9. COMPETING RIGHTS: ANALYSING THE DYNAMIC INTERPLAY OF INTELLECTUAL PROPERTY AND COMPETITION LAW

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Abstract

The complex relationship between intellectual property (IP) rights and competition law is thoroughly examined in this research paper, with particular attention paid to the ambiguity that results from the granting of exclusive rights in relation to the advancement of market competition. By design, intellectual property rights grant creators and inventors' temporary monopolies to encourage innovation, but competition law seeks to uphold market equilibrium and stop anti-competitive behaviour. The paper explores the theoretical and legal frameworks that control these two legal fields and explores the difficulties in striking a harmonic balance. The effects of intellectual property rights on market dominance, possible abuses of monopolistic power, and the function of competition law in mitigating these issues are given particular consideration. This paper presents a critical discourse on how IP rights and competition law goals can be reconciled through an analysis of significant judicial decisions from major jurisdictions such as the US, EU, and India.

Keywords: *Intellectual Property, Competition Law, exclusive rights, market competition, legal frameworks*

INTRODUCTION

Intellectual property rights safeguard creators against unapproved use and duplication of their works, whereas competition law works to improve consumer access and promote rivalry in the market. Though these two areas were once seen as antagonistic, there is a

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growing recognition that they can coexist and even strengthen one another. IPR and competition law both aim to foster innovation, safeguard consumer interests, and advance economic development. In order to encourage innovation and creativity, intellectual property rights (IPR) include a variety of rights, such as patents, trademarks, and copyrights. On the other hand, competition law aims to restrict actions that hinder market competition, which eventually helps consumers. Competition legislation protects long-term consumer welfare by fostering product diversity and quality, whereas IPRs encourage short-term innovation and market access. As a result, they support one another in furthering both general economic development and technological advancement.

Despite the perception of a conflict, the functions of competition law and IPRs are complementary. Competition law guarantees market fairness and consumer welfare, whereas IPRs protect artists' rights and encourage innovation. IPR holders get into trouble when they abuse their market dominance, which raises antitrust issues. Policymakers can achieve a balance between promoting innovation and maintaining market competitiveness by managing these difficulties. The study initially examines how intellectual property rights have changed over time, as well as how competition law has developed in India and around the world. The following part of the article examines the relationship between competition law and intellectual property rights in different jurisdictions, with an emphasis on India. A few recommendations are made in the conclusion of the paper.

EVOLUTION OF INTELLECTUAL PROPERTY RIGHTS

Years have passed since the earliest kinds of IPR were developed in ancient cultures. These ancient societies granted their artists and crafters exclusive rights, laying the groundwork for the contemporary concept of intellectual property. A precursor to the creation of copyright and trademark laws, the medieval era in Europe saw the rise of guilds and trade associations, which set regulations to protect the rights of artisans and craftsmen[1].

[1] S F Anthony, 'Antitrust and Intellectual Property Law: Adversaries to Partners' (2000) 20 AIPLA QJ 1

The printing press revolution of the 15th century catalysed the need for copyright protection, leading to the enactment of the Statute of Anne, 1710[2] – considered the first copyright law. The legislation established a precedent for future copyright laws by granting writers temporary exclusivity over their works. Meanwhile, governments introduced patent laws to encourage creativity as a result of the Industrial Revolution of the 18th and 19th centuries, which fuelled innovation and technological growth. The United States Patent Act of 1790[3] symbolises one of the first patent laws, granting creators the temporary exclusive right to use their creations.

With the development of treaties and conventions like the Berne Convention and the Paris Convention in the 19th and 20th centuries, the internationalisation of intellectual property rights gained momentum.[4] These agreements sought to promote international cooperation and integrate intellectual property protection among states. With the ratification of the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement, "which set the minimum requirements for intellectual property protection among World Trade Organisation member countries, "intellectual property rights were significantly expanded and standardised in the next half of the 20th century[5]." This agreement also pressured countries, particularly those in the Global South with weaker intellectual property protections, to implement stricter IP legislation. The Global South generally includes regions such as Africa, Latin America and the Caribbean, most of Asia (excluding Israel, Japan, and South Korea), and parts of Oceania (excluding Australia and New Zealand).

The growing use of the internet and digital technology in today's world has made it more difficult to defend intellectual property rights. The current legal frameworks need to be updated and modified due to issues like internet piracy, domain name conflicts, and digital rights management. Furthermore, advancements in biotechnology, pharmaceuticals, and open-source licensing models continue to influence the subject of intellectual property law. These changes are a reflection of ongoing discussions about how

[2] Statute of Anne, Act of British Parliament 1710, 8 Ann. c. 21
[3] The United States Patent Act 1790, 1 Stat. 109
[4] Paris Convention for the Protection of Industrial Property 1883
[5] The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) 1995

to strike a balance between encouraging innovation and granting the public access to knowledge and information.

