and facilitate commercial benefits.

CONCLUSION

The convergence of IPR and competition law presents a fluid and evolving realm within legal discourse, carrying significant implications for innovation, market dynamics, and consumer welfare. Over time, the relationship between these legal frameworks has transitioned from apparent conflict to a trend of increasing alignment and synergy.Our investigation reveals that while IPR legislation aims to spur innovation by granting creators exclusive control over their intellectual creations, competition law is geared towards ensuring market efficiency and curbing monopolistic behaviors. Despite their divergent aims, both legal domains share a common objective of fostering economic growth, stimulating innovation, and protecting consumer interests.

Through legislative reforms, judicial interpretations, and evolving legal doctrines, attempts have been made to reconcile the sometimes-competing interests of IPR holders and market competition. Recent legal developments underscore the importance of striking a balance that preserves incentives for innovation while upholding principles of fair competition and consumer choice.

Looking ahead, it is essential for policymakers, legal practitioners, and scholars to delve deeper into the intricate dynamics at the intersection of IPR and competition law. By fostering dialogue, encouraging interdisciplinary collaboration, and embracing adaptable legal frameworks, we can navigate the complexities posed by rapid technological advancements, globalization, and evolving market dynamics.

In so doing, we can aspire towards a legal landscape that not only safeguards intellectual property rights but also fosters robust competition, drives innovation, and ultimately serves the broader interests of society.