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CONFLICT BETWEEN COMPETITION LAW AND INTELLECTUAL PROPERTY LAW- AN ANALYSIS

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Abstract

Competition Law and Intellectual Property Law are two important fields in the area of law that deal with the promotion of competition in the Indian economy, however, the connotation of the word 'competition' is quite contrary for both these laws. One of them promotes competition by granting exclusive rights to the license holder and encouraging other market players to come up with better technologies through innovative measures whereas the other promotes competition by prohibiting anti-competitive agreements and abuse of dominant position. Both of them are important for the smooth functioning of competition, economic growth and consumer welfare. However, it is peculiar that while both of them have same converging outcomes and objectives, still there arises a conflict between them when it comes to the monopoly in the market. One grants monopoly rights and position through exclusive licensing, the other prohibits it. This paper discusses the same conflict between these two important areas of law. Intellectual Property Law is a developing field with increasing importance in the current economic scenario owing to the increase in the research and development and the importance it holds in the present time. In this context, it is imperative to understand the effect this has on the competition in the market as both of these aspects have different effects on the market. This paper analyses the two laws in this context and their operation in India- Intellectual Property Law [Copyright Act, 1957, Patents Act, 1970, Trade Marks Act, 1999, Geographical Indications of Goods (Registration and Protection) Act, 1999, Designs Act, 2000 and the Semi-conductor Integrated Circuits Layout-Design Act, 2000 and the Competition Law [Competition Act, 2002]. The paper establishes the relationship between these two areas of law and also the situations in which the conflict arises among them. With this respect, the objectives of the laws are discussed and how the objectives appear to be different but when analysed properly, they are converging in nature and both these laws aim to achieve the same objectives for the Indian economy. Then, the paper delves into the recent

judgments with respect to the present position in law with respect to the conflict between Competition Law and IPR laws and who has the authority to deal with such cases and then finally a conclusion to summarize all the aspects that the paper deals with.

Introduction

Competition Law and Intellectual Property Law are the two main laws that operate in the market and protect the rights of the participants of the market and hence it is of foremost importance to understand the functioning of these laws in the market¹. First, it is important to look into the interface between both these areas of law to understand the relation between them. Intellectual property law exercises the intent of granting monopoly rights over the intellectual property whereas Competition Law aims at promoting competition and restricting monopoly and abusive anti-competitive practices. IPR laws lead to a balance of the owner's rights and consumer welfare in addition to upholding the underlying social interest. It ensures that the owner receives the commercial benefits for his/her invention and thus promotes competition as when exclusive rights are granted, the other players of the market want to come up with better products to increase profitability, thus leading to increased innovation and technological advancement, in addition to promoting competition in the market, which is the ultimate goal of the Competition Act.

Section 3 of the Competition Act, 2002 prohibits anti-competitive agreements and states that any agreement entered into between any person, association of persons, enterprises, association of enterprises which causes or is likely to cause an appreciable adverse effect in the market shall be void in nature. The section also provides which type of agreements cause an appreciable adverse effect on competition and it covers both horizontal and vertical agreements. However, it is pertinent to note that IPR laws have been granted an exception from Section 3 under sub-clause (5) of the same section which says that this section shall not affect the rights granted to any person under the Copyright Act, Patents Act, Trade and Merchandise Marks Act, Geographical Indications of Goods Act, Design Act and Semi-Conductor Integrated Circuits Layout Design Act. Thus, all the IPR laws have been granted an exception under Section 3(5). However, the same exception has not been granted under Section 4, so if the owner of an exclusive right abuses his dominant position, he would be still liable under Section 4. Thus, we can see how these two areas of law are related to each other and in many ways complement each other.

¹ K.D. Raju, "The Inevitable Connection between Intellectual Property and Competition Laws", Journal of Intellectual Property Rights

Objectives

For the purpose of understanding the relationship between IPR and Competition Law, it is important to know about the objectives that these laws sought to achieve. Intellectual Property Law grants exclusive legal rights to its owners and thus promotes technological advancements. Whereas, competition law, on the other hand promotes competition in the market and restricts the abuse of dominant position. So, we can see the differing objectives of these two areas of law, one grants monopoly to the owner of the intellectual property, the other one says that there shall be no monopoly and there shall be competition in the market.