DEVELOPMENT OF COMPETITION LAW IN INDIA

The Monopolies and Restrictive Trade Practices Act (hereinafter referred to as 'MRTP Act') marked India's first attempt to regulate competition within its economy. Three significant research studies affected this legislation. Under the direction of R.K. Hazari, the first research looked at "the Industrial (Development and Regulation) Act's industrial licensing processes"[6]. It concluded that the licensing system had led to disproportionate growth among certain business entities in India.

The second study findings, led by Professor P.C. Mahalanobis, examined the distribution of income in the nation. It has been discovered that the wealthiest ten percent of Indians accounted for up to 40% of the country's income. The article connected the emergence of large commercial corporations to the government's planned economic model and recommended gathering comprehensive data on the concentration of economic power.

Under the direction of K.C. Das Gupta, the "Monopolies Inquiry Commission" (MIC) carried out third research with the goal of determining the degree of power concentration in private hands and the frequency of monopolistic behaviours. The MIC report, which was turned in in October 1965, showed a notable concentration of economic power in terms of both products and industries[7]. Consequently, the MIC put out a measure to control business activities, prevent monopolies, and outlaw actions that would be harmful to the general welfare.

Drafted by the MIC and then revised by a parliamentary committee, this measure became the MRTP Act and became operative on June 1, 1970. The MRTP Act was based on ideas like the unhindered interaction of market forces, the best use of resources to achieve the greatest amount of material advancement, the provision of high-quality goods and

[6] Industrial (Development and Regulation) Act 1951

[7] Report of the Monopolies Inquiry Commission (1965) Vol. I <https://indianculture.gov.in/reports-proceedings/report-monopolies-inquiry-commission-1965-vol-i-and-ii> accessed 05 September 2024

services at competitive costs, and fair treatment of customers. Notably, the production and distribution of products and services were both included under the MRTP Act.[8]

Plenty of hurdles were faced throughout the MRTP Act's implementation, mostly because of clauses that were thought to be too general, antiquated, and insufficient to deal with a variety of commercial activities that were considered illegal. The MRTP Commission and the Supreme Court have both reached decisions that indicate the need for stronger provisions. Cases under the MRTP Act's jurisdiction exposed the Act's shortcomings in preventing practices like "bid-rigging, cartels, conspiracy, price-fixing, and abuse of dominant positions".

While the MRTP Act included broad prohibitions against monopolistic and restrictive trade practices, many lawmakers and academics contended that, in order to adequately safeguard consumers and punish offenders, it was imperative to recognise particular anti-competitive practices[9]. Furthermore, the significant changes in the structure of domestic as well as international commerce that followed the 1991 economic reforms resulted in a shift in government outlook. To meet the new difficulties, the changing trade and economic environment necessitated a more robust and all-encompassing legislation. This led to the formulation of the Competition Act 2002[10], aimed at promoting free and fair competition in India.

INTERFACE BETWEEN IPR AND COMPETITION LAW

According to a statement from the United Nations Conference on Trade and Development (UNCTAD) addressing the link between competition policy and intellectual property rights, the main purpose of IPR is to encourage innovation by providing sufficient incentives. This is done by giving creators exclusive rights over their inventions for a

[8] Himanshu Handa, 'Evolution of Competition Law in India' (2016) 5(1) International Journal of Socio-Legal Research 53

[9]Shakti Sinh *v* Parmar, 'Intellectual Property Rights and Innovation in India: Challenges and Opportunities' (2024) 9 (2) IJNRD <https://ijnrd.org/papers/IJNRD2402015.pdf> accessed 6 September 2024

[10] Competition Act 2003

limited period, allowing them to recover the costs associated with research and development[11].

Conversely, the goals of competition legislation are to protect consumer welfare, encourage economic growth, and advance efficiency. Competition law restricts private property rights for the greater good of the society as a whole to accomplish these goals[12]. Since it fosters competitiveness and encourages innovation, competition is thought to be good for the economy. "Workable competition" is the term used to describe the prevalent strategy, supported by regulatory agencies, for restricting property rights because of competition concerns. J. M. Clark made the original proposal in 1940[13] Workable competition recognises that almost all markets contain some form of monopoly. Consequently, the goal of regulatory bodies is to guarantee that there is enough competition among companies to protect consumers from unfair practices and distortions of the market. Three essential components of healthy competition are highlighted by Clark: competition between vendors, customers' freedom to choose other suppliers, and sellers' attempts to match or surpass the appeal of competitors' products.[14]

While competition law is designed to safeguard the interests of the market and broader society by limiting private rights that might harm public welfare, intellectual property rights (IPR) are focused on protecting individual creators by granting legal protection to their inventions. However, both IPR and competition law share a common understanding that promoting innovation ultimately benefits consumers and enhances overall well-being[15].

