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# **THE INTERFACE BETWEEN INTELLECTUAL PROPERTY RIGHTS AND COMPETITION LAWS**

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## **ABSTRACT**

This paper focuses on the interface between intellectual property rights and the competition laws. Furthermore it deals with all the essential subjects related to the topic and encourages the reader to involve with the topic and improve their understanding on the same. Although the two regimes are diverse, they tend to show a certain degree of collocation on various grounds where both disciplines prevail by limiting each other's right. The interface between these two areas of law is generally anticipated in many sectors of economy, including Pharmaceutical sector where there is a lack of consumer knowledge, which gives rise to the problem of Pay for delay/Reverse delay settlements, discrimination in patient assistance program, ever-greening of patents, etc. and for which the concept of 'Compulsory Licensing' was addressed to draw the balance between intellectual property right and competition law so that the owners of intellectual property rights cannot misuse its privileges and curb competitiveness in the market by abusing its dominant position.

Keywords- competition law: IPR

## **INTRODUCTION**

IPRs protection is a tool meant to cultivate invention, which benefits consumers through the development of new and advanced goods and services, and promotes profitable growth. It confers on originators the rights to legitimately count, for a limited period, other parties from the marketable use of innovative products and processes grounded on that new knowledge. In other words, originators or IPRs holders are served with a temporary monopoly by the law to recover the costs incurred in the exploration and invention process. As a result they earn due and

reasonable gains, so that they've incitement to engage in invention. Competition law, on the other side, is essential in bridling request poverties, chastising anticompetitive practices, precluding abuse of monopoly, converting optimum allocation of coffers and serving consumers with fair prices, wider choice and better rates. It, thus, ensures that the dominant power associated with IPRs isn't exorbitantly compounded or abused and extended to the detriment of competition. either, while seeking to cover competition and the competitive process, which in turn encourages originators to be the first in the request with a new product or service at a price and quality that consumers want, competition law underscores the significance of stimulating invention as competitive inputs, and therefore also works to enhance consumer weal. Over the times, there have been numerous developments and advances in the Intellectual Property Rights field of law with further and further IPRs being issued or claimed. The focus of IPR is to admire the exclusive rights of an innovator or person's bona fide creation and give them monopoly over their separate creation. Unlike portable or irremovable property, it's a kind of property that consists of impalpable creations manifested by the mortal mind. The intention of this composition is to dwell deep into the interrelations between IPR and Competition Law which acts as an opposing force against IPR as Competition law basically ensures that there's an effective medium in place to identify and exclude anti-trust ornate-competitive agreements or cover monopolies or irregular use of dominant power in the request. The ideal of this composition is to understand the hassle between IPR and Competition Law and the reasons behind the same.

Intellectual Property Rights and Competition laws are two separate realities and work singly of each other. The main ideal of competition law is an effective and easy access to the request; whereas, the main ideal of IPR is monopoly with respect to a creation. Though the two laws are different and have individual objects, they meet at a point which is the need for creation and icing of consumer weal and invention. Both the laws work towards attaining this common thing. IP laws give for impulses, royalties, encourage exposure, promote invention and also insure that the need of the public is met with. On the other hand, competition law provides frantic-competition vittles' dwindling any form faint-competition conditioning, removing illegal request practices, and promoting genuine request practices. The interface between Intellectual property rights and Competition law has attracted growing attention, particularly as a result of the expansion and strengthening of invention and technological sector at the global scale, especially in developing nations. Just as the suchlike poles of an attraction repel each other also the motivation of Intellectual Property and Competition law creates the apparent enmity between

the two. The intellectual property rights governance furnishes exclusive rights to those who are instituting new product or creating new effects by furnishing monopoly rights to good inventions. The essential trait of intellectual property rights is the 'right of rejection' which allows the proprietor to exercise his right to count the whole macrocosm, while on the other hand, competition policy seeks to avoid request walls by confining monopoly and exclusivity to insure freedom of trade and commerce in the request. In general, it has been realized that both the areas are reciprocal to each other with two different bodies of law having their independent and different area of operation. The conflict between the competition policy and intellectual property right governance has been most controversial in the environment of patent laws. The interface between competition policy and patent law arises out of the styles that they embrace to achieve their complementary pretensions.<sup>1</sup> On the one hand, competition policy prescribes that there's no unreasonable conditions on competition, on the other hand; patent laws award the innovator with a temporary monopoly that insulates him from competitive exploitation of his patented composition.