Licences are granted under the Intellectual Property Law so that the other innovators are motivated to perform better and come up with new ways of innovation. Thus, competition is promoted and at the same time, by granting exclusive rights through license, competition is also hindered. However, it should be noted that the rights are in public domain after a specified period of time. The ultimate goal is to promote innovation so that it is sustained and continued and at the same time, the people who are granted the license can exercise an exclusive right for a specified period of time along with increased investments for further research and development.

Competition Law seeks to promote competition and restrict any anti-competitive practices prevailing in the market so that there is fair trade and no abuse of dominant position. This is done so that there are no unfair trade practices prevailing in the market and the customers receive products and services at a fair price. Thus, the ultimate goal of the Competition Act is economic growth as well as consumer welfare.

To summarize the objectives, IPR looks at individual rights and the Competition Act on the other hand looks at the market as a whole with the ultimate objective of economic growth whereas IPR laws lead to technological development. The word 'Competition' has been used in a different sense for both these laws. Competition is encouraged when IPR rights are granted and it is promoted when abusive practices are restricted in the market.

Relationship Between IPR and Competition Law

The relationship between these two areas of laws was said to be like that of fire and water², however, this perception has significantly changed over time and it has been opined that these laws complement and supplement each other in more ways than one and also have similar underlying objectives.

The provisions in the Competition Act, 2002 are in consonance with the TRIPS (Trade Related Intellectual Property Rights) agreement³. As we have seen how all the IPR laws have been specifically given an exception under Section 3(5)⁴ of the Competition Act, 2002 and how this exception has not been extended to Section 4. So, if an exclusive right is granted and the owner becomes the exclusive owner of the intellectual property and obtains a monopoly status, he still cannot abuse his dominant position as this would be a violation of Section 4⁵ of the act. Thus, both these laws operate in the same domain i.e., the promotion of competition and restricting abuse of dominant position. Thus, there can be a dominant position by virtue of holding the exclusive right, however, the same position cannot be abused by the owner of this right. These laws are complementary to each other and ensure economic growth, consumer welfare and technological advancement.

When we first see the objectives of these laws, they are contradictory in the sense that one grants monopoly and the other restricts it, however, when the substance is looked at, it is clear that they are aimed at doing the same thing and i.e., promotion of competition in the market. With the grant of the license, the owner improves his ways and means to ensure his right whereas the other market competitors come up with new ways and means to increase competitiveness. In this way, it is ensured that the owner reaps the commercial benefits for his research and development and also that this research and development is sustained in the longer run with increased innovation in the same field by the owner as well as his competitors. Hence, both competition law and IP Law facilitate competition in the commercial business environments, with a balancing of interest between both the inventors and creators as well as the competitors.

² Jens Schovsbo, 'Fire and Water Make Steam: Redefining the Role of Competition Law in TRIPS' [February 2009] Centre for Information and Innovation Law 3

³ The Institute of Chartered Accountants of India, "Competition Laws and Policies" (2004), p. 129.

⁴ R. Dutta, "Critical Analysis: Reflection of IP in Competition Law of India", at: <http://www.indlawnews.com/display.aspx?4674> (Last accessed 14 April, 2019), p.133.

⁵ T Ramappa, Competition Law in India: Policy, Issues and Developments, The University Press, New Delhi, 2011, p.24.

Conflict of Law and Differences

The main point of conflict that exists between Intellectual Property Law and Competition Law is that while one grants monopoly, the other restricts it which can be interpreted as a deadlock⁶. There are various means through which the objectives of these both areas of laws are achieved and that is what brings in the interface between them. The intellectual property laws ensure that the owner of these rights gets an exclusive right to restrict others to use his products and processes over which a license has been granted to him. Thus, a temporary monopoly is created so as to enable the owner to recover the costs incurred by him during the innovation of that product or process, thereby enabling the owner of these rights to earn just and reasonable profits for that period. Also, the competitors work towards coming up with better technology, thus ensuring competition to prevail in the market, ultimately leading to consumer welfare. Thus, these laws lead to the promotion of innovation and consumer welfare⁷.