Now, we shall consider how different jurisdictions have managed this conflict-

United States

[11] Alice Pham, 'Competition Law and Intellectual Property Rights: Controlling Abuse or Abusing Control?' < https://www.cuts-international.org/pdf/CompetitionLaw_IPR.pdf> accessed 6 September 2024
[12] Martin Khor, '*Intellectual Property, Competition and Development*' (TWN, 2005)
[13] Eleanor M. Fox, 'Trade, Competition and Intellectual Property- TRIPS and its Antitrust Counterparts', (1996) 29 Vand. J. Transnational L 481
[14] M Clark, 'Toward a Concept of Workable Competition', (1940) 30(2) The American Economic Review 241
[15] Nidhi Singh, 'Competition Law and Intellectual Property Interface' (*KSLR Commercial & Financial Law Blog* July 9 2018) < https://blogs.kcl.ac.uk/kslrcommerciallawblog/2018/07/09/competition-law-intellectual-property-rights-ipr-interface/> accessed on 1 September 2024

Conventional perception on intellectual property rights holds that these rules create exclusive monopolies in the marketplace, which runs counter to antitrust regulations. But as the body of legal precedent pertaining to intellectual property laws has developed, it has become clear that these rules support the reward theory by providing customers with more options and substitute goods and technology. Consequently, this aids in lessening anti-competitive behaviours inside the industry. Under the Department of Justice's "Safety Zone" principle, intellectual property license agreements are unrestricted until they have a significant negative impact on the market[16]. Within this theoretical framework, for example, patent pooling agreements that result in price coordination or license refusals that impair competition are scrutinised.

Europe

The conflict between IPR and Competition laws was explicitly addressed in Article 81[17]. With respect to licensing agreements pertaining to intellectual property rights, European courts have notably moved from a liberal to a more interventionist approach. Article 82[18] serves to deter the abuse of dominant positions created through such agreements. About anti-competitive behaviour in IPR licensing agreements, two block exemptions were added. In 2000, the first block exemption was granted, which applied to "specialised agreements." Under certain criteria, such as neither party owning more than 20% of the agreement and the agreement not having price fixing, output constraints, or territorial splits among retailers, these agreements, which focused on particular aspects of IPR, were excluded. "Technology Transfer", the second block exemption, was created in 2004. Subject to specific restrictions, it regulates issues pertaining to patents, know-how, and copyrights with regard to anti-competitive practices. These include no more than 20% of the relevant market held by all parties together, no more than 30% held by any one party individually, and no significant anti-competitive restrictions in the licensing agreement.[19]

[16]Department of Justice, *Press Release* (India, 8 August 2024) 3
[17] Treaty Establishing the European Community 1992, art. 81
[18] *ibid* art. 82
[19] Samyukta Shetty and Astha Sinha, 'SEBI's new norms for related-party transactions-An overview' (Lakshmikumaran and Sridharan 16 December 2021) <https://www.lakshmisri.com/insights/articles/sebi-s-new-norms-for-related-party-transactions-an-overview/#> accessed 8 September 2024

Nexus Between IPR and Competition Law

The most intriguing element is at the point of intersection between IPR and competition law in India. Due to the inherent conflicts between IPR and competition law, their interactions are complicated in India. IPR protection, on the one hand, promotes creativity and pays creators and innovators for their work. However, the exclusive rights provided by IPR may result in monopolistic behaviour.[20] Keeping these interests in balance is a challenging commitment. By giving creators and innovators exclusive rights, intellectual property laws are intended to promote innovation. These exclusive rights, therefore, may result in monopolistic behaviour that stifles rivalry. Striking the right balance is challenging. [21]

Patent Law and Antitrust Regulations

The exclusive control held by a patent owner and the safeguards provided by antitrust laws are key aspects of both patent and antitrust law. Patents, typically valid for 20 years from the filing date, give inventors the sole right to develop, use, and market their innovations. This exclusivity allows the patent holder to prevent others from using their patented technology without consent, which is a fundamental feature of patent protection. Contrarily, antitrust laws are intended to prevent anti-competitive behaviour and promote fair competition. Regarding patents, it is generally accepted that the patent holder has the absolute right to refuse to provide any individual a license to use their innovation. This is the case because patents are essentially a short-term monopoly that the government grants to their holders, allowing them to exploit their technology without having to license it to others. However, conditional license denials that stifle competition could result in legal action for antitrust offenses. [22] When a patent holder dominates a

