
INTELLECTUAL PROPERTY AND COMPETITION LAW'S INEVITABLE RELATIONSHIP: NEW JURISPRUDENCE AND LESSONS FOR INDIA

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ABSTRACT

Competition law and Intellectual Property (“IP”) law have traditionally developed independently. Historically, competition law aimed at encouraging market efficiency and, by extension, to avoid market distortions, whereas IP law's focus has been on fostering innovation by providing legal protection for new creations. The common belief is that IP rights and antitrust regulations are at odds with one another. The recent uptick in intellectual property-related competition litigation across legal systems is indicative of this trend. Several judicial cases in India have addressed this same topic. Examining how IP laws and antitrust regulations intersect in India is the focus of this paper. The study also proposes deliberating and discussing judicial rulings and policy initiatives from diverse jurisdictions. Based on the findings, it becomes evident that the Indian Competition Act of 2002 fails to adequately address the interplay between competition and intellectual property laws. Acknowledging the intricacies of this matter, particularly the dearth of pertinent regulations and legal case law, the study advocates for the Competition Commission of India (CCI) to issue specialized directives concerning IP and competition matters.

1. INTRODUCTION

One of the intricate discourses in the field of competition law revolves around the applicability of IP law to challenges within the domain of competition. Therefore, conducting further comprehensive research becomes quintessential to fully comprehend the fundamental correlation between intellectual property and competition law, especially considering the notable rise in cases involving the misuse of dominant market positions/abuse of monopoly rights due to significant technological advancements. The surge of disputes related to competition intertwined with IP rights, especially within the United States and the European Union, has become increasingly pronounced.¹ The Aamir Khan Productions Private Limited v. Union of India case sparked a wave of intellectual property and antitrust litigation in India, which is still in its infancy. In order to foster innovation in high-tech industries, it is essential to draw a clear line between the boundaries of IPR and competitive action. Abuse of a dominating position, patent pooling, refusal of a license, etc., on the part of IPR holders should be probed legally. In the case of Singhanian & Partners LLP v Microsoft Corporation (I) Pvt Ltd & others, Microsoft India was alleged to be engaged in anti-competitive practices and abused its dominant position in the Indian market. Initially, the complaint was lodged with the CCI, and subsequently, on October 9, 2012, the Competition Appellate Tribunal (COMPAT) endorsed the CCI's ruling, affirming that Microsoft had not engaged in anti-competitive practices within the software licensing sector. Although the software company was facing lawsuits and unfavorable decisions in other locations, such as the US and the European Union, this case ruled in Microsoft's favor. In another case, the CCI displayed a weak stance against DTH providers in India who were accused by a consumer rights group, Consumer Online Foundation ("COF") of participating in anti-competitive practices such as abusing their dominating position by bundling hardware with other technological items and not allowing interoperability in the burgeoning Indian high-tech market. The CCI's contention that "collective dominance" does not exist under the Competition Act of India led to the DTH companies' acquittal. The alignment of the CCI's verdicts with other judgements in similar jurisdictions raises substantial doubt. The COF appealed the CCI's decision to the COMPAT, which granted the

¹ Mansee Teotia & Manish Sanwal, Interface Between Competition Law and Patents Law: A Pandora Box, SSRN Electronic Journal, (2021), <https://ssrn.com/abstract=3775567>.

appeal.²

In the case of FICCI Multiplex Association of India v/s United Producers/Distributors Forum (“UPDF”), the CCI identified cartel-like behavior in the Indian film industry. The UPDF contended here that the purported agreement between the film's creators and distributors was required to safeguard the creators' intellectual property. As a result, intellectual property protection & competition legislation in India have fought each other rather than worked together recently. These disagreements or partnerships, however, must not undermine the purposes of competition legislation or intellectual property rights protection.³

This study examines how IPR protection or competition law has begun to intersect in modern times, focusing on policy measures and their implementation in highly technical fields. The first section of this article provides a theoretical framework for understanding the relationship between IP law and competition policy, as well as its implications. The second section examines the developing IP law surrounding competition disputes in India and elsewhere. Intellectual property rights are not intrinsically antithetical to competition rules.

2. DIFFERENT APPROACHES TO A COMMON GOAL

There are several reasons why people in today's technologically evolved society pay close attention to intellectual property rights protection. Also gaining traction in the spectrum of laws affecting today's tech-driven society is the concept of competition law. Intellectual property rights and competitiveness are related concepts. They use various approaches to accomplish the same ends.

