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Analysis of Interplay between Competition law and Intellectual Property Rights

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ABSTRACT

The legal framework aims to safeguard individual rights and provide remedies in case of violation, however, there can arise certain circumstances where objectives of different law seem conflicting to one another. A prominent example of such tension is the tussle between Competition law and Intellectual Property Rights. While competition law was established with the purpose to promote fair and open market which is accessible to every individual and encourage competition to provide variety of products to consumers, Intellectual Property Rights seems contrary to this notion by granting exclusive rights to an individual to their innovations and further protect creativity by doing the same.

This article examines the seeming conflict between both the areas of law and further explore the common ground of interplay. It further analyses how both laws intersect and operate harmoniously to ensure market regulation and innovation in India. Additionally, the based lacunas in both the Indian statutes would be discussed that can result in inconsistencies in enforcement of these laws.

Key words: Intellectual Property Rights, Competition Law, Interplay, Innovation, Monopoly, Rights, Free and Fair Market.

INTRODUCTION

Competition and innovation are the two major aspects that play a significant role in the growth of a market and economy. Both these aspects are protected and regulated by certain laws known

as the Competition law and Intellectual Property Rights with the purpose to protect not just the consumers' right but also the innovators' creativity.

However, it is considered that there is a tussle between the application and objective of both these laws and inherently both laws cannot have a co-existence with one another, since the IPR has the inherent objective to protect the innovators' right and provide the exclusive monopoly over their innovation while competition law functions with the objective of achieving free and fair market where every individual can participate and enter easily in the market. The conflict that is considered over here is that the monopolistic rights which IPR provides to the innovator can lead to discrimination against the policy of free and fair market which the competition law is trying to achieve. But this conflict is overplayed, rather both the laws ensure that the regulation of market is done in a fair manner. Both the laws provide exceptions for one another to incorporate each other for better regulation of the market; such co-existence can be understood by the better understanding of the following sections of the competition act:

1. **Section 3(4) of the Competition Act, 2002:** It refers to the tie-in arrangement which is considered to be a practice anti-competitive according to section 3(4) of the Competition Act 2002, if not practised in a reasonable manner. Tie-in arrangement basically refers to a business practice where the seller of a product requires the tied product to be sold first for the buyer to obtain the primary product they actually require. The legality of such arrangement depends upon the appreciable adverse effect they can cause in the market.

   Such arrangement actually promotes innovation when applied in a proportional manner as it helps in recovery of research and development cost that was utilised in innovation of the primary product and at times for technical compatibility and better performance of the primary product, which leads to tie-in arrangement of products by the seller in the first place. For instance, Apple iPhone comes with pre-installed propriety operating system (iOS) and app store exclusively for iPhone, which is quite different from the open ecosystems that provide consumers with choice of alternative app stores or operating systems[1].

2. **Section 3(5) of the Competition Act, 2002:** This section provides for an exception for preservation of Intellectual Property Rights and provide the innovators' such right so

[1] The Sunday Guardian, https//: latest.sundayguardianlive.com, (last visited December 11, 2025).

long as they are reasonable and not being used to abuse the market. In simple terms, it can be stated that as long as there is reasonable utilisation of IPR, it won't lead to infringement of the competition policy established, however if such infringement is unreasonable or based on abuse of IP rights then the competition policy can put such innovator's right on hold[2].

The exercise of such exemptions is highly dependent on the conditions imposed during the licensing agreements and the Competition Commission of India (CCI) has all the rights to investigate or inquire in case of unreasonable conditions imposed by IPR holders as recognised by the IP laws (section 3(3) and 3(4)) of the Act[3].

3. **Section 4 of the Competition Act, 2002:** The intention of this section is to prohibit the abuse of dominant position of companies in the market and ensure accessible market for every enterprise that wants to enter. Though, at first instance this section may seem conflicting towards IPR that provides its holder exclusive rights to their invention, however that isn't the case, as only when there is abuse of such dominance will this section come into play, henceforth merely having dominance in the market won't result in application of section 4, thus protecting the exclusive rights and position which one might create via their innovation within the market.

