CONVERGENCE OF INTELLECTUAL PROPERTY AND COMPETITION POLICY

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ABSTRACT

Intellectual property (IP) law and competition law may appear to be at odds in the legal system, but as science and technology evolve at an unstoppable rate, it is clear that these two legal fields coexist and even advance technology-driven marketplaces. In the modern world, wealth is largely created through research and innovation, and IP protection rules act as catalysts for this. Still, the question remains: does the protection provided to inventors interfere with the free market, and do both of these legislative spheres overlap in their areas of operation? This article specifically focuses on the interaction between Indian competition law and intellectual property, especially how patent law functions in combination regulation.

The term "combination" refers to the purchasing of one or more businesses by one or more people as well as the merging and combining of businesses. The worth of assets, including patents and other intellectual property, that both the acquirer and the acquiree own is specified by law as a criterion for a merger, along with turnover value. It is at this point that the importance of IP in combination discussions becomes clear. As a result, the goal of this essay is to evaluate, understand, and suggest several strategies for striking an acceptable equilibrium between these two demanding legal fields.

INTRODUCTION

The Indian Parliament has enacted laws to combat anti-competitive practises in markets, and these laws are outlined in detail in the Competition Act 2002. Except for protecting intellectual property rights, Section 3 of the Act prohibits anticompetitive agreements. The fact that this provision seems to encourage anti-competitive behaviour while allowing monopolies to flourish has sparked concerns.[1] To counteract this abuse of dominating positions, Section 4 of the Act provides some remedy.[2] A variety of rights granted to rivals under separate Acts, including as the Patents Act of 1970 and the Copyright Act of 1957, are included in the IP exception under Section 3(5) of the Act.[3] The role of IP in this context is addressed by the Act, which defines and governs combinations in detail.

Although intellectual property laws and antitrust laws seem to have opposed goals, IP laws encourage innovation, which is essential in today's technologically advanced economy. Contrarily, the goal of competition legislation is to safeguard the competitive procedure instead of individual competitors.[4]

RESEARCH OBJECTIVES

1. To examine the necessity and potential conflicts between competition law and intellectual property law.

2. To gain insight into how intellectual property functions during a combination, particularly when it comes to mergers, acquisitions, and amalgamations, and how it affects competitiveness among combined companies.

3. To examine how patent law governs combinations and guards against the exploitation of market dominance.

[1] Aamir Khan Productions Pvt. Ltd. v. Union of India, 2010 (112) BomLR 3778.
[2] Competition Act, 2002 § 4
[3] Competition Act, 2002 § 4
[4] A. Kezsbom & A. Goldman, "No Shortcut to Anti-trust Analysis : The Twisted Journey of the Essential Facilities Doctrine", [1996] Columbia Business L. Rev. 1, 2 (1996).

4. To contribute suggestions on how to properly balance competition rules with intellectual property rights in order to promote innovation, consumer welfare, and a competitive market.

RESEARCH METHODOLOGY

Using a doctrinal research technique, this research study thoroughly examines legal ideas found in statute provisions and other relevant legal contexts. In doctrinal research, case studies and court rulings are examined as main sources, along with the Competition Act of 2002. To obtain the information required for this study, secondary sources such as books, journals, articles, and more are also looked at.

LITERATURE REVIEW

The literature review section discusses relevant articles that shed light on the interplay between Competition Law and Patent law.

The article "Interface Between Competition Law and Patents Law: A Pandora Box"[5] offers a broad overview of the conflicts and misunderstandings that result from the combination of competition law and patents. The present study is grounded in this essay, which highlights the increasing significance of patents in the field of competition law. But it provides little insight into Indian legislation, concentrating mostly on jurisdictional challenges in the US and the EU.

In a further paper titled "The Inevitable Connection between Intellectual Property and Competition Law: Emerging Jurisprudence and Lessons for India,"[6] the argument over IP and competition law in India is examined, using notable instances such as the Cartel FICCI Multiplex case and the Aamir Khan case. This article addresses the specific setting of Indian law, however, it falls short in providing remedies for conciliation of both of these areas of law.