One may argue that IPR is anti-competitive since it provides the owner the right to a monopoly and prevents others from entering the market with a similar product. Moreover, intellectual property rights may be used to prevent licensees from engaging in competitive activities. The economic goals of competition law and intellectual property law are essentially the same. Whenever possible, conflicts between two laws should be avoided by interpreting them against the

² Raju KD, Interface Between Competition Law and Intellectual Property Rights: A Comparative Study of the US, EU And India, 2, Intellectual Property Rights: Open Access, (2014).

³ Robert D. Anderson, Nuno Pires de Carvalho, Antony Taubman (eds.), Competition Policy and Intellectual Property in Today's Global Economy, Cambridge University Press, (June 22, 2023), https://assets.cambridge.org/9781107194366/frontmatter/9781107194366_frontmatter.pdf.

backdrop of a shared goal. The two bodies of legislation are seen as working together to protect and advance the interests of innovators and consumers. Both fields advocate for "dynamic efficiency," or a set of laws governing markets and the distribution of property that encourages innovation and the associated risks. The importance of intellectual property rights in fostering innovation is recognized and respected by the field of competition law.⁴

A liberalized economy also relies heavily on competition legislation. More than a hundred nations have competition laws in place as of 2010, indicating the relevance of the topic. Some of these statutes are over a century old; the Sherman Act, for instance, was passed by the United States Congress in 1890. The passage of the Treaty of Rome in 1957 established the competition regulations of the European Union. "Although most European nations did not establish legislation until the 1950s, Japan's Act Concerning Prohibition of Private Monopoly & Maintenance of Fair Trade was passed in 1947. In the aftermath of economic liberalization that started with the signing of the WTO agreements in 1995, it seems that newly developing economies have either updated their existing laws or established contemporary competition laws." In 2002, for instance, India passed new competition legislation to accommodate its evolving economic policies.

With time, the importance of countering IPR infringements has gained prominence in the economic strategies of many nations due to the rising significance of IP in global economies. According to Martin Khor, there may be an asymmetry between short-term gains from more rivalry and the long-term benefits of increased growth and innovation. Protection of intellectual property includes the appearance of anti-competitive market dominance on the side of the monopoly holder. Dominance in the market is OK so long as it is not abused. Refusing or failing to license one's intellectual property to rivals at a fair price may be seen as unfair behavior by the market. Competition & intellectual property were formerly seen as diametrically opposed concepts. It was generally agreed that intellectual property rights (IPR) and free market competition both had inherent conflicts. This was largely because IPR and competition policy have traditionally developed as two independent legal systems. Conventionally, the purpose of competition legislation has been to encourage market efficiency and, by extension, to forestall market

⁴ Robert D. Anderson and William E. Kovacic (2017), 'The application of competition policy vis-à-vis intellectual property rights: the evolution of thought underlying policy change', WTO Working Papers, (Sep. 13, 2017), https://www.wto.org/english/res_e/reser_e/ersd201713_e.pdf.

distortions. Both areas of law, however, have the goal of fostering healthy market competition. It remains uncertain, though, whether competition law genuinely restrains the use of IPR. The case involving Microsoft illustrates the debate since it centered on the tension between intellectual property law and antitrust regulations. It is generally agreed that protecting the interests of customers, maintaining a high rate of innovation, and discouraging new entrants into the market would be counterproductive. With the proliferation of new technologies comes a growing need for in-depth study of the intersection of intellectual property or competition law in order to combat IPR abuse, which includes blocking patents, patent pools, repurchase agreements, and interoperability concerns.⁵

Recently, competition regulators and courts have barred IP owner conduct that is permitted under IP laws but which runs afoul of competition law. The rulings against Microsoft in the U.S and E.U are analogous to this. The purpose of antitrust legislation is to break up monopolies that are fostered by intellectual property laws. This is a common belief, and the only open issue is how these two currents find equilibrium with one another.

