

The Relationship between Intellectual Property Law and Competition Law

Dr. Shiva Chaudhary,
Assistant Professor, Department of Management,
Center for Management Studies, JAIN (Deemed-to-be University), Bangalore, India
Email Id: dr.shiva_c@cms.ac.in

ABSTRACT: *Intellectual property is the creation of your intellect and its basic idea is to promote science, technology, and cultural art. Intellectual property plays a vital role in a country's economic development. Intellectual property rights provide a monopoly to the inventor or creator of the work for a particular period of time. On the other hand, competition law which prohibits anti-competitive agreements is against the concept of creating a monopoly. Competition law and Intellectual property law are always in conflict with each other. The main reason being there antithesis parallel views, competition law ensures free competition in the market by prohibiting monopolies whereas on the other hand intellectual property law ensures some sort of monopolies (in the form of exclusive right) in the market for certain period to encourage the invention or creation. These differences between the two subjects are responsible for the dispute arising from the nature of two subjects. Here in this review paper, I the author will discuss the nature and scope of intellectual property law and competition law; an interplay between both the subjects. The author will further discuss and highlight the landmark judicial pronouncement.*

KEYWORDS: *intellectual property, competition, anti-competitive, monopoly,*

INTRODUCTION

The interplay involving the Intellectual Property Rights and Competition law was most discussed and debatable issue in the last 20 years after the implementation of the TRIPS Agreement. On the one hand, competition law counters anti-competitive agreements; prohibits market monopoly and making use of a strong position. On the other hand, IPRs provides the inventor or creator market monopoly for certain time period. It provides the owner the exclusive rights to commercially exploit his creation or invention. Thus it cannot be denied that there exists tussle between the Competition Law and Intellectual Property law.

The main point of disagreement lies in the fact that intellectual property provides exclusive monopoly to the inventor or creator of the work, which is prohibited under the Competition law. On the contrary it is significant to maintain the interest of the creator or inventor and on the other hand it is important to regulate the competitiveness in the market. The scholars of the intellectual property argue that in the long term IPR fulfill some of the competition law's policy. For instance, giving exclusive rights to the inventor encourages inventors and other person who is skilled in the art to innovate more products which will ultimately help in growing dynamic market. Creation of more dynamic market is several of the goals of competitive strategy.

Primarily market is governed by two distinct mechanisms or system. They are:

- Market activity that is unrestricted (Free Market Action); and
- Market operation that is controlled (Regulated Market Action)

These two market operation can be understood as- when the prices are decided by the buyers and sellers it is considered as free market operation whereas when the prices are determined by any 3rd party particularly by any government recognized regulatory bodies it is considered as regulated market operation. The legislative body is primarily responsible for regulating mechanism. These mechanisms are accountable for the nation overall market improvement performance. Free Market Action refers to market situation where there is no role of the government. Each decision regarding production, capital investment and price is determined by the direct involvement of the manufacturer (or producers) and consumer. However, there is the possibility that manufacturer or producers takes the undue advantages of his dominant position and regulate the process at his own will. This will lead to unfair and unbalanced economy in the market.

One the other hand, regulated market from the name it suggests that it was regulated by any authorities or government recognized regulatory market. These market systems were completely governed by the state

authority. The objective of establishing regulated market system is to ensure that there will be no unfair trade practices and monopoly in the market. These markets are regulated in such a manner that there is monitoring at each steps. Here the decision regarding the production, price and investment was decided by the regulating bodies. Sometimes manufacturer was compelled to produce any particular products indispensable for the living of the public at large. This market system helps in improving the economy of the nation.

However, it is pertinent to note that regulated market system was criticized sometimes for imposing excessive restriction. Due to excessive restriction (or regulation) there is no flexibility in the market and that leads to less innovation and inventions. As a result, limited products will be available for the consumers. Thus from the above discussion it can be concluded that both the market is need of the hour and it is necessary to regulate in such a manner that there would not be so rigidity in the market. Both the market has benefits and drawbacks.