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[5] Teotia M, and Sanwal M, 'Interface Between Competition Law And Patents Law: A Pandora Box' [2021] SSRN Electronic Journal.

[6] Raju KD, 'Interface Between Competition Law And Intellectual Property Rights: A Comparative Study Of The US, EU And India' (2014) 2 Intellectual Property Rights: Open Access.

In addition, a different paper by Robert D. Anderson, Nuno Pires de Carvalho, and Antony Taubman titled "Competition Policy And Intellectual Property in Today's Global Economy"[7] delves into the intricate connection between intellectual property rights and competition policy in the global economy. It emphasizes the necessity of striking a balance between IP protection and encouraging competition for the advantage of consumers while recognising the significance of intellectual property rights in driving innovation. According to the article, more investigation is required to examine the field's changing difficulties, including the influence of new technologies, the function of trade arrangements, and the need to harmonise competition laws across countries.

COMPETITION LAW AND IP LAW COALITION: NEED AND CHALLENGE

The research paper discusses the relationship between intellectual property and competition regulations, emphasising how both public and commercial organisations have significantly increased their R&D spending.[8] The modern economy has undergone significant structural and qualitative transformations as a result of this. The protection of intellectual property includes copyrights, patents, trademarks, and other financially significant products of human ingenuity.[9] This research is limited to the effects of trademark and patent safeguards on a free market.

According to the World Intellectual Property Organisation (WIPO), patents confer exclusive rights for inventions, which might be goods or procedures that give novel approaches to tasks or innovative technical fixes for issues.[10] Conversely, trademarks function as indicators that help set one company's products or services apart from another.[11] Particular attention is paid to patents and trademarks since they significantly affect the free market. In a world driven by technology, any limitations in this field have a big impact on the market, and trademarks prevent new business owners from taking advantage of the goodwill of more established ones. In essence, these legal

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[7] Anderson , R.D., de Carvalho, N.P. and Taubman, A. (eds.), Global economy s intellectual property in today competition ... - assets, Cambridge University Press.
[8] Ove Granstrand, 'The Shift Towards Intellectual Capitalism — The Role Of Infocom Technologies' (2000) 29 Research Policy.
[9] A. Roughton, 'The Interface Between Intellectual Property Rights And Competition Policy' (2008) 3 Journal of Intellectual Property Law
[10] 'Patents' (Wipo.int, 2023)
[11] 'Trademarks' (Wipo.int, 2023)

structures obstruct a free market by acting as hurdles that business owners must take into account before entering the market.

Antitrust laws, such as the Sherman Act of 1890 and the Clayton Act of 1914, which received public awareness after World War II, have been in effect in developed nations like the United States since the late 19th century. Many of the antitrust laws in Europe were also based on these statutes. India, on the other hand, established the Competition Commission of India and the Competition Appellate Tribunal with the introduction of the Competition Act in January 2003, which later became the Competition Act of 2002 and was further amended in 2007.[12] In May 2009, the Competition Commission of India (CCI) and the Competition Appellate Tribunal (CAT) gained further power with the implementation of the regulations of anti-competitive agreements and the misuse of dominant positions.

As per Black's Law Dictionary, an effective market is defined by multiple essential components, including a large number of buyers and sellers that promote healthy competition, uniform products, easy access to precise information, and unhindered entry and exit for participants.[13] IP laws and competition laws clash because the former seeks to create economic value by granting monopolistic power and encouraging innovation, while the latter seeks to make it easier for existing resources to be used in the market and encourage the entry and survival of entrepreneurs. While both laws have similar purposes, they take distinct routes to getting there, therefore to concurrently advance consumer welfare and economic development, a balance must be struck between both.

Intellectual Property's Impact on Market Competition in Combination Deals

The article then explores the function of intellectual property in combination deals, highlighting the fact that all Intellectual Property Rights (IPRs) engaged in mergers and acquisitions are owned jointly. The probability of the merged company achieving a leading position in the market is raised by this joint ownership. Such hegemony may give rise to abuses of market power, which would restrict competition, options for customers, and anti-competitive behaviour. To avoid potential

[12] 'Competition Commission of India' (Cci.gov.in, 2023)
[13] HENRY CAMPBELL BLACK, 'Black Law Dictionary'

misuse resulting from market dominance, it is crucial to carefully analyze the impact of intellectual property rights in combination deals.