3. NEW CASE LAW: INTELLECTUAL PROPERTY VS. ANTITRUST

Since England passed the Statute of Monopolies in 1624, there has been friction between competition policy and intellectual property rights. While monopolies were outlawed, 'patent monopolies' were allowed. Protecting and encouraging creativity via the grant of a temporary monopoly over an invention is what intellectual property law is all about. Conversely, competition law serves to safeguard the market by limiting instances of unfair competition. The purpose of a nation's competition policy is to promote free and open markets via various forms of regulation. No new limits or restraints that might stunt social development are envisioned. Companies may have temporary monopolies over certain technology, but they cannot persist in monopolizing whole markets. Intellectual property protection in and of itself is not abusive; rather, its dominance in the market serves its lawful function by providing an incentive for more invention. However, essential principles of competition law and the spirit of intellectual property protection are

⁵ Keith E. Maskus, Competition Policy and Intellectual Property Rights in Developing Countries: Interests in Unilateral Initiatives and a WTO Agreement, 23(4), *The World Economy*, 595-611, (2000).

undermined when corporations refuse to license their IP to rivals.⁶

Examining the systems, practices, and regulations of different nations that deal with competition and intellectual property is necessary to comprehend the challenges of implementing competition law or intellectual property law.

In the past, patents were seen as monopolies, hence patent protection and licensing operations were closely monitored by the state. When economists like Posner analyzed the importance of protecting intellectual property, new anti-trust legislation was enacted later in the 1970s. While not all IPRs are monopolies, these statutes recognized the possibility that some may be.

More incentives to spend on research and development, along with stronger legal safeguards, led to a surge in cumulative innovation in software and other high-tech industries. Some of the largest corporations reaped the benefits of this strengthened IPR protection situation by using it to their advantage in the marketplace. According to the latest Microsoft lawsuit, Windows has a global market share of 94% among PCs powered by Intel chips. Microsoft has been the subject of anti-competitive practices investigations in both the United States and the European Union due to the company's acquisition and monopolization of key market segments. The exploitation of intellectual property-protected technologies and the money generated by commercial monopolies always lead to conflict.⁷

To further the country's open market policy, which was established after economic liberalization in 1991, India enacted the Competition Act in 2002. In its current form, the Act aims to:

- (1) Ban Anti-competitive agreements, for one.
- (2) Restrict businesses from taking advantage of their market dominance

⁶ Yogesh Pai and Nitesh Daryanani, Patents and Competition Law In India: CCI'S Reductionist Approach In Evaluating Competitive Harm, 5(2), Journal of Antitrust Enforcement, 299-327, (2017).

⁷ Pierre Régibeau and Katharine Rockett, The relationship between intellectual property law and competition law: An economic approach, University of Essex, Department of Economics, Economics Discussion Papers (2004), https://www.researchgate.net/publication/5020030_The_Relationship_Between_Intellectual_Property_Law_and_Competition_Law_An_Economic_Approach.

- (3) Minimize mergers and acquisitions that exceed legally mandated sales or asset levels.

India's Patents Act was first adopted in 1970 and has been revised many times, most recently in 2005, to bring it into line with the country's promises made to the World Trade Organization in 1995. According to Section 3 of the Competition Act, 2002, *"no enterprise or association of enterprises or person or association of persons shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services that causes or is likely to cause an appreciable adverse effect on competition within India."* The dedication of the Indian Government to safeguarding IPR is evident through Section 3(5) of the Indian Competition Act, 2002, which provides a complete exemption to IPR. However, Article 4, which addresses the misuse of a dominant position clause, allows for extensive interference in IP issues.⁸

Abuse of a dominating position is a widespread sort of anti-competitive behavior that is observed across nations. This might come about via several means, such as a refusal to trade, a tie agreement, an exclusive license, etc. The next section discusses these types of agreements in further depth.

4. MISUSE OF AUTHORITY

The concept of a "dominant position" in economics refers to the ability of a market participant to restrict effective competition within a specific market. The deployment of such tactics by a market leader constitutes anti-competitive behavior. As stated in Section 4 of the Indian Competition Act, 2002, no business is permitted to exploit its dominant position. This position is defined as "the degree to which a firm's position of strength in a given market allows it to act independently of the established competitive forces and to the detriment of its competitors or the consumers in that market." This implies that although businesses may hold a dominating position in a market, the Act prohibits them from exploiting their position in a way that harms competitors or consumers in the given market.

The delicate balance between intellectual property rights (IPRs) and competitiveness is an issue that has garnered significant traction in India. The existence of a plethora of intellectual property

⁸ Forrester Ian S, Competition and intellectual property: Ten years on, the debate still flourishes, (Nov 19, 2012), http://www.eui.eu/RSCAS/Research/Competition/2005/2005_10-CompForrester.pdf.