   In the case of *CCI V. Telefonaktiebolaget LM Ericsson*[4], under which complaints were filed against the defendant that he was misutilising the monopolistic rights he holds regarding Standard Essential Patents in regards to 2G, 3G and 4G mobile communication technologies where, he was charging excessive and discriminatory royalties. Through investigation the CCI examined the position of Ericsson's in the market and thereby the abuse of the complete control that he held by excessive and discriminatory pricing of his patented product which had no other alternative in the relevant market at the present point. This case thus established that IPR based dominance

[2] Chandrika Bothra & Mehak Kumar, Determining the Reasonability of Conditions under Section 3(5) of the Competition Act: Analysing the Intellectual Property Law Exemption, 13 NUJS L. REV. 4, 631, 645-646, 2020, https://nujslawreview.org/wp-content/uploads/2021/03/13.4-Bothra-Kumar.pdf
[3] The Competition Act, 2002, Section 3, Act no. 12 of 2003, Acts of the Parliament, 2002 (India)
[4] CCI V. Telefonaktiebolaget LM Ericsson 2023 SCC OnLine Del 4078.

if abused in the market can result in actions to be taken under the Competition Act for the protection of the market and the welfare of the consumers.

LACUNAS IN THE LEGAL FRAMEWORK

Despite the regulatory frameworks established by the legislature, there still exist multiple inconsistencies which can lead to gaps in the enforcement of Competition law and IP rights, leading to an irregulated and bias market within the economy of the country, further impeding creativity and innovation as these lacunas can lead to uncertainty and drive away the innovators into other countries where such regulations are engrained into practice. Some of such inconsistencies within the Indian statutes are highlighted below:

1. **Absence of clear guidelines on IPR abuse:** As per section 4 of the Competition Act, 2002 certain forms of abuse have been mentioned however it is completely silent on how these forms apply when abuse of dominance flows through the Intellectual Property Rights. For instance, the lawful monopoly that IPR creates is not expressly defined or categorised leading to critical lacunas, such as when certain actions by IP-based dominance turn abusive, like refusal to license, high royalty pricing, NDAs etc. There is no certain test or threshold set for such gaps which is a requirement in the modern market[5].

2. **Absence in codification of "Essential Facilities Doctrine":** The "Essential Facilities Doctrine" is a principle which states that any facility which is necessary for competitors to operate in the market must be provided access to on reasonable terms. This principle is necessary to ensure competition in the market, however under the Indian competition legislation there is no explicit mention of this doctrine which results in circumstance under which even if an Intellectual Property is a necessity that must be accessible to the competitors in the market becomes inaccessible.

[5] Saurav Kumar, Analysing the Joint Parliamentary Committee Report on the Competition Amendment Bill, 2022, SCC Online Blog, (Dec. 12 2025, 10:00 AM), https://www.scconline.com/blog/post/2023/01/14/analysing-the-joint-parliamentary-committee-report-on-the-competition-amendment-bill-2022/

Further section 4(2)(c) prohibition of actions which lead to denial of market access provides an uncertainty where it does not explain how denial to market through IP licensing should be assessed. This requires clear conditions for intervention to ensure predictability while enabling the objectives of both the laws with clear guidelines in place[6].

3. **Royalty Determination:** There are no clear guidelines provided for calculation of royalty and the determination of excessive or unfair pricing for abuse of dominant position in the market as per section 4 of the Competition Act, 2002 is completely based upon the facts and circumstances of the case. The courts and CCI in most cases rely upon the economic analysis or comparison with foreign royalty practices for the valuation of the royalty which leads to uncertainty. For instance, in the case of *CCI V. Telefonaktiebolaget LM Ericsson*[7], the determination of the Standard Essential Patents was entirely subjective and based on 'Fair, Reasonable and Non-discriminatory' as there was absence of domestic guidelines[8].