As far as competition law is concerned, it aims at restricting anti-competitive practices, preventing abuse of dominant position in the market, consumer benefits owing to good quality goods and services at fair and reasonable prices. In relation to IPR, there shall be no abuse of dominant position that has been established due to the grant of exclusive licensee rights. This has been done as the consequence of granting exclusive rights can be very harmful for the economy of a country. It leads to the detriment of consumer interest as the prices could be higher than what is considered to be fair, keeping in mind the market forces. This is one of the negative effects of market control that comes in the hands of the license holder under the IPR laws. This in turn, can harm long-term economic growth of a country.

Thus, the conflict between these two areas of law comes into place when the grant of exclusive rights leads to an abuse of the dominant position, thereby leading to anti-competitive effects in the market. These are the various ways in which the abovesaid conflict arises: -

- **Abuse of Dominant Position**: - As already stated, the abuse of its dominant position by the owner of the IPR leads to a conflict between the IPR laws and Competition Laws, as the exclusive right as granted by the IPR laws is being abused by the license holder and hence, he would be liable under Section 4 of the Competition Act. The position of

⁶ Supra note 1

⁷ **Atari Games Corp v. Nintendo of Am Inc**, 897 F.2d 1572, 1576 (Fed Cir 1990).

monopoly achieved through IPR is violating the provisions of the Competition Act. This is the conflict which arises when there is an abuse of dominant position by the license holder. In India, there was also an issue as to who would be the competent authority to deal with such cases that involve both the questions of IPR laws and well as Competition Laws. According to the current position, after the case of **Aamir Khan Productions Pvt. Ltd. V. Union of India**⁸, the CCI (Competition Commission of India) is the competent authority to deal with these cases as they involve a major question of competition and also the provisions of the Competition Act have been violated under Section 4, hence, CCI should have the authority to decide these cases.

- **Overriding effect:** - It is nowhere stated specifically nor has this been decided as of now as to what law would prevail over what law when it comes to the conflict between IPR law and Competition law. However, it was stated by the CCI that the IPR laws cannot have an overriding effect over the Competition law in any way. Thus, there is no absolute overriding effect, whatsoever.
- **Tying Agreements:** - Tying agreements basically means selling a product with huge demand on the condition that the consumer has to also buy a second product, which usually has a low demand. This is a type of vertical agreement and is prohibited under Section 3(4) of the Competition Act.
- **Patent Thickets:** - When a large number of patents are granted in the same field or industry, suppose relating to a particular technology, this situation can lead to 'patent thickets' which in turn causes barriers to entry as the new entrants would have to take licences from multiple patent holders. This situation can lead to a disruption in the competition and anti-competitive practices. In addition to this, the innovation in the market can also face a downfall as the competition is reduced and hence, the imitative practices would not be practiced as much as there is no need to counter the competition. With the decreased innovation, the consumers would get the products at higher prices which is not beneficial for the consumers and the social interest as a whole would be hampered.