& competition agencies in India is a cause for worry as well. Hence, considering this, one of the best examples of this is the Bombay High Court determining the CCI having the jurisdiction to handle competition matters involving IPR in *Aamir Khan Productions Pvt Ltd v Union of India*. The *Kingfisher v. Competition Commission of India* further solidified that the CCI has jurisdiction over matters previously under the purview of the Copyright Board. These instances collectively show the readiness of the Indian judicial system to adjudicate on competition or intellectual property matters.⁹

Precedents like *Manju Bharadwaj v. Zed Telefilms Ltd.* and *Dr. Vallal Peruman v. Godfrey Phillips (India) Ltd.*, the then-MRTP Commission made it clear that anyone who engages in trademark infringement—including using manipulation, distortion, contrivances, or embellishments—in order to deceive consumers could face legal repercussions. Section 4 of the Indian Competition Act, 2002 does not explicitly mention public interest and IPR misuse as a basis for interference; it requires a "significant adverse effect on competition" before any action can be taken.¹⁰

Cartels are another element of anti-competitive behavior, and within India, numerous sectors are grappling with detrimental impact by such practices. The film industry, due to persistent copyright concerns and pervasive anti-competitive practices, provides a particularly illuminating case study. In the case of *FICCI Multiplex Association of India v. UPDF*, the Federation of Indian Chambers of Commerce and Industry (FICCI) sued UPDF and others on the grounds that the multiplex industry was being monopolized. The UPDF declined to negotiate with multiplex owners to increase their income, despite understanding the multiplex industry is wholly reliant on movies. As a result, this amounted to a refusal to transact, which is inimical to market competition. Moreover, it became evident that the UPDF, along with other entities, controlled close to one hundred percent of the Bollywood film business, and that their engagement in unprofessional practices such as limiting/controlling the availability of films in the market, exhibited a reluctance to engage with multiplexes.

⁹ Khor Martin, Intellectual property, competition and development, Third World Network, (May 2, 2005), <https://www.twn.my/title2/IPR/pdf/ipr07.pdf>.

¹⁰ James B. Kobak, Jr., Intellectual Property, Refusals To Deal and The U.S. Antitrust Laws, Intellectual Property Antitrust, (2005)

In this context, the Competition Act of 2002 was flagrantly disregarded here. The CCI's first investigation exposed that an anti-competitive agreement & misuse of the dominant position existed here. Consequently, the CCI referred the matter to the CCI Director General (hence referred to as DG) to investigate the situation. The Director General proactively conducted a comprehensive investigation into this matter and provided a report hinting clearly towards the presence of a cartel. Subsequently, the CCI sent the involved parties a show-cause notice, seeking an explanation. However, rather than addressing the notice, the UPDF went to the Bombay High Court and argued that the Copyright Board lacked jurisdiction since films are protected by copyright [under Sections 13(1)(b) or 14(d)(ii) of the Copyright Act]. UPDF further contended that the sole recourse for exclusive permission is compulsory licensing under the Copyright Act of 1957. The petitioner argued that the CCI had the authority to rule on the matter. The Bombay High Court elaborated on the issue at length even though it had already been adjudicated upon in the previous instance of the *Kingfisher v Competition Commission of India*.¹¹¹²

Every individual and organization, according to the CCI's precedent, has the freedom to engage in collective bargaining; nevertheless. However, this freedom does not permit the formation of cartels or exercise market power in a manner that has a deleterious impact on competition. Article 19(1)(g) of the Constitution of India, it was further noted, guarantees the right to engage in any occupation. Considering this, Competition law precludes any encroachments on this freedom. Nonetheless, the CCI reached the conclusion that the UPDF's coordinated action of refraining from distributing films through the informant in this instance was a blatant violation of Section 3(3) of the Competition Act, 2002.

The nuanced treatment of copyrights is of significance, as the CCI has ruled that they are statutory rights granted by the Copyright Act of 1957, rather than inalienable one. To support its position, the CCI cited a decision from the Delhi High Court called *Gramophone Company of India Ltd vs Super Cassette Industries Ltd*. In addition, the Court noted in another case, *Microfibers Inc v Girdhar & Co*, that "the legislative intent was to grant higher protection to pure original artistic

¹¹ Lianos I and Dreyfuss RC, *New challenges in the intersection of intellectual property rights with competition law – a view from Europe and the United States*, Centre for Law, Economics and Society, (2013).