With the existence of the Competition law and the Intellectual property law together, it is necessary that invention should be encourages with adequate price tag. This is because in such scenario, both the supplier and the producers will fulfill each other's need. Now in the next part we will discuss general conception of the Competition law and Intellectual Property law keeping in mind the both the market system.

1. General Conception of Competition Law

Competition in the market refers to rivalry between the different proprietors to attract more customers towards themselves. Form the multinational companies to retailers each one is competing with other to attract more and more customers towards themselves. The competition in the market is unsettled and fluctuates following the entry and exists of different competitors in the market. In the common parlance the term Competition refers to contention between the two parties similarly in business there is rivalry of superiority; rivalry of attracting new customers; rivalry to capture other's customers; rivalry to create goodwill in the market.

There are two ways to acquired good will in the market fair and unfair. Under fair way the proprietor mainly deals with quality of goods and services. On the other hand, under unfair way the proprietor adopts restrictive strategies like lowering the price of the goods and services. However, in both the condition the practices by the proprietor leads to concentration of market. However, this tendency sometimes leads to monopoly as it is well said that Competition Kills Competition.

Thus the suitable definition of competition can be written as- state of affairs where the market remains always open and new proprietor is allowed to enter the market. In this way all the competitors operate under the pressure of competition.

2. General Conception of Intellectual Property Law

The concept of intellectual property can be understood with the concept of possession and ownership of the property. The concept of ownership is broader than the possession. The concept of Ownership includes possession in it. The property was generally divided in two categories tangible and intangible. The tangible property has possession over the physical object. However, in the case of the intangible property which has no material object it is quite difficult to establish concept of possession. This leads to evolution of the intellectual property. Intellectual property is creation of the mind and derives value from the ideas.

The intellectual property law was divided in to two broader categories industrial properties and copyrights. Under the industrial properties it mainly includes patent, design, utility, and trademark. Like the tangible property where exclusive rights are provided to the owner of the land, the creator or inventor of the intangible property are provided with the exclusive rights to use, sell or destroy his property. These exclusive rights are in such from that they are sometimes referred as establishing monopoly in the market. For instance, inventor is allowed to exploit his exclusive rights for the 20 years and thus between those period no one is allowed to use the invention without inventor authorization. In this way it was argued that it creates monopoly for certain time period and thus it is anti-competitive in nature.

3. Rationale for IP Protection and Competition Law

Both the law has their own advantage and disadvantage. Here the rational for protecting intellectual property and regulating competition in the market can be summarized in the given Figure 1.

S. No.	Rationale for Intellectual Property	Rationale for Competition Law
1.	Incentive to Invent	For promoting social welfare
2.	To Encourage Disclosure	To make markets work effectively
3.	Commercialization of Technology	It helps to reduce costs and motivate innovations
4.	To Increase Dynamic Efficiency	Prohibits Monopolies

Figure 1: Rationale for IP Protection and Competition Law

From the above Figure 1 it is clear that both the Competitionlaw and IP law have conflicting objectives. This is mainly because the exclusive rights given to the creator or inventor provides monopolies for short duration of timewhich is against theethics of the competition law. For better understanding the concept it is necessary to understand the meaning of the word “competition’from both the perspective.¹

Under the Intellectual property, the competition is amongst the inventor or creator to invent or create new products for the general public. The competition law aims to encourage competition in the market to assure that goods and services are easily available to the general public at the adequate prices. Thus this makes the meaning of the word ‘competition’ different in both the subject.

To avoid abuse of the intellectual property law different methods are adopted. They are as follows:

- Compulsory licensing
- Parallel Imports

Compulsory licensing as the name suggest is type of licensing where the IP-holder are compelled to license their invention or creation to 3 parties. The IP-holder was forced by the state to license their invention to willing buyer. The TRIPS Agreement laid down prerequisite to grant the compulsory licensing.² The prerequisite to grant the compulsory licensing can be written as follows:

- Necessary in public interest
- Necessary in National Emergency
- If there are anti-competitivepractices

Parallel Import means when the goods were brought from another country to the country of origin is referred as Parallel Imports.