## **HYPOTHESES**

Competition law as well as the copyright law and intellectual property right have the same stance as both have the same end goal. This paper will going forward prove the statement.

## **RESEARCH QUESTION**

Even though both the intellectual property right and competition law both have the same end goal, however each of their means to achieve that goal is widely different. So which law is superior and prevailing over the other? Or do both of them have the same stance?

## **RESEARCH METHODOLOGY**

Doctrinal method

## **OBJECTIVES**

The purpose of Intellectual property aphorism is majorly to give an exclusive right to the creator or the author in cases of brand law, thereby leading similar generators to enjoy the monopoly

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<sup>1</sup> <https://www.walshmedicalmedia.com/open-access/interface-between-competition-law-and-intellectual-property-rights-a-comparative-study-of-the-us-eu-and-india-ipr.1000115.pdf>

over the creation. One illustration of such a statement is copyright licensing or the power of the creator to assign similar work as part of marketable exploitation of his or her right. On the other hand, the purpose of competition law is to break the monopoly and insure that all people have the same means without anyone being dominant in the request. This is because of the fact that a monopoly might go against the interests of the consumers. Not to forget, competition law not only bases its ideal to insure competition or circumscribe the abuse of dominance but also to work for the benefit of the consumers as a total who are the end parties to this aspect. So, this is also an analogous aspect when it comes to the IP and Competition law or anti-trust laws. The idea behind antitrust laws was no way meant to feed to the interests of the jealous challengers who simply sought to bear a contender to redistribute lawfully earned wealth. “The licit thing of Competition law is the creation of effectiveness through the protection of the competitive process itself, rather than any particular contender; therefore, Competition law seeks to cover competition, not challengers.” It acknowledges the part of IP in promoting competition because by precluding free riding, enterprises as a result are encouraged to produce their own goods. Exception to IPR under Section 3(5) of the Indian Competition Act 2002 The Indian Competition Act 2002 is designed not to intrude with IPR. Still, if the CCI finds that IPRs produce a perceptible adverse effect on competition (AAEC) the Act provides for the possibility to bring action. More specifically, Section 3(5) of the Indian Competition Act 2002 contains an exception clause with regard to the use of IPR, which allows for the reasonable use of these exclusive rights over the invention. “Reasonable use” then pertains to the fact that Section 3(5) of the Act only allows IP holders to put ‘reasonable conditions’ on their licenses to secure IP protection, without driving Competition law issues.

Competition Law and IPR in India Competition Act weren't executed in India until the time 2002. Before the Competition Act came into force, the Monopolies and Restrictive Trade Practices Act (“MRTP”) was active. Competition Act, 2002, amended in 2007 was a relief to the MRTP Act to fulfil the mischief created by the MRTP Act. After the inception of the Competition Act, there arose a lot of debates concerning the IPRs the right holders and its interface with the competition law. Section 3 of the Competition Act deals with taint-competitive agreements. But it's subsection (5) of section 3 that's concerned with the interface between IPR and competition laws. Section 5 (3)(I) easily states that the competition laws don't affect, intrude or circumscribe any rights of the IP holder in respects to violation of his rights or operation of conditions for the use of his invention. Still, Section 4 of the Competition Act provides for