[20]Regi beau & Rockett Katharine, 'The relationship between intellectual property law and competition law: An Economic Approach', (2004) University of Essex, Department of Economics <https://repository.essex.ac.uk/2851/1/dp581.pdf> accessed 2 September 2024

[21] Gustavo Ghajini, '*Innovation, Competition and Consumer Welfare in Intellectual Property Law*' (Edward Elgar Publishing Limited 2010) Edward Elgar Publishing Limited

[22] K.D. Raju, 'The Inevitable Connection between Intellectual Property and Competition Law: Emerging Jurisprudence and Lessons for India', (2013) 18 J. Intellectual Property Rights 117

market and refuses to license their technology to competitors in a way that hurts consumers and competition, antitrust authorities could get involved.

Copyright Law and Antitrust Regulations

For a specific period, copyright law gives creators the exclusive rights to their original works. While safeguarding the rights of authors, this exclusive right may also result in a monopoly on a certain kind of content. Antitrust issues may arise when copyright holders misuse their monopoly power to hinder competition. Similar to this, the copyright law's "fair use" theory permits certain, unrestricted uses of copyrighted content for things like "news reporting, commentary, and criticism." When copyright holders abuse their rights to prevent fair use or impede competition, particularly when there is a transformative use of copyrighted works, competition law may be invoked. Owners of copyrights frequently sign licensing contracts to allow third parties to utilise their protected content. These contracts may have an impact on competition, particularly if they contain exclusive licenses that could limit consumer choice or stifle competition. Antitrust authorities may then carefully examine such agreements to check for instances of anti-competitive behaviour[23]. Copyright holders are not permitted to engage in anti-competitive activities that hinder competition and result in the misuse of a dominant position, such as price-fixing, market-sharing, or discriminatory behaviour. This could lead to enforcement actions and antitrust investigations. [24]

Trademark Law and Antitrust Regulations

In the same way, the owner of a trademark is granted exclusive rights to use it in connection with particular goods or services under trademark law. Even though these exclusive rights are essential for protecting brands, using them to establish an unwarranted monopoly in the market could cause competitive issues. In *Bayer AG v United Drug Co. Ltd.*,[25] the court took note of the possible anti-competitive effects of

[23] Rita Coco, 'Antitrust Liability for Refusal to License Intellectual Property: A Comparative Analysis and the International Setting' (2008) 12(1) Marq Intellectual Property L Rev 4

[24] Keith E. Mask us, Mohammad Lahouel, 'Competition Policy and Intellectual Property Rights in Developing Countries: Interested in Unilateral Initiatives and a WTO Agreement' (1999) 23 The World Economy 595

[25] *Bayer Co. v United Drug Co.* [1921] SDNY Civ 272 F. 505

granting an injunction over the trademark "aspirin," since it would preserve a monopoly in the industry. The court observed that granting the plaintiff, as the trademark holder, exclusive rights over the use of the word would effectively create a monopoly, thereby restricting its availability for consumers. Such an outcome, the court emphasised, would have broader adverse implications for commerce, undermining market competition and consumer choice.

Several examples of intersection of Competition Law and Intellectual Property Rights

a) Exploitation of Market Power: Abuse of Dominant Position[26] - In *Novartis Case,*[27] the Supreme Court rejected Novartis' patent for a cancer drug to promote competition within the pharmaceutical industry. This decision allowed generic drug manufacturers to produce more affordable cancer treatments, particularly benefiting poorer countries. The Court emphasised that India, as a developing nation, must prioritise affordable access to medications for its population of over a billion people. Another instance of abuse was felt when the European Commission fined Google €4.34 billion for abusing its dominant position by forcing manufacturers to pre-install its search engine and apps on Android devices, stifling competition in the market.
b) Standard Essential Patents (SEPs)[28]: SEPs have been required to implement industry standards, such as 5G technology, but anti-competitive behaviour might arise when patent holders refuse to grant licenses on "fair, reasonable, and non-discriminatory (FRAND) terms." In the case of Ericsson *v* CCI Case, Micromax and Int ex complained to the Competition Commission of India (CCI) about Ericsson, alleging that Ericsson was not licensing its Standard Essential Patents (SEPs) in accordance with the principles of FRAND—Fair, Reasonable, and Non-Discriminatory terms. The complainants argued that Ericsson's licensing practices were unfair, as the company demanded exorbitant royalties that did not reflect the economic value of the patented technology. Additionally, they claimed the terms