¹² Santa Cruz Scantlebury M and Trivelli P, *Interaction between intellectual property and competition laws E15 Initiative*, International Centre for Trade and Sustainable Development and World Economic Forum, (2016).

works such as paintings, sculptures, etc. and lesser protection to design activity which is commercial in nature. Thus, it is quite evident that the protection afforded to a work having a commercial purpose is less than and is not to be compared with the protection accorded to a work of pure Artistic Nature.”¹³ With its judgement in the FICCI Multiplex case, the CCI set a precedent aiming to curtail the misuse of dominant association practices in the cinema industry. As if that were not enough, the Commission solidified its stance by imposing fines totaling Rs 1 lakh on 27 film studios.

The CCI made the correct observation that "intellectual property laws do not have any absolute overriding effect on competition law." The phrasing of Section 3(5) of the Act testifies that the scope of the non obstante clause is not absolute, and that the purpose of the provision is to exempt the right holder an exemption from competition law requirements solely for the purpose of protecting his rights against infringement. As a bonus, this allows the holder of the right to set restrictions that are both equitable and essential for the preservation of that right.¹⁴

In *Twentieth-Century Music Corp v Aiken*, the US Supreme Court said, "The immediate effect of our copyright law is to secure a fair return for an 'author's' creative labor." But this incentive is meant to encourage creative production for the common benefit. Prioritizing commercial interests takes a backseat to IPR's primary goal of fostering innovation across diverse fields. When properly implemented, intellectual property rights (IPR) and competition legislation may serve to uphold the public interest by facilitating unrestricted market competition and free commerce. Not just in India, instances like *United Brands* (1978), *Hoffmann-La Roche* (1979), and *Michelin* (1983), witnessed a similar line of reasoning followed by the European Court of Justice (ECJ).

Two primary avenues exist for achieving market dominance. An organization can employ unfair business practices, engaging in anticompetitive behavior in the market. The opposite scenario is one in which the monitored corporation holds a position where it does not need to consider the actions of other market participants when deciding how to behave in the relevant market. The European Court of Justice (ECJ) articulated the notion of "dominant position" as corresponding to

¹³ Simon Geiregat, Copyright Meets Consumer Data Portability Rights: Inevitable Friction between IP and the Remedies in the Digital Content Directive, 71(6), *GRUR International*, 495–515, (2022).

¹⁴ Gianclaudio Malgieri, "User-provided personal content" in the EU: digital currency between privacy and intellectual property, 32(1), *International Review of Law, Computers & Technology*, 118-119, (2018).

the latter option, emphasizing on the independent formulation of corporate activities in its United Brands ruling. Remarkably, the High Court of Delhi came to a very similar conclusion.

In cases where an IPR holder abuses their dominant position, the CCI retains the authority to penalize them under Section 27 of the Competition Act, 2002. In addition, the Commission is empowered to levy fines on the parties in unlawful agreement under Section 4 of the Act, particularly if the agreement is in violation of Section 3 of the Act.¹⁵

5. DENIAL OF PERMISSION

“The licensing laws in both the United States and the European Union are grounded on the idea that the intellectual property system and competition law have complementary aims.” For a certain amount of time, the law grants the owner of intellectual property the exclusive right to use that asset. Although the owner of the right can prevent others from using it, he cannot stop from creating and utilizing the superior alternative. As a result, safeguarding intellectual property encourages fierce market rivalry. However, rejecting patented technology hinders the introduction of a product into the market, which is an anti-competitive practice.¹⁶

A significant case from India's highest court, Entertainment Network (India) Limited versus Super Cassette Industries Ltd, examines the impact IP laws have on business competitiveness. According to the Court, if the owner of copyright uses it as a monopoly, then any agreement struck on unacceptable conditions is a refusal. The owner of copyrights may, indeed, profit from his efforts by issuing licenses and collecting royalties. However, there are limits to this privilege.