The question of whether IP licenses during a combination represent the "acquisition" or "transfer" of an asset is up for debate. If a combination is anticipated to have a "appreciable adverse effect" on the level of competition in the relevant market, it may be deemed void.[14] When assessing combinations, the Competition Commission of India (CCI) takes into consideration variables, which include the "nature and extent of innovation."[15]

In actuality, a combination results in the sharing of the monopoly over the innovation for which intellectual property rights have been granted, which may lessen market competition and give the combination the upper hand. The CCI intervenes to make sure mergers don't significantly harm the market or to implement changes that are required to encourage competition and stop anti-competitive behaviour. Because combinations can result in market domination and Section 6 of the Act covers misuse, this provision is essential.

ROLE OF PATENT LAW IN COMBINATION REGULATION

A monopoly in opposition to competition is created when people are granted patents to stop others from replicating their inventions. By establishing incentives and defending rights, patents are meant to encourage innovation.[16] A patent is given to the owner of an innovative and new product or process after it has undergone formal and substantive review by the relevant authorities. After the patent is awarded, the patentee has a 20-year monopoly over it and it is still subject to post-grant opposition and revocation.

The Patent Act, 1970 has special measures to prevent abuses of dominance and to grant monopolies for longer periods and in more areas. The Act of 1970, Section 140, outlines the conditions that are illegal to put in a sale or purchase agreement for an invention to be patented, offering a remedy for abuse of dominance. This may be shown in the Micromax v. Ericsson[17] case, wherein

[14] Jill Boylston Herndon, 'Intellectual Property, Antitrust, And The Economics Of Aftermarkets' (2002) 47 The Antitrust Bulletin.
[15] Competition Act, 2002, S.6.
[16] Leela Kumar, 'MRTP Commission And Competition Commission Of India' [2014] SSRN Electronic Journal.
[17] Micromax v. Ericsson W.P.(C) 464/2014.

Micromax violated Ericsson's Standard Essential Patent, leading to Ericsson to bring a Patent Infringement lawsuit against Micromax.

The Patent Act grants exclusive rights to protect the patent holder, while the Competition Act prevents abuse of dominance by safeguarding competitors. This is the contention of those who have discussed the relationship between the two laws. However according to the Delhi High Court, these laws go hand in hand because they both aim to safeguard shared interests and don't conflict. Regulations on combinations shield rivals against the misuse of patent holders' dominating position.[18] One instance of a monopoly that could result in the abuse of dominance in the satellite internet service industry is when two businesses, Neil Paxman Limited and Hughes Communication Ltd., jointly control a patent.

CONCLUSION & RECOMMENDATIONS

The paper's conclusion highlights the critical role that intellectual property (IP) plays in combination regulation under competition law. The junction between competition law with intellectual property creates inherent tension, but this tension can be mitigated by realizing that the ultimate goal of both laws is to promote consumer welfare. A stricter and more comprehensive structure is necessary for timely involvement during combination transactions and the evaluation of IP value to prevent misunderstandings and legal disputes, particularly when it comes to patent pooling, cross-licensing, and licenses.

A legally binding directive for the CCI is suggested in the paper: more consultation with other sectoral regulators. India should take the lead in preventing the implementation of monopolistic intellectual property policies that are incompatible with competition law, as the country's competition law is primarily influenced by US and EU legislation. It is necessary to have a flexible and balanced policy since both laws must be constructed harmoniously to guarantee that neither right is absolute. An equitable and competitive economy that protects innovation requires this delicate balance.

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[18] Yogesh Pai and Nitesh Daryanani, 'Patents And Competition Law In India: CCI'S Reductionist Approach In Evaluating Competitive Harm' (2017) 5 Journal of Antitrust Enforcement.

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