

# CONFLICT BETWEEN COMPLETION LAW AND INTELLECTUAL PROPERTY RIGHTS

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**ABSTRACT:** *As two distinct and distinct structures, the rules on intellectual property rights and competition have traditionally evolved. Traditionally, competition law has played a role in fostering healthy market competition and in so doing preventing market distortions, while intellectual property rights have played a role in promoting innovation and creative ideas through the provision of protection and rights over prototypes. The common view is that the conflict between intellectual property rights and competition law is inevitable. Evidence of this is the increase in the number of antitrust cases relating to intellectual property across jurisdictions. India has had its fair share of lawsuits as well. This paper deals with the relation between intellectual property rights and competition law, with an emphasis on India. It also recommends that judicial decisions and legislative initiatives conducted in various jurisdictions be deliberated on and debated. The article ends by discussing the new Indian Competition Act 2002 (as amended in 2009) and the interplay between the provisions on competition and the defence of intellectual property.*

**KEYWORDS:** *Competition Law, Intellectual Property Rights, Abuse of Dominance.*

## INTRODUCTION

A number of questions have arisen in our minds with the implementation of the Competition Act as to how it would respond to intellectual property as well as the rights imposed on it by the statutes of intellectual property rights. There is uncertainty in this respect since, at least with regard to the place in India, it is a grey region. As intellectual property and competition laws are constitutionally different in tone, the confusion is obvious and tends to be opposed to each other as they both have different goals together. When Intellectual Property remains for a period of time on the award of monopoly, antitrust laws aim to reverse monopolistic and discriminatory market practises. They appear, prima facie, to be antagonistic. When approached by a study of the genesis of these various phases of law, the fields of application of intellectual property statutes and competition laws, along with the prevalent misconception that these are opposing branches of a 'common root,' can be more readily understood.

## DISCUSSION

### *Characteristics of Intellectual Property Rights*

It is usually possible to recognise intellectual property rights as a type of property rights. For many decades, its defence has led to the development of secure prosperity in most modern political structures, and is found at both the base of most of today's thriving industries. It is intended to encourage creativity and innovation by enabling innovators with a monopolistic, albeit temporary, exclusive right to land. As society has grown and personal possessions have increased, governments have considered it prudent to allow for the controlled exchange of property between citizens, for the placed to benefit of the additions to either the world's wealth through a trade of property among the creators of this wealth, This promotes individual talent and commitment to foster better ways of creating and using the means at hand efficiently and effectively. By rewarding them with the depredations of less industrious individuals, this offers

a justification for increasing individuals. The rights of possession of property are recognised by the government as the fruits of individual labour, whether intellectual, manual, or mixed. As the authority for the preservation of the peace and security of the state, the protection of these rights becomes a measure of the functional utility of the government.<sup>1</sup>

The basis both for recognition of intellectual property by special government approval seemed to be that public welfare is improved by creativity in the society, and now the innovator is a public primary beneficiary to that degree.<sup>2</sup>

### *Competition Laws*

Antitrust laws were not established either by economists or by commercial law technicians themselves. Instead, it was the intention of politicians and academics who were attentive to the foundations of democratic institutions, who saw it as a response to the key to solving the democratic problem. Competition laws are based on the belief that competition is often a good one and that drugs are a monopoly. It is argued that the above view can not be extended to all cases, but offers clarification on the whole as it is intended to increase consumer welfare. Its aim is "not to protect business from the functioning of the market, but to protect the public from the market's failure."<sup>3</sup>

By free competition in business and trade, the economic environment is better served. Competition laws or antitrust rules preserve competition. They are concerned with cartels and the consolidation or preservation by "unacceptable" means of monopoly control. Its goal is to foster competition, which in turn is to promote quality goods, lower prices and more productive methods of production. It provides profit opportunities that cause companies to find effective, creative and new production methods. It is in the public interest that the deciding factor in business competition is quality, competitive prices in a free, competitive market for goods and services.<sup>4</sup>

Common law has really advocated healthy competition yet has entered into unlawful and unenforceable deals and contracts to limit trade.