conditions when the IP holder is said to have abused his powers and rights conferred to him by Section 3. They are still, directly or laterally, he's said to have followed anti-competitive practices, if the IP holder imposes illegal prices or conditions on his work. If the IP holder limits or restricts the product of goods and/ or services to the request. If the IP holder limits or restricts scientific or specialized development to reach to request to the prejudice of the consumers. If the IP holder denies access to request to anybody in any manner. If the IP holder enters into contracts with others with supplementary scores for marketable operation of the creation that don't have any applicability to the subject of the contract. Still, transfers from one request to another, if the IP holder shows a dominating power and with similar dominant position. Section 3(5) of the Competition Act mentions a necessity of reasonable conditions for protection under IPR. The meaning and the contents of reasonable conditions aren't mentioned in the provision. It, still, needs to be dealt with in a case by case manner. Standard Setting Associations (SSOs) are associations that give for norms to confer to in order to be considered a valid creation for the entitlement of IP. Standard Essential Patents (SEP) are those patents without which a standard cannot be attained. Then, SSOs apply IPR taking the members to expose everything about their IP and certify their SEPs under FRAND Terms (Fair, Reasonable and on-Discriminatory Terms). Still, a varied interpretation of the FRAND terms has led to precious action process.

Hindrance of Competitive law and IPR in Foreign Settings the Trade Related Aspects of Intellectual Property Rights (passages) Agreement in its papers has mentioned about the competition law and Pico-relations. Composition 8.2 simply states that applicable measures inconsistent with the passages agreement have to be taken to help the abuse of the IPRs or restraint of trade or negatively affect the transnational transfer of technology by the right holders.

Composition 31 k easily mentions about mandatory licensing and situations when mandatory licensing is allowed. According to the provision, mandatory licensing cannot be granted if similar license is being sought for andante-competitive practices. Composition 40 of the passages Agreement deals with the control faint-competitive practices in contractual licenses. According to the composition, members are given the right to check for any foul competition practices followed by any license holders that would affect the smooth functioning of the request. Through these papers, passages tries to tie a strong knot between IPR and competition laws keeping IPR in check and not letting it hamper the objects of the competition laws. In the United States of America, the Clayton Act, the Sherman Act and the US Department of Justice and the

Federal Trade Commission, Antitrust Guidelines for the Licensing of Intellectual Property, deal with the interface between IPR and competition and trust laws. Section 1 of the Antitrust Guidelines mention about forestalment faint-competitive agreements. Section 2 of the Antitrust Guidelines deals with the abuse of the dominant position, which in this environment means the vituperative gets of an IPR holder in respect of trade and the request. In the European Union, The Treaty on the Functioning of the European Union (TFEU) has been in function in relation to the competition laws and ante-competitive practices. Section 101 (preliminarily section 81) deals with anti-competitive practices. The provision easily states that no existent is to follow Anti-competitive practices. Section 102 (preliminarily Section 82) deals with the abuse by dominant person. In the environment of IP, the vittles' specify that no IP holder is to follow and ante-competitive practices for his invention and hamper the request practices<sup>2</sup>. Further, no IP holder can exercise a dominant power over other request members and affect the request.

## SCOPE AND LIMITATIONS

Passages regarding IPR policy and Competition Law There are generally two approaches that have been espoused to help IPR abuse mandatory licensing (an involuntary contract between a willing buyer and an unintentional dealer assessed and executed by the state) and resembling significances (goods brought into a country without the authorization of the patent, trademark or brand holders after those goods were placed legitimately into the request away). preventative Measures Two styles have been used to help the abuse in IPRs- mandatory licensing (a contract which is involuntary between a willing buyer and an unintentional dealer is executed by the government.) resembling significances( goods brought into another country once they've been placed in the request away without the authorization of a patent or brand holder.) Under Composition 31 of the passages Agreement provides for the entitlement of mandatory licenses, under the following situation- In the interest of public health In case of public exigency Anti-competitive practices Secondly, there are numerous consequences regarding the interlink between competition policy and IPR that requires to be taken into account. Authorities regulating competition policy should consider each case relating to IPRs with reason approach. Still abuse of dominance laws could be applied to IPRs and suitable remedies taken; this will reduce high implicit cost regarding reducing impulses to introduce. His correlation between IP rights and Competition Law seems to be antithetical to each other but in actuality, it's not; but it assists the