Second, there are many things that need to be considered about the relationship between competitive policy and intellectual property rights. Authorities in regulating property policy should be prudent in investigating any intellectual property rights issues. However, the laws of domination can be abused on intellectual property rights and appropriate redress. This will reduce the high potential cost of reducing innovation benefits.

4. Law of Competition & Patent Law

Law of Patent is associated with trade policy that seeks to maintain fair market practice by unauthorized manufacturing and preventing the sale of patented products, that is the primary goal of trade policies.

¹ ibid

² Article 31 of the TRIPS Agreement

Competition problems only arise when the patent owner utilizes his invention in a way that serves the reason of patent rights and is incompatible with his essential purpose.

Awarding rights to the patent owner will not violate antitrust laws, but abuse of rights will violate trade law. Patent rights are granted only for a specific period of time, that is, 20- years from the filing date. If any such protections are granted for an unrestricted time, there is an improper use of monopoly power and competition will be impeded by limiting the innovation of products. A competition law enters the scene when the patent owner has the exclusive right to exclude others from entering the market. This disagreement arises to frustrate the market situation.

5. *Comparison between IPR and Competition Law*

The connection b/w intellectual property rights and competition law seems contradictory, but in reality it is not. But it helps a person invest in dynamic competition while keeping tough competition at bay. The owner has the option to use his product exclusively for a certain period of time. During this particular time, patent holders have monopoly power and can dominate. This dominance does not show the way to a violation of the antitrust laws.

In due course and due to the appearance of various cases, this leads to an additional, but not inconsistency, purpose of both laws. To comprehend the issue that arises in the application of intellectual property rights and competition law it is essential to study competition law and how it has been organized to address certain issues..

6. *Competition Law and IPR policy*

Take India as an example of a developing nation, Sec. 3 of the Competition Act, 2002 states that business undertaking or group of the business undertaking that prohibited are from entering into any arrangement relating to any practices that are illegal or contrary to the competition law.

Section 3(5), on the other hand, discusses the exception. It notes that competition law has no bearing on intellectual property rights. However, if we compare Section 3(5) read with Section 4, we will see that it still prevents IP holders from abusing their strong position, because if they do, competition law will be involved. As a result, we can assume that they complement rather than say the opposite to each other.

7. *Judicial Position in different countries*

7.1. *The U.S.*

The customary view of IPR law is that it creates a special monopoly in the market and is therefore a breach of trust. However, with the development of jurisprudence related to IP laws, it was speculated that such reward theory provided people with alternative products and technologies. And increasing the variety of alternatives available to consumers and reducing the market's anti-competitive practices. The Department of Justice has formed a "Safety Zone" that does not provide for any limitation on the IP licencing agreement unless it is expressly stated otherwise is created. Appreciation trouble in the market through patent polling, resulting in price stabilization or denial of license which results in competitive loss.

7.2. *Europe*

Article 81 of the EC Treaty clearly mentions the disagreement between intellectual properties law and competition law. In the IPR licensing agreement, the European courts saw a shift from a liberal perspective to intervening perspective. Further, Article 82 prohibits abuse of overriding position formed in the course of IPR licensing agreement. The 2-block exceptions were allowed in relation to the IPR license agreement relating to anti-competitive activities. Exemption in Block 1 was related to the "Specialty Agreement", which refers to intellectual property rights, issued in 2000. Agreement was exempted with certain requirements in the Specialty Agreement. For instance, both parties have no additional than 20% interest, and such agreement is not related to pricing or weekend or jurisdiction over the territory.

The second block of exceptions relates to "transfer of technology", which was issued in 2004. It manages or control dealing with certain correspondence relating to anti-competition rule, patents, know-how, and

copyright piracy issues. The total share of all parties in the respective market should not exceed 20%, and the individual share should not exceed 30%, and such licensing agreement does not contain serious anti-competitive restrictions.

