
JURISDICTION AT CROSSROADS: REVISITING PATENT MONOPOLY THROUGH THE LENS OF COMPETITION LAW

Mr. Abhinaba Niyogi, B.B.A. LL.B. (Hons.), School of Law,
CHRIST (Deemed to be University), Delhi NCR, Uttar Pradesh

ABSTRACT

This article explores how competition law and patent law interact in India, particularly in the pharmaceutical sector, where both innovation and public access matter deeply. It examines whether the Competition Commission of India can intervene when companies use patent rights to dominate the market, particularly in light of recent court decisions. The article shows that these two legal frameworks are not necessarily in conflict and can be interpreted in ways that support both consumer welfare and innovation. It also highlights how practices such as excessive pricing by pharmaceutical companies can negatively impact patients and why competition law is important for addressing such issues.

I. INTRODUCTION

On March 31, 2003, the Indian Competition Act came into force in India, which seeks to safeguard and protect healthy competition in the market by providing sufficient recourse to innovation and promoting price competition.¹ Competition law regulates the market power of enterprises and brands and prevents the economy from Market Failure. Similarly, as rapid globalisation broke down the barriers to trade and communication, it increased opportunities for new technology in developing countries such as India. Multinational corporations, however, worry that the lack of intellectual property protection in developing nations will impede their ability to be innovative and creative. India enacted intellectual property laws, including the Patent Act of 1972, to address this issue.

This brings us to the problem that has recently happened regarding the jurisdiction of the Director General (“DG”) of the Competition Commission of India (“CCI”) and the Controller as per the Patents Act. Both laws present a complex legal landscape. Still, in the case of patent monopoly, the question is whether the competition commission possesses adequate jurisdiction to investigate the abuse of subject matter. Furthermore, on 13th July, 2023, the Hon’ble High Court of Delhi decided in the case of *Telefonaktiebolaget LM Ericsson (PUBL) v. CCI*², held that the CCI has no jurisdiction to investigate or prevent abuse of patent monopoly. This raises the question of which law will prevail over the other if a pharmaceutical company tries to monopolise the market using its intellectual property rights on certain medicines. This Article will shed some light on the topic.

II. LEGAL FRAMEWORK

The subject matter of rights under both laws is different.

Both Competition law and laws on intellectual property seek to achieve consumer welfare.³ However, the OECD Report on ‘Competition Policy and Intellectual Property Rights’ highlights the benefits of applying competition policy to intellectual property licensing.⁴ Supreme Court, in the *Bharti Airtel case*, held that the factors in the determination of ‘conflict’

¹ ROBERT H. BORK, THE ANTITRUST PARADOX: A POLICY AT WAR WITH ITSELF 323 (10th ed. 1993).

² *Telefonaktiebolaget LM Ericsson (PUBL) v. Competition Commission of India & Anr.*, 2023 SCC OnLine Del 4078.

³ Joshua D. Wright, *The Antitrust/Consumer Protection Paradox: Two Policies at War with Each Other*, 121 YALE L.J. 2216 (2012).

⁴ *Competition Policy and Intellectual Property Rights*, OECD (May 3, 2025, 5:30 PM IST), <https://www.oecd.org/regreform/sectors/2376247.pdf>.

between two statutes and the distinct nature of the CCI must be acknowledged.⁵

While the Controller of Patents is seized of an *inter partes*,⁶ And under Section 84 of the Patents Act, which results in the grant of a license, only the person interested may apply for Compulsory Licensing under Section 93 of the Act. They usually give the creator the right to use their creation for a specific period. A patent holder is granted a statutory right to prevent third parties from making, using, offering for sale, selling, or importing the patented products.⁷

The jurisdiction of the CCI to entertain complaints regarding abuse of dominance concerning patent rights could not be excluded. Clause (m) of Section 19(4) is an omnibus clause that speaks of “any other factor which the Commission may consider relevant for the inquiry”.⁸ The act does not distinguish between SEPS and other patents. Section 18 of the Competition Act is vested with the vast powers of the Commission to deal with market mischief. As per Section 27 of the Act, the DG is empowered to pass an order after an inquiry on abuse of dominance, including imposing a fine or passing any order it deems fit. The Joint Parliamentary Committee Report specifically stated that the primary object of the amendment to the said Chapter is to make patents relating to the health sector more conducive and affordable.⁹ CCI under Section 27 of the Competition Act regarding abuse of dominant position materially differs from the remedies available under Section 84 of the Patents Act.

CCI holds the wider Jurisdiction for regulating the market conditions

There is no irreconcilable repugnancy or conflict between the Competition Act and the Patents Act. The Patents Act must be interpreted harmoniously. It is only in cases where there is an irreconcilable inconsistency that the question of which act or provision had an overriding effect would have to be considered. The Act may be general, and for specific other purposes, it may be special, and the court cannot blur a distinction when dealing with the finer points of law. In

⁵ CCI v Bharti Airtel Ltd (2019) 2 SCC 521.

⁶ J. Sai Deepak, *Metes Patents and Competition Law: Identifying Jurisdictional Metes and Bounds in the Indian Context*, 27 NLSIR 9 (2015).

⁷ *Unravelling the Concept of 3D Printing: Knowing Your Rights in India*, IAM MEDIA (May 3, 2025, 5:30 PM IST), <https://www.iam-media.com/article/unravelling-the-concept-of-3d-printing-knowing-your-rights-in-india>.

⁸ *The Distinct Idea of Super-Dominant Undertaking: Judgment of Google Shopping*, NLIU CBCL (May 3, 2025, 5:30 PM IST), <https://cbcl.nliu.ac.in/competition-law/the-distinct-idea-of-super-dominant-undertaking-judgment-of-google-shopping/>.

⁹ Parliament of India Rajya Sabha, *Report of the Joint Committee on The Patents (Second Amendment) Bill, 1999* (Dec. 2001).

this context, Section 27 of the Indian Contract Act, which talks about an agreement restraining trade, could be regarded as a general provision. Still, the Competition and Patent Acts are special acts for different material objects. Two laws must show material conflict to render one void. Thus, the CCI has wider jurisdiction as provisions of the Act are in addition to any other law in force.

Section 60 of the Act states the overriding effect notwithstanding anything inconsistent in any other law for the time being in force. Section 62 of the Act explains the operation of the Act as an addition to and not in derogation of the provisions of any other law. Section 62 is a departure from the conventional principle of the specific legislation prevailing over the general, since it posits the Competition Act as an additional remedy. Thus, the collective interpretation implies that the remedy provided under Section 21A for the reference of the matter by the commission to a statutory authority is supplementary to the Patent Act and builds the bridge for the harmonious construction of a provision of Section 90(i) of the Patent Act, 1