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<sup>2</sup> <https://www.legalbites.in/nexus-between-ipr-and-competition-law>

person to invest in a dynamic competition by restraining the rigid competition. It gives benefits to the holder to make exclusive use of his product within a particular period. During such a particular period the patent possessors have monopoly power and are in a position to dominate. Similar dominance won't lead to violation of antitrust law. Over time and from arising different cases it results in the supplementary but not a contradicting function of both the laws. To understand the problem arising while applying an IPR and competition law, it's necessary to look into the Indian laws about competition and how it has been structured to exclude similar problems. In the contemporary world, the requests have come globalised leading to investments and start-ups of businesses smooth without restrictions. When we bandy competition law and IPRs, it's known that both of these attempt to regulate an aspect of the request by conferring rights and duties to individualities and enterprises. Competition in the IPR field of law basically denotes the cut-throat competition among generators or formulators where allocation of IPRs principally encourages similar generators to develop their product in order to survive the request. IPR laws enable similar competition and nurture it by guarding as well as icing rights to similar formulators in order to maintain their exclusive claim over their creation. On one hand IPRs give individualities the right to simply do business with their intellectual property or creation which further creates a monopoly while on the other hand competition law attempts to regulate requests and covenant-competitive agreements, dangerous monopolies, and abuse of dominant position. One of the first major differences between the two is the interpretation of the word 'competition' which is contextually different in competition law and IPR laws. Competition in the IPR field of law basically denotes the cut-throat competition among generators or formulators where allocation of IPRs principally encourages similar generators to develop their product in order to survive the request. While in the competition law sphere, the competition between different individualities or enterprises is laboriously regulated and covered to uphold fair trade practices. As clashing as both laws might feel, competition law doesn't intend to discourage or penalise all forms of monopolies. Competition law only penalises and discourages those monopolies where the IP holder or the establishment abuses their dominant position in the request. This is the line of difference between the ideals of IPR and Competition law, where the former confers rights to individualities while the ultimate regulates those individualities with similar rights and powers. Still, there are some parallels in IPR and Competition law where one law complements the other.<sup>3</sup> For illustration, the patent law primarily focuses on barring bootlegging or replication of someone's work by conferring exclusive rights by dealing patents. This aspect of IPR

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<sup>3</sup> <https://www.zeusip.com/the-interface-between-intellectual-property-rights-and-competition-law.html>

impeccably syncs with the ideals of competition law as the ultimate points to produce a fair and safe request for businesses to bloom. While competition law upholds trade or issue of patents it doesn't still encourage or enable abuse of patent rights which leads to violation faint-trust programs.

## OUTCOMES

The paradigm of interface between the Intellectual Property Rights (IPRs) and Competition law is that the two legal administrations are connected by the economics of fostering invention and a sophisticated web of legal programs that seek to stabilize the compass and effect of each policy. There exists a common area wherein Competition policy and Intellectual Property Law end at nurturing invention, effectiveness, consumer weal and profitable growth. The interface between the two, Competition policy and Intellectual Property Law has been examined from two main aspects

- (i) The effect that the Intellectual Property Rights have in shaping the disciplines of competition law; and
- (ii) the operation of competition law on the post-grant use of IPRs Intellectual Property Rights act as an institutional nonsupervisory frame confining, generally as an impunity, pure rejection of conditions by competition law.

The Competition Act, 2002 (India) under section 3- outlines that its vittles' won't circumscribe" the right of any person to restrain any violation of or to put reasonable conditions, as may be necessary for guarding any of his rights which have been or may be conferred upon him under colourful IPR bills. Nevertheless, the Competition Act does draw the line insofar as it doesn't permit unreasonable conditions to be passed off under the guise of guarding IPRs. Therefore, in principle, IPR empowering arrangements which intrude with the Competition law programs similar as competitive pricing, amounts, rates of products or abuse of the dominant position whatever be the source of similar practices would fall foul of ultimate in India. For case, the field- of- use limitation on the Licence, if it's quested that it should be used as drug only for humans and not creatures, indeed though it could be used for both. Likewise, the Monopolies and Restrictive Trade Practices (MRTP) Commission in- Valla Peru man and another. Godfrey Phillips (India) Limited (MRTP Commission, 1994) and Manju Bhardwaj. Zee Telefilms Ltd (MRTP Commission, 1996) observed that where a trademark is misused by manipulation, deformation, contrivances and embellishments so as to mislead confuse the consumers, he'd be