Both the Ninth Circuit Court of Appeals in Kodak II and the Federal Circuit Court of Appeals in *Re Independent Service Organizations* offered elaborated insights on the topic of license refusal. In the latter instance, it was decided that IP protection does not provide immunity from antitrust laws. According to the District Court's decision in *United States v. Microsoft*, “copyright does not give its holder the immunity from laws of general applicability, including antitrust laws.” Thus,

¹⁵ Arahant Jain, Shubha Jindel, Paradoxical Relationship: Intellectual Property Rights and the Competition Policy, SSRN Electronic Journal, (March 1, 2014), <https://ssrn.com/abstract=2407642>.

¹⁶ Kd, Raju, The inevitable connection between intellectual property and competition law: Emerging jurisprudence and lessons for India, 18, Journal of Intellectual Property Rights, 111-112, (2013).

evidently, the protections afforded by intellectual property laws are obviously susceptible to antitrust regulations.¹⁷

ECJ has agreed with this assessment, holding that a license denial inhibits fair market competition. The Magill case exemplifies this principle, where an individual's reluctance to grant a license for their property was deemed an abuse and violation of competition regulations. The case involved a broadcaster who declined to license its content to a book publisher seeking to produce a TV guide. Such denials constitute an abuse of competition laws. Companies with a dominating market share may abuse their refusal-to-negotiate strategies in order to gain an unfair advantage in the marketplace. However, in *Volvo v. Veng*, the court ruled that "the refusal by the proprietor of a registered design in respect of the body panels of an automobile to grant to third parties, even in return for reasonable royalties, a license for the supply of parts incorporating the design cannot in itself be regarded as an abuse of a dominant position." However, Article 86 of the Treaty of Rome may prohibit the exercise of such an exclusive right by the proprietor of a registered design in respect of car body panels if it involves, on the part of an undertaking holding a dominant position or the decision to no longer produce spare parts for a particular model even though many automobiles still use that model..." On occasions, a monopolistic enterprise may opt to discontinue supplying its competitors, withhold essential facilities from them, deny the use of their intellectual property, and abstain from collaborating on any initiatives. To classify such refusals as an abuse of a dominant position, the *IMS Health* case outlines three prerequisites:

1. The refusal to grant a license obstructs the development of a prospective product that could potentially meet consumer demand.
2. The refusal lacks reasonable justification.
3. Secondary market competition is impeded as a result of the refusal.

This implies the rights holder's discretion is limited to the extent necessary for maintaining a level playing field in the market. So, IP rights should be used to boost market innovation and stimulate

¹⁷ Samaddar S G & Chaudhary B D, Practical insights into intellectual property strategy for a technical institute, 13, *Journal of Intellectual Property Rights*, 590-600, (2008).

competitive activity.

6. EXORBITANT COSTS

There is a tight relationship between excessive price (including predatory pricing) and reluctance to license. The MRTP Act of 1969 banned predatory pricing as an unfair business practice that harmed consumers. The Act prohibits restrictive trade practices that are detrimental to the public interest, such as an agreement to sell products at such rates that would have the effect of removing competition or a rival.¹⁸

However, there is no direct violation of antitrust laws when a patented product is priced more than comparable products on the market. It was decided in *Union of India vs Cyanamide India Ltd* along with others that essential medications are not immune to price regulation. The costs of patented and branded generics must remain unregulated. When there are no alternatives, there is always the possibility of monopolistic price abuse. In the case of essential medications, this is an especially pressing worry in underdeveloped nations. When it comes to licensing limitations, tie-in agreements, predatory pricing, and other market abuses, competition law aims to draw the line.

In the case *Singhania & Partners LLP versus M.S (I) Pvt Ltd & others*, the Competition Commission of India (CCI) investigated allegations of anti-competitive activity and abuse of dominant position in the distribution of Microsoft's Windows and Office 2007 products. The petitioner (informer) in this case purchased Windows OS and Office 2007 from an authorized Microsoft reseller. Petitioners placed an order for the software on behalf of their LLP & paid in advance as stipulated by the terms of the purchase agreement. After the petitioner paid the down payment, Microsoft said they could not get an OEM license (which are only accessible to those buying brand new computers) and instead had to buy licenses in bulk. Volume licenses were twice as expensive as original equipment manufacturer (OEM) licenses. The petitioner claimed the respondent was unfairly regulating pricing by having various Microsoft resellers charge varying amounts for the same product. The petitioner was forced to buy a volume license from Microsoft

¹⁸ Narayanan S, Intellectual property rights economy vs. science and technology, 1(1), International Journal of Intellectual Property Rights, 6-10, (2010).