⁸ (2010) Bom 112

- **Refusal to License:** -Refusal to License is entirely based on the complementary aspects of the IPR laws and Competition Laws. The owner has the right to restrict others to use his patented product and process for a limited period of time, however he cannot restrict the research and development on that product or process in any manner, only the use can be restricted and that too for a limited period of time. Some aspects of this matter were discussed in the case of **Entertainment Network (India) Limited v. Super Cassette Industries Ltd**⁹, in which it was clearly stated that yes, monopoly rights are granted to the owner of the IPR however, the same right can lead to refusal to license, if the owner abuses this right.
- **Patent Trolls:** -Licensing fee is extracted by patent trolls from other companies without being involved in any productive or innovative activity. This can have a major impact on competition and can disrupt the competition in the market. When we look at the compulsory licensing provisions under the Patents Act, 1970, it says that the compulsory license can be granted to the competitors of the license holder when the need arises due to public health and certain other conditions. The interests of all the stakeholders should be balanced so as to avail the maximum benefit of these provisions. This is when the conflict arises as when the patent trolls operate or when compulsory license is granted, it reduces the competition and hence there is an interplay between the competition laws and the IPR laws of the country.
- **Excessive Pricing:** - Excessive Pricing is very common when someone has been granted an exclusive right over a product or process, however, this has not been specifically stated in the Competition Act that it is violative of a specific provision, however, this can be brought under the purview of Section 4 as abuse of dominant position. Predatory pricing on the other hand, has been specifically prohibited under Section 4(2)(a)(ii) as abuse of dominant position.
- **Standard Essential Patents (SEPs):** - Standard Essential Patents are another aspect that can lead to a conflict between the IPR and the Competition laws. This kind of patent is granted to a license holder when there is an essential patent is required to implement a particular kind of industry standard. It mainly covers the patents over technology. Now,

⁹ [2008] 37 PTC 353 SC 78-91 [71]

the conflict will arise, if suppose the holder of a SEP does not grant the license to the other competitors on fair and reasonable terms, normally known as FRAND (Fair, reasonable and non-discriminatory) terms, then this would disrupt the competition as the competitors would be restricted from entering the market as without the technology, it is impossible to operate in the industry, thus, yet again an intellectual property right would lead to the disruption of the competitive forces operating in the market.

Judicial Precedents

As far as the judicial precedents are concerned, there is not much jurisprudence available in the Indian law in respect of the intersection between Competition Law and Intellectual Property Law. It is still a developing field with a very a smaller number of cases that have come before the courts¹⁰. However, the European Union and the United States Courts have dealt with such cases in the past and there is jurisprudence available on this issue for the courts to pass judgments.

Before the Competition Commission of India (CCI), the jurisdiction over such matters involving a question of IPR rights was resolved by the Monopolistic and Restrictive Trade Practices Commission (MRTP Commission) however, after the CCI was established in 2003, it is the competent authority to deal with competition law cases. In the case of **Aamir Khan Productions vs. the Director-General**¹¹, it was held by the Bombay High Court that the CCI has the authority to deal with competition law and IPR cases. The case of **Ericsson v CCI**¹² dealt with the Patents Act, 1970 and it was held by the Delhi High Court that the CCI has the authority to deal with such cases and nothing in the Patents Act can vitiate this authority of the CCI either directly or indirectly.

Then, in the judgment of **Shamsher Kataria v Honda Siel Cars Ltd**¹³ (**Automobile spare parts case**), Section 3(5) of the Competition Act, 2002 was discussed by the CCI. This case comprised of an agreement entered into between the original equipotent suppliers and manufacturers that the spare parts of the automobiles would only be acquired by them and there was a prohibition on trading outside the market and all the technical specifications, components were manufactured by the original suppliers only. It was argued by the manufacturers that this agreement falls under the

¹⁰ Forrester Ian S. Competition Law and IPR: Ten years on the debate still flourishes, <http://www.eui.eu/RSCAS/Research/Competition/2005/2005.pdf>.

¹¹ Supra note 1

¹² W. O. (C) 464/2014 & CM No. 911/2014 & 915/2014

¹³ (2019) PL (Comp. L) June 77, June 6, 2019

exception granted by Section 3 (5). However, it was held by the CCI that for taking the benefit of the exception, it is mandatory that the right exercised has been granted by any of the IPR statutes. In this case, the manufacturers were unable to prove that the right is covered under any IPR statute and hence the agreement was held to be anti-competitive under Section 3 of the act.

The case of **Kingfisher Airlines v Competition Commission of India**¹⁴ again discussed the scope of Section 3(5). It was observed by the court that the said section does not put a bar on the right of an IPR holder to sue for its infringement, it only bars the applicability of the Competition act for the purpose of Section 3. The right to sue for infringement is protected under the respective IPR laws itself.