[26] Gireesh Chandra Prasad, 'MNCs Marrying into India Inc. Face Patent Test' *Economic Times* (30 July 2007) < https://economictimes.indiatimes.com/industry/banking/finance/mncs-marrying-into-india-inc-face-patent-test/articleshow/2243228.cms?from=mdr'> accessed 30 August 2024
[27] *Novartis v Union of India & Others* [2013] 13 SCR 148.
[28] World Intellectual Property Organisation, *Strategy on Standard Essential Patents* (WIPO, 2024-26)

were unreasonable, imposing undue obligations on the licensees, and discriminatory, as they did not ensure equal access to the patented technology for all licensees. These alleged violations of FRAND principles raised concerns about anti-competitive practices and abuse of Ericsson's dominant position in the market. Ericsson is the owner of a sizable portfolio of SEPs related to technologies used in mobile phones[29]. Considering that Ericsson had not complied with the requirements of the FRAND, the CCI issued a directive stressing the significance of fair licensing procedures for SEPs. These instances demonstrated the CCI's dedication to closely examining any possible anti-competitive actions by major firms in the technology industry. Ericsson contested the CCI's authority to issue these orders in front of the Delhi High Court. Nonetheless, the Delhi High Court upheld the CCI's authority to hear patent cases. The Competition Act does not supersede the Patents Act, according to the Delhi High Court, which stated that there is no "irreconcilable conflict" between the two.

c) Patent Holdups and Holdouts: A patent holder may impose unjust licensing terms or demand greater royalties to cause a patent holdup. In certain situations, the CCI has the authority to look into the matter and apply sanctions. Furthermore, complex agreements between original creators and generic pharmaceutical corporations are frequently involved in patent infringement settlements. To make sure that the market entry of generic medications is not unreasonably delayed, the CCI has carefully examined these settlements.

d) Compulsory Licensing: Indian law permits mandatory licensing of patents in specific situations, such as when a patented technology is not being fully exploited. This promotes access to essential treatments and technologies while diminishing the monopolistic power of patent holders. There are worries that intellectual property rights could be compromised even though it promotes competition. In *Bayer Corporation v Union of India and Others*[30] (India's first compulsory licensing case), Nat-co Pharma Limited requested a compulsory license against

[29] Shubha Ghosh, 'Competitive Baselines for Intellectual Property Systems, International Public goods and Transfer of Technology under a Globalized Intellectual Property' in Keith E. Mask us & Jerome Reichman (eds), International Public Goods and Transfer of Technology under a Globalized Intellectual Property Regime (Cambridge University Press 2004)

[30] *Bayer Corporation v. Union of India and Others* [2014] SCC OnLine Del 2296

Bayer's patent by filing a request with the Controller of Patents based on Section 84 (1)[31] of the Indian Patent Act of 1970, as amended in 2005. The Controller granted Natco's request and the Intellectual Property Appellate Board (which has now been abolished) affirmed the Controller of Patents' decision to provide India's first license under compulsory licensing, in addition to broadening the terms and circumstances for such licenses.

e) Application of Law: In a crucial ruling, a division bench of Delhi High Court quashed antitrust proceedings initiated by CCI against Monsanto[32] and Ericsson[33] and held that "the Competition Act of 2002 should not be used to address any matter pertaining to a patentee's use of their patent rights because the Patents Act is a special legislation."

Domestic Legislation

Articles 38[34] & 39[35] declare that it is the duty of the State to protect the welfare of its people by creating and upholding a social structure that is based on social, political, and economic fairness. This involves the duty of the State to guarantee that "the distribution of ownership and control over the material assets of the community" is for the benefit of all. The MRTP Act was passed, building on these fundamental constitutional ideas and taking cues from US, UK, and Canadian legislation.

Following the Singapore Ministerial Declaration of the World Trade Organisation in 1996[36]India took a leading role in developing new competition laws. In its report to the Ministry of Commerce in January 1999, an Expert Group entrusted with investigating trade and competition policy proposed the drafting of such legislation, highlighting the need of competition policy for economic liberalisation. In October 1999, the government formed the "High-Level Committee on Competition Policy and Competition Legislation"

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[31] Indian Patent Act 1970, s 84
[32] *Monsanto Holdings Private Limited v CCI* [2020] SCC OnLine Del 598
[33] *Ericsson AB v CCI* [2014] 8 SCC 319
[34] The Constitution of India, art. 38
[35] (n 35), art. 39
[36] World Trade Organisation, *Singapore Ministerial Declaration* (UNCTAD, 14th executive sess, 1996)

in response to these proposals, and in November 2000, the new competition legislation was introduced[37].