### *Intellectual Property Rights versus Competition laws*

The complementary regimes are intellectual property and competition law, both structured to foster creativity within the acceptable limits. In other words, incentives in the form of an intellectual property monopoly are appropriate unless they are substantially in excess of what is required to stimulate investment and unless market power is used to manipulate competition. In order to fulfil the participation restriction, the legislation regulating intellectual property and competition law must therefore enable the developer to gain a reasonable return on his investment to encourage the desired amount of creative behaviour. Any changes to the competitive treatment of intellectual property may be required to comply with the participation cap.

The better view is that so many laws provide incentives to implement new innovations by protecting competition and intellectual property by enabling creativity. For the most part,

<sup>1</sup> Journal of Politics and Economy, 62 (1954) 124

<sup>2</sup> K.D. Raju, "[The Inevitable Connection between Intellectual Property and Competition Laws](#)", Journal of Intellectual Property Rights

<sup>3</sup> Spectrum Sports, Inc v Mc Quillen 506 US 447 (1993)

<sup>4</sup> Holyoak & Torremans, Intellectual Property Law, Oxford University Press, 2008.

competition has no problems with intellectual property rights, believing that market leverage is sufficiently important to gain efficiencies, even innovation-related efficiencies. It is to "safeguard competition and competitive process" and pro-competitive productivity gains must give way to this objective. Where the modest anticompetitive effects of a transaction are greatly counterbalanced by the beneficial effects of competition on consumer welfare, antitrust has pushed for innovation. Jurists and courts have recognised that the fundamental purposes of intellectual property laws and competition laws are compatible because, through innovation and business, both serve the shared purpose of maximising consumer welfare.<sup>5</sup>

#### *Antitrust laws in India*

India has implemented antitrust policies in its domestic companies, like other developing countries, in order to smash monopoly practises that are the product of the communist effect on economic policy. The introduction of antitrust policies through the enactment of the Competition Act (2002), through repealing the previous Monopolies and Restrictive Trade Practices Act (1969), and the establishment including its Competition Commission mostly in core areas of employment, has become the latest genre that guides the industry. A significant role was played by the SVS Raghavan Committee.

As a signatory to the Intellectual Property Rights Trade-Related Aspects (TRIPS) Agreement under the World Trade Organization (WTO) Regime, India must comply with the requirements of Article 40. It includes the enactment of the applicable law of competition and brings the laws of intellectual property into accordance with it. The aim of the competition law was to avoid activities adversely affecting competition, to encourage and maintain competition in markets, to protect consumer interests and to ensure the freedom of trade of other market participants in India.<sup>6</sup>

#### *Indian competition act in relation to competition and IPR policy*

"In India, Section 3 of the Indian Competition Act 2002 states: "No undertaking or association of undertakings or individual or association of persons collective bargaining into any arrangement with regard to the manufacture, supply, delivery, storage, acquisition or control of goods or services causing, or likely to have caused, a significant adverse effect on competition within India. However, Section 4 of the aforementioned Act deals with "abuse of the dominant position" that, if violated, tries to interfere with IPR rights. This illustrates the link between competition law and IPR rather than the contrasting existence."<sup>7</sup>

### **CONCLUSION**

Innovation has always been a catalyst in a developing economy, contributing to more creative development. The introduction of new technologies gives rise to healthy competition at both the micro- and macro-economic levels. IP laws help safeguard against misuse of these inventions. In view of this IP, competition laws must be enforced in a fair way to ensure that the interests of all stakeholders, including the customer, are safeguarded, as well as those of

<sup>5</sup> Atari Games Corp v. Nintendo of Am Inc, 897 F.2d 1572, 1576 (Fed Cir 1990).

<sup>6</sup> Case No. 04/2015, Best IT World India Private Limited v. M/s Telefonaktiebolaget L M Ericsson (Publ) (CCI).

<sup>7</sup> Illinois Tool Works Inc. v. Independent Ink, Inc., 547 U.S. 28 (2006).

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the innovator or the general public. This illustrates the link between competition law and IPR rather than the contrasting existence.

The common aim of both policies is to foster creativity and ingenuity that would ultimately contribute to the growth of a nation's economy, but this should not benefit the common public. For this reason, India's completion commission aims to check the co-existence of competition policy and IP laws, as economic and also some consumer welfare will result from a balance between both laws.