8. *Indian's Perspective*

As the law relates to the coherence of the two laws, it is important to analyze the subject matter in element. It is not necessary that everything in the IPR be deduced from the competitive law. IPR generates a dominant position, but there is no reasonable contradiction in it to misuse a dominant position. To investigate this, a question, we need to deepen the legal frame and judicial precedent.

9. *Legal Structure*

The Competition law 2002 was based on economic performance and liberalization. It endorses socio-economic & political fairness for the citizens. The MRTP Act was passed as a competitive law to include strong provisions and to rectify the error created by fulfillment with TRIPS. Section 3 speaks of anti-competing agreements but Section 3 (5) speaks of an inter-legal interface that provides general exceptions to IPR licensing agreements to endorse innovation in the market. Under Section 4 it also controls the methods that make a significant impact in the market by abusing this dominant position.

10. *Judicial Precedents*

There is an excess of cases overseeing the crossing point between IPR and competition law. Like in the case of Aamir Khan Productions Pvt. Ltd. v Union of India³, Bombay HC states that CCI has the right to hear all matters pertaining to trade laws and IPR. The court further stated that rights related to IPR are not independent of the legislature, but only a civil right under the law.

In another case of Entertainment Network (India) Ltd. Vs. Super Cassette Industries Ltd.⁴ the SC repeated the law on the issue of conflict between the two. The court held that although the right holder has an absolute control, it is restricted in the same sense that if such domination interferes with the functioning of the market, it would be a violation of the law of competition and the same would be the case with the license denial. No doubt, IPR owners can enjoy the fruits of their labor through a license but this is not right. The court further observed that the SC stated that charging royalties via a licence issued to the rights holder is not even an inherent right. Unless the proprietary goods are overpriced, it will clearly violate trade laws, and the licence will be revoked as a result.

In Union of India v. India Vs. Cyanamide India Ltd. & others⁵ it was submitted that charging exorbitant prices on life-saving drugs is subject to price control and the CCI is empowered to do so. Lack of substitution always leads to the formation of monopolies which impede economic efficiency in the market. Subsequently, the same principle was repeated in different courts.

11. *Valle Peruman & ors. Vs. Godfrey Phillips India Ltd.*

The proprietor of trademark exploited the trademark by manipulating or distorting it. It corresponds to the unjust trade practices of registered trademarks. Taking into account India's competition policy, the court said: "Intellectual property of any kind may infringe competition. The court also has the right of trademark owners to use the trademark reasonably." Requirements levied at the moment of patent issuance⁶.

12. *Kingfisher vs. CCI*

Here in this case the court ruled that Article 3 (5) owners' rights are unaffected of intellectual property rights to sue for violation of copyrights, trademarks, patents, etc. Copyright Committee. Therefore, competition law hinders the application of other laws.

³ MANU/MH.1025/2010

⁴2008 (37)PTC 353 (SC)

⁵[1987] INSC 104

⁶ Writ Petition (civil) 567 of 1994, decided on 20 January 2005

13. FICCI Multiplex Association of India vs United Producers Distribution Forum

The key issue in this case was whether market competition would be beneficial or affect the rights of copyright owners. In the above case, the court found that the rights granted to the copyright owner were not absolute rights, but legal rights u/ Copyright Act 1957. The European Court of Justice has determined that the purpose of the IPR is to promote innovation in all areas. It also provides commercial benefits.

CONCLUSION

After analysis, the IPR can be concluded as a claim, contrary to the competitive law that governs the body, that build the rules relating to the industry's production, supply, distribution, and storage of products while the market is open for business. IPR seems to be granted to the manufacturer, maker or creator of any script for special use. We can support it through wages, which means that a person is responsible for benefiting from all kinds of hard work and efforts.

These two laws seem contradictory in nature but as we have seen from the above analysis, the two laws complement each other and come into the picture when someone is abused. Competitive law seeks to offer a wide variety of products to consumers and creates a balance between producers and consumers by maximizing profits with quality products at affordable prices. IPR allows manufacturers to have a single product creation and helps the public at large. The IPR's dominance status does not breach antitrust policies; however, the abuse of that position does.