Just before India's TRIPS compliance period terminated in 2002, the Competition Act was passed, which may indicate compliance with TRIPS obligations. Section 3[38] states that any contract that the Competition Commission believes to be anti-competitive is void. Nonetheless, the Act incorporates a wide exemption for IPRs, acknowledging the need to safeguard IPRs as incentives for innovation that is in Section 3(5)[39], promoting technical innovation and maintaining the high standard of products and services. However, this clause also sets boundaries to prevent IPRs from being misused while being misrepresented as protected.

Though the High-Level Committee acknowledged that IPRs may pose difficulties for competition policy, there are issues with the way Section 3(5) is currently being applied. The Act addresses anti-competitive behaviour involving IPRs under the more lenient "abuse of dominant position" category in Section 4 since it completely exempts IPRs from this category.[40] This divergence from earlier MRTP Commission practice calls into question the uniformity and efficacy of the Act in handling complaints pertaining to intellectual property rights. Cases such as *Manju Bhardwaj v Zee Telefilm Ltd.*[41] *and Dr Val-la Perumaan v Godfrey Phillips (India) Limited* indicates the likelihood of unfair trade practices resulting from concept manipulation or distortion can be demonstrated. The court determined that in these situations, the abuse, tampering distortion, ingenuity, or embellishment of ideas could give rise to unfair commercial practices. This would amount to trademark misuse, and the IPR holder would be subjected to legal action.[42]

Critics contend that Section 3[43] prioritises protecting the rights of intellectual property owners over the interests of the general public. They contend that the Act is powerless to

[37] Vishwanath Pingali, 'Competition Law in India: Perspectives' (2016) 41 (2) Sage Pub <https://journals.sagepub.com/doi/10.1177/0256090916647222> accessed 3 September 2024
[38] (n 11), s 3
[39] (n 11), s 3(5)
[40] (n 13), s 4
[41] *Manju Bharadwaj v Zee Telefilms Ltd.,* [1996] 20 CLA 229
[42] *Dr. Valla Perumaan v Godfrey Phillips (India) Limited* [1995] 16 CLA 201
[43] (n 42)

stop IPR holders from imposing arbitrary terms on licensees. Although price fixing and market breakdowns are specifically mentioned in the statute as being intrinsically illegal, more standards are required to determine if these actions significantly hinder competition.[44] Furthermore, the uniformity of the legal approach to tying arrangements, transaction refusals, resale price maintenance, and exclusive agreements raises concerns regarding how well it addresses sophisticated types of anti-competitive behaviour.[45]

International Forum

Regarding intellectual property rights and competition law, India proposed "three recommendations during the 1999 WTO Ministerial Conference". First, under Article 66, India advocated incentives for technology transfer from developed to developing countries.[46] The purpose of the recommendations was to encourage the spread of technology, especially in fields like ecologically friendly technology. India suggested examining TRIPS clauses like Article 40[47], to identify areas for improving technology transfer implementation.

Addressing genetic resources in particular, the second proposal addressed conflicts between the UN Convention on Biological Diversity and the TRIPS Agreement. India proposed amending Article 29 to include new requirements for patent applications[48] so as to reconcile conflict between TRIPS & the UN Convention, ultimately seeking harmonisation of national laws.

Finally, India stressed the necessity of strengthening Geographical Indications' (GI) protection. Drawing attention to the disparity in Article 23[49], which merely provides protection for wines and spirits, India pushed for more extensive GI protection. It

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[44] James B. Kobak Jr., 'Intellectual Property, Competition Law and the Hidden Choices Between Original and Sequential Innovation', [1998] 3 Va. J.L. & Tech 6

[45] Steven D Anderman and Hedvig Schmidt, 'EC Competition Policy and IPRs' in Steven D Anderman (ed), *The Interface Between Intellectual Property Rights and Competition Policy* (Cambridge University Press 2007)

[46] (n 6), Art. 66

[47] (n 6), Art. 40

[48] (n 6), Art. 29

[49] (n 6), Art. 23

demanded quick action in accordance with Article 24[50] to expand the TRIPS Council's efforts in this regard.

The third recommendation, which is regarding improved GI protection, draws attention to a shortcoming in Indian competition law, whereas the first two are recommendations for further international involvement. With no designated agency to enforce Article 22[51] and that In regards to the TRIPS principles, India might decide to incorporate GI-related unfair competition concerns into its competition laws. India must, however, proceed cautiously with TRIPS modifications, giving top priority to actions that do not obstruct free trade and pushing for greater exclusions.