In the case of **Entertainment Network (India) Pvt. Ltd. vs. Super Cassette Industries Ltd**¹⁵, the issue of the interface between competition law and IPR came before the Supreme Court and it was observed by the SC that when monopoly comes in the hands of the owner of an IPR and it in any way disrupts the competition in the market, then the owner can be held liable under the Competition Act for abuse of dominant position, hence licenses can be granted by the owners, however this right is not absolute in nature.

Further, in the case of **Vellu Peruman and Ors. v Godfrey Philips India Ltd**¹⁶., the court observed that all sorts of IPR have the potential to distort the competition in the market, hence, it is important that the rights granted under the IPR laws are practiced within the domain of competition law.

In the case of **FICCI Multiplex Association of India v. United Producers Distribution Forum**¹⁷, the nature of the right of a copyright holder was discussed and it was held that it is a statutory right granted under the Copyright Act, 1957 which is not absolute in nature and hence, the competition in the market does not have an affect on the rights of the copyright holder under the act.

¹⁴ (2010) 4 Comp. LJ 557 (Bom)

¹⁵ 2008(5) OK 719

¹⁶ 1986 AIR 806, 1985 SCR Supl. (3) 123

¹⁷ Case No.01 of 2009, order dated 25th May, 2011

In the case of **Union of India v. Cyanamide India Limited & Another**¹⁸, there was excessive pricing on the selling of drugs in the market that were important for life and essential for the health of the people. The court held that the CCI has the authority by virtue of the competition act to deal with this particular matter as an IPR creates a monopoly in the market, however, it should not be misused to the detriment of public health. This principle regarding public health and the monopoly created by the IPR holders has been dealt with in different jurisdictions across the world and the same has been held by the courts that in case of scarce resources, an IPR holder leads to having a monopoly status, this ultimately disrupts the economic efficiency of the country.¹⁹

Conclusion

The Competition Law and the Intellectual property Law face a major interface when it comes to the intersection between these two areas of law. This interface occurs as one law grants a monopoly status and exclusive rights while the other prohibits it as its very objective. Section 3 (5) of the Competition Act has a major role to play when it comes to the applicability of these two laws. It excludes the IPR laws from the purview of Section 3 which deals with anti-competitive agreements, however, the same has not been exempted under Section 4 of the Act. Hence, when it comes to the abuse of the monopoly status granted by the IPR laws, the Competition act would have an operation and the CCI has the requisite authority to deal with such cases of the abuse of dominant position in the market by the IPR holders. This is because the very objective of these laws is to promote fair play and competition in the market, the only difference is that the word 'competition' has been used in a different sense under both laws. One promotes competition by restricting anti-competitive agreements and abuse of dominant position, the other encourages it by motivating other players in the market to come up with better products and processes to keep up with the existing competition in the market which ultimately leads to innovation and technological development in the economy of the country. There arises a conflict between these two areas of laws in many ways and in such cases, the CCI has the jurisdiction to deal with the conflict and pass orders and it is also pertinent to note that the rights under the IPR laws are independent of Section 3 (5) as discussed by various judgments. The right to infringement of the IPR holders is not affected in any way and is also subject to reasonable conditions under the act. These laws have similar underlying objectives in the form of consumer benefit, promotion of competition, increased innovation, better research and development, robust economic growth. It

¹⁸ AIR 1987 SC 1802

¹⁹ **United States v. Microsoft**, 38 1998 WL 614485 (DDC, 14 September 1998)

has been observed by the Raghavan Committee report²⁰ that innovation is a major catalyst in the economic growth of India as a country at both micro and macroeconomic levels which also is a key factor for a healthy competition to exist in the market. The IPR laws ensure that the innovative factors are not exploited in any way and everyone receives a fair chance at it to come up with newer ways to produce products and reap the economic benefits out of the same and at the same time encourage the other market players to come up with better ways at innovation hence promoting healthy competition within the market. Thus, it is important that both the laws relating to Competition and IPR in India are applied in a way so as to maximize the benefits for all the stakeholders which include the general public, innovators, companies, individuals, consumers and to promote and protect the economic growth of the country as a whole.



²⁰ Report of High-Level Committee on Competition Policy and Law, S. V. S. Raghavan Committee