at double the price of the OEM license because of Microsoft's 90 percent market dominance.¹⁹

7. PROBLEMS ASSOCIATED WITH COMPETITION AND INTELLECTUAL PROPERTY

- (1) There is no legal definition of "abuse of intellectual property rights" in Indian law. As a result, it can only be interpreted according to the limited scope of case laws in other nations like the United States or the European Union.
- (2) Licensing must be regarded as an "abuse of IPR" if it is used to increase ownership of an IPR, limit or eliminate competition, or otherwise gain an unfair advantage.
- (3) India needs clear technology transfer standards to control the acquisition of intellectual property rights for the goal of increasing monopolistic power in the market.
- (4) To prevent a monopolization of resources by firms with a lot of intellectual property rights, it is important that merger criteria be followed.
- (5) Fair pricing should be guaranteed for IPR-protected items by competition regulations because excessive pricing or high prices unrelated to any objective criterion is the core of exploitation.
- (6) Competition law prohibits discriminatory pricing practices, therefore prices in both developing and developed nations should be set according to consumers' ability to pay.
- (7) It is not a violation of antitrust law to charge different amounts for licenses in various markets. As a result, a monopoly should not be exploitative in its pricing practices, but rather should instead consider the economic well-being of customers.
- (8) The CCI should take a hard stance against anticompetitive practices, such as the refusal of license for unjustified and unacceptable reasons.
- (9) Super domination of a market in and of itself does not violate competition laws. In any case,

¹⁹ Dushyant Sharma, Intellectual property and the need to protect it, 9(1), Indian Journal of Science and Research., 84-87, (2014).

it is important to look at how that dominance was achieved; using anti-competitive licensing strategies to maintain that supremacy is a clear case of abusing a dominant position.

(10) So that intellectual property holders do not have the ability to put excessive requirements on the buyer after the sale, the exhaustion principle should be enforced strictly in the technological sphere.

(11) Tied relationships are anticompetitive and should be dealt with severely under antitrust laws.

(12) High prices are not considered an abuse of a dominant position under the Indian Competition Act, of 2002. Since high prices are also relevant, Section 4 of the Competition Act should be revised accordingly.

As a final observation, it seems clear that the complex and ironic interplay between competitiveness and IP rights is here to remain. These two schools of law cannot be expected to remain independent of one another forever, and it is quite evident that they will eventually merge.

Increased international trade and bolstered economic ties highlight the importance of countries fortifying their legislative systems to ensure they are ready to deal with any impending crisis that may require them to choose between either stream of law without sacrificing the individual's or society's best interests. To guarantee the greatest benefit for the broadest number of people and to provide enough protection and encouragement to an individual's creativity and ingenuity, regulations must be made as failsafe as possible. The winds of change are set to bring with them a new set of challenges about conflicts in overlapping zones of competition laws and IP laws.²⁰

8. CONCLUSION

Inventors are rewarded under the incentive theory of IPR protection with a temporary monopoly privilege. In contrast, the anti-monopoly protections of competition law are intended to curb the abuse of monopoly power. The goal of competition legislation is to improve market conditions by encouraging more consumer freedom of choice and business competition. This notion seems to be

²⁰ J Sai Deepak, Protection of traditional handicrafts under Indian intellectual property laws, 13, Journal of Intellectual Property Rights, 197-207, (2008).

at odds with intellectual property rights, which might lead to tensions between the two bodies of law. Antitrust legislation may be used to prevent companies from abusing their position of dominance in the market. The purpose of intellectual property rights monopolies is to encourage further innovation and, by extension, greater market competition. While holding a dominating position in the market is not illegal in and of itself, abusing that advantage would be in violation of antitrust laws. It is not permissible to engage in cartel-like behavior under the guise of "collective bargaining," as was the case with FICCI Multiplex. If the price of a product, including software with copyrights or patents, is deemed to be exorbitant in India, the country reserves the right to employ compulsory licensing. The competition regulations should be applied to the producers' and retailers' tying agreements. Cases concerning competition and intellectual property should have clear rules established by the CCI. There is no rivalry or replacement of one another in the relationship between intellectual property and competition policy. Instead, one branch of law complements and completes the other. Ultimately, the courts have made it clear that the 'interest of the consumer and competition in the market' is paramount and must not be jeopardized for the benefit of the right holder.