Furthermore, India's use of compulsory licenses under Article 31[52] necessitate conformity to established administrative and legal processes. It is imperative to synchronise the current competition law with TRIPS standards for the issuance of compulsory licenses, especially in light of the significance of technological advantages—including intellectual property rights in determining dominant position as per Section 4.[53]

In summary, India should outline certain requirements for providing forced permits, keeping with stipulations in Article 31. This comprehensive strategy would enhance uniformity between India's competition law and international standards. The intersection of competition law and intellectual property rights is noticeable in many cases. In the case of *Aamir Khan Productions Private Ltd. v Union of India,*[54] the Bombay High Court has confirmed the jurisdiction of the Competition Commission of India (CCI) over all disputes pertaining to intellectual property rights and competition legislation. It emphasised that, rather than being essentially sovereign, intellectual property rights are statutory rights granted by the state. Similarly, in *Kingfisher v CCI*[55], the Bombay High Court ruled that "the CCI has the competence to address issues brought before the Copyright Board of India". This stance was also upheld in *FICCI Multiplex Association of India v United*

[50] (n 6) Art. 24
[51] (n 6), Art. 22
[52] (n 6), Art. 31
[53] (n 44).
[54] *Aamir Khan Productions Private Ltd. v Union of India* [2010] 112 Bom LR 3778
[55] *Kingfisher Airlines Limited v Competition Commission of India* [2010] SCC OnLine Bom 2186

Producers/Distributors Forum[56], reaffirming the CCI's jurisdiction. Additionally, in *Ericsson v CCI*[57], the Delhi High Court ruled that the authority of the CCI is not expressly or implicitly precluded by the Indian Patents Act of 1970.

In *Entertainment Network (India) Limited v Super Cassette Industries Ltd*[58], the Supreme Court examined the disagreement between the two legislations. Although copyright holders have a limited monopoly, it was highlighted. It is against competition law to interfere with the free and fair operation of the market, particularly when it comes to license denials. Although IPR owners are entitled to royalties through licensing, this right is not universal. In *Union of India v Cyanamide India Limited & Another,*[59] the court ruled that the CCI had jurisdiction over these matters and that unreasonable costs for life-saving drugs are subject to price control. The risk of monopolies developing arises when there are few substitutes, which disrupts market economic efficiency. This ruling received backing from a number of other courts[60].

IPRs As a Defence Against Abuse of Dominance

The Act's "safe harbour", as stated in Section 3(5), is evident from the text of the law; it solely relates to the activities forbidden by Section 3 and those covered by Section 4. The CCI's most recent order in the Automobiles matter, which was made on August 25, 2014, as previously pointed out, has confirmed this stance[61].The CCI clarified that section 4(2) of the Act does not have an exemption, in contrast to clause 3(5). Consequently, it is not a defence to argue that an enterprise's exclusionary behaviour falls within the purview of its intellectual property rights if it is determined to be dominant in accordance with Explanation (a) of Section 4(2) and it took actions that effectively prevented it from accessing the market[62]. The CCI's decision, which is currently under review and appeal, suggests that the existence of IPR has no bearing whatsoever on the analysis carried out

[56] *FICCI Multiplex Association of India v United Producers/Distributors Forum* [2011] SCC OnLine CCI 33
[57] (n 37)
[58] *Entertainment Network (India) Limited v Super Cassette Industries Limited* [2008] 13 SCC 30
[59] *Union of India v Cyanamide India Limited & Another* AIR 1987 SC 1802
[60] *Microsoft Corporation v Wayne Lybrand* [2005] SCC OnLine WIPO 177
[61] *Akhil R Bhansali v Skoda Auto India Private Limited* 2017 SCC OnLine CCI 52
[62] *ibid*

under Section 4. Still, it seems dubious how the CCI handled the situation. If the process of awarding and exploiting rights that are frequently associated with intellectual property rights is considered to be an "abuse", then the act of providing rights itself would become superfluous. The Act's Section 62, which states that "it should be utilised in conjunction with other legislation", is rendered meaningless by this. Nevertheless, one is not inherently immune to the severe penalties listed in Section 4 of the Act solely because they own an intellectual property right. This eliminates the interpretation attached to Section 60 of the Act, which declares that the Act would be applied regardless of any contradiction with other laws. The existence of both clauses merely indicates that an effort should be made to strike a balance between the exercise of IPR exclusivities and competitive behaviour in order to make sure that market participants are acting in a way that does not substantially harm competition in India.

COMPETITION LAW V. IPR

Though intellectual property rights and competition law may seem at odds, they work together to promote investment in dynamic competition by limiting static competition. IP rights grant creators an upper hand by allowing them to commercially benefit from their innovations for a set period of time[63]. It goes without saying that the owner of the intellectual property rights will maintain their position of dominance and monopoly power throughout this time. Although monopolistic behaviour should always be challenged, competition law has never said that it cannot be done so. However, abusing such a position would be illegal under antitrust laws[64].