SUGGESTIONS

Despite the existing laws on both IPR and Competition there is still a need for precise guidelines for bridging the gaps and enabling further clarity for better regulation of the market. This leads us to certain suggestions which can be implemented and enhance the enforcement of both IPR and Competition law with better scrutiny and less conflict, some of these suggestions are mentioned below:

1. **Clarifying Abuse of Dominance in IPR Context:** The lack of specific provisions for the regulation of IP-based dominance in the market is a gap that need to be filled in order to make the application of both IPR and Competition policies consistent. The IP-based dominance, as discussed above originates through lawful monopolistic rights, however when such dominance and control of the market turn into abuse is still very facts and circumstance based under the Indian legal framework, resulting in

[6] Manu Garg & Anisha Agarwal, The Doctrine of Essential Facilities: How Essential it is, in the Indian Market, SCC Online Blog, (Dec. 13 2025, 13:00), https://www.scconline.com/blog/post/2022/01/05/doctrine-of-essential-facilities/

[7] CCI V. Telefonaktiebolaget LM Ericsson 2023 SCC OnLine Del 4078.

[8] Anmol Aggarwal & Ria Bansal, Licensing Royalties and Relevant Market Concerns: The 'Relevance' of Preparing the Field before the Match, 17 NUJS L. Rev. 1, NUJS Law Review, 2, pg.: 13, (2024), https://nujslawreview.org/wp-content/uploads/2024/05/17.1-Aggarwal-Bansal.pdf

inconsistency through decisions of the CCI and Courts. CCI must, along with IP regulatory authorities must publish guidelines for assessing such abuse[9].

2. **Development of Royalty Determination Test:** As no statute necessarily provides royalty determination guidelines it is fairly difficult to find out when certain amount of royalty demand can necessarily turn into abuse under Competition Act. There is a need to formulate a clear royalty calculation method with inclusion of 'percentage caps,' 'tiered royalty' etc[10].

3. **Joint IP-Competition Regulatory Cell:** In order to formulate regulations that harmonize both the IP laws and Competition policies in a fair and equitable manner it is necessary for a joint regulatory cell to be set up which will review cases accordingly and develop sector specific regulations.

These actions if taken precisely, can ensure the establishment of a harmonized IP and Competition policy regime which is not just innovation friendly but also creates an accessible and free market, thus achieving the objectives that both these laws were trying to ensure, further reducing uncertainty and creating stability in the market.

CONCLUSION

The perceived conflict between IPR and Competition Law is often considered to be a tussle between monopolistic market and Perfect market. However, a closer analysis of the objectives of both the legislations in enforcement reveal at a certain degree the basic purpose is ultimately promotion of free, fair and efficiently regulated market that recognizes creativity but also market accessibility.

Further analysis of the Indian statutes has revealed that the tussle can easily be cured if legislative and regulatory gaps are fulfilled. The absence of express framework for the IP-

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[9] Saurav Kumar, Analysing the Joint Parliamentary Committee Report on the Competition Amendment Bill, 2022, SCC Online Blog, (Dec. 12 2025, 10:00 AM), https://www.scconline.com/blog/post/2023/01/14/analysing-the-joint-parliamentary-committee-report-on-the-competition-amendment-bill-2022/

[10] Anmol Aggarwal & Ria Bansal, Licensing Royalties and Relevant Market Concerns: The 'Relevance' of Preparing the Field before the Match, 17 NUJS L. Rev. 1, NUJS Law Review, 2, pg.: 13, (2024), https://nujslawreview.org/wp-content/uploads/2024/05/17.1-Aggarwal-Bansal.pdf

based dominance under section 4 of the Competition Act, lack of explicit mention of necessary doctrines such as Essential Facilities Doctrine, and uncertainty surrounding royalty determination has led to uncertainty in the market and bridging of these gaps can lead to enhancement both competition and innovation. With the development of such legal framework, sector-specific guidelines and harmonisation in operation of IPR and Competition Law can enhance stability within the market, further strengthening the market from within and jointly fostering innovation and fair competition.