exposing himself to an action of indulging in illegal trade practices. In other words, this implies that the Competition Act prohibits trade practices visible to the detriment of public interest and also restricts the unreasonable conditions assessed by a right holder during the exercise of a right. The conciliation of IPRs and competition policy entails the necessity to identify IP laws as a form of competitive policy, performing in a balance between individual interests of the right-holders and the interest of the society at large, and encouraging farther invention. Competition law and IPR come less divergent given the fact that abecedarian end of invention/ inventions is further competition. The construction of commerce between competition law and intellectual property rights is driven by a number of contending considerations piecemeal from the IPRs and competition principles. The challenge for the state is to concoct rules both within the dimension of IP law<sup>4</sup> as well as outside it, i.e. statutory IP laws as well as substantial competition law in a manner that promotes dynamic competitive requests. The middle path can be achieved only by coordinating the immediate pretensions of the two systems only with reference to their effect on the request i.e. IP law must deal with the entitlement and functioning of property rights, while competition law would need to deal with the manner of exercise of these rights.

## CONCLUSIONS

The price proposition of Intellectual Property Rights specifically provides for a monopoly over the creation. It allows the right holder to use, vend, license or do down with the IP the way he wants. On the other hand, competition laws aim at furnishing equal openings to everyone in the request and against strict monopolization in the request. The two laws feel to drift in opposing directions leading to the conflicts that are seen between them. At the same time, one of the advantages of IPR is that it encourages invention which further leading to a lesser competition in the request. Competition laws aren't against dominant position in a request but are against the abuse of similar dominant position. To check the extreme monopolization and abuse of dominant position, the government has come up with colourful processes like mandatory licensing which keeps a check on illegal prices and illegal trade practices among IP holders. IPR and Competition law are reciprocal to each other and therefore cannot be considered in insulation, given that their compass seems to largely lap and, in some cases, clash. It's therefore important to strike a balance between IPR and Competition law to fulfil the pretensions of competition and consumers' weal, while at the same time guarding invention by granting formulators sufficient protection. After

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<sup>4</sup> <https://www.hellocounsel.com/interface-between-ipr-and-competition-law/>

analysis, it can be concluded that IPR is a right while on the contrary Competition law is regulating body which makes the regulations regarding the product, force, distribution and storehouse of godet. To be performed by the enterprise while operating the request. IPR is said to be some benefit given to the creator of any product or author of any script to make exclusive use of it for a specified period. We can support this by labour proposition which is given by which means that a person is liable to get the benefit of all hard and labour work It appears that these both laws are contradicting in nature but they aren't as we find from the below study that both the laws are supplementary to each other and one comes into the picture when one is misused. Competition law tries to offer wide kinds to the client and it brings the balance between the right of the manufacturer and the guests by maximizing profit with a quality product at affordable prices. IPR also allows the manufacturer to get the price for the sole creation of the product which in turn will help the public at large. The monopoly position offered by the IPR is prima facie not violating the competition programs but abuse of the position can be violating the programs. IPR and Competition law have been put under the microscope frequently in the recent history due to the unintentional yet ineluctable conflicts but anyhow of similar hassles, they both should be seen as reciprocal laws which appreciate each other. IPR is a law which focuses on creating and conferring rights upon individualities or pots while competition law aims forward to maintain checks and balances with regard to request players gets.

## CASE LAWS

**Aamir Khan Productions Pvt. Ltd. v. Union of India** The issue that arose before the Bombay High Court was whether the Competition Commission of India (CCI) had the governance to take up cases relating to IPR. The court held that IPR isn't autonomous in nature but statutory and the CCI has the governance to handle matters relating to IPR vis- à- Vis completion laws.

**Union of India v. Cyanamide India Limited & Another** In this case, the Hon'ble Supreme court held that *charging excessively for life saving drugs is against the principles of price control in the market and hence falls under the jurisdiction of CCI.*

**Kingfisher v CC** the Bombay High Court held that the CCI is competent to deal with all the issues coming before the Copyright Board of India.

**Ericsson v. Micromax** In this case, Ericsson brought a suit against Micromax claiming that Micromax had infringed eight of their SEPs and that Micromax had not obtained licenses for