Intellectual property rights help drive innovation, benefiting consumers by encouraging the creation of new, high-quality products and services, while also contributing to economic growth.[65] It allows creators to legally prevent others from using or selling their innovative products and processes based on that new information for a specified period.

[63] M Clark, 'Toward a Concept of Workable Competition' (1940) 30(2) The American Economic Review 241
[64] Shalaka Patil, 'Competition Law in India – Jurisprudential Trends and the Way Forward' (*Nisith Desai Associates*, April 2013) <https://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/Competition%20Law%20in%20India.pdf> accessed 10 September 2024
[65] Murali Neelakantan, 'The Interplay between Competition Law and Intellectual Property Rights in the Indian Healthcare Sector' (2015) 1 (1) NLS Business Law Review 31

If understood otherwise, the law provides a temporary monopoly to inventors or owners of intellectual property rights so they can recover costs associated with their research and invention. As a result, they can generate just and reasonable revenues, which motivates them to develop.[66] However, competition laws are essential for eliminating discrepancies in the market, "forbidding anti-competitive behaviour, stopping the abuse of monopolies, promoting the most efficient use of resources, and assisting consumers by providing fair prices, a wider range of options, and superior quality". As such, it assures that the prevailing authority centred on intellectual property rights is neither excessively complicated, overly dependent, or inflated at the price of competition. In addition to safeguarding competition and the competitive process, competition law highlights the role of innovation as a key driver of competition. This focus not only improves consumer welfare but also motivates innovators to bring new products or services to market first, offering them at attractive prices and quality that meet consumer needs.

Despite their differences, the two systems often coexist in ways that benefit from limiting each other's rights. This interplay is particularly significant in industries like pharmaceuticals, where issues such as pay-for-delay practices, unfair patient assistance programs, and patent evergreening arise due to a lack of consumer awareness. Therefore, in these areas, their intersection is highly anticipated. For this reason, the notion of "compulsory licensing" [67] was designed to strike a compromise between competition law and intellectual property rights, preventing the abuse of privileges by IP owners and the stifling of market competition through the abuse of their dominant position[68].

CONCLUSION

[66] Himanshu Handa, 'Evolution of Competition Law in India' (2016) 5(1) International Journal of Socio-Legal Research 53

[67] Riya, 'The interplay between Intellectual Property Law and Competition Law: Similarities and Differences' (*Enhelion Blog*, 22 August 2022) < https://enhelion.com/blogs/2022/08/22/the-interplay-between-intellectual-property-law-and-competition-law-similarities-and-differences/#:~:text=The%20interface%20between%20these%20two%20areas%20of%20law,stifle%20market%20competition%20by%20abusing%20their%20dominant%20position.> accessed 11 September 2024

[68] Josef Drexel, 'Intellectual Property and Antitrust Law - IMS Health and Trinko - Antitrust Placebo for Consumers Instead of Sound Economics in Refusal-to-Deal Cases' (2004) 35 Int'l Rev. of Intellectual Prop. & Competition L, 788, 805

It is evident that owing to their considerable overlap and sporadic clashes, competition law and intellectual property rights are interrelated and cannot be understood in isolation. By giving innovators sufficient protection to recover their R&D expenses, striking a balance between the two is essential to fostering innovation, protecting consumer interests, and promoting competition. [69]

When IPR holders misuse their dominant positions and go beyond the fair use of their rights as specified in Section 3(5), competition law steps in to regulate IPR. In these types of situations, the Competition Commission of India (CCI) must be able to handle IP-related problems that cause market distortion with sufficient power to support its jurisdiction. But when it comes to competition law, discretion is essential. Regulation should only be applied in situations when intellectual property rights (IPR) materially impede competition so as to avoid going too far. Only in situations where IPR actually impedes competition should the bar for involvement under competition law be raised.

In a nutshell, albeit employing distinct processes, both intellectual property rights (IPR) and competition legislation seek to improve market efficiency. By fostering competition and guaranteeing that markets stay available to new entrants, competition law promotes stable efficiency. By offering inventors and innovators temporary exclusive rights, IPR, on the other hand, aims to achieve dynamic efficiency and encourage the creation of new products and technology. IPR promotes innovation by offering a restricted monopoly to safeguard creative works, while competition law makes sure the market is still open and competitive. Therefore, even though their strategies are different, competition legislation and IPR can be considered complementary forces that cooperate to promote innovation and market expansion.

[69] Rahul Dutta, 'Critical Analysis: Reflection of IP in Competition Law of India' (2008) <http://www.indlaw.com/display.aspx?4674> accessed 10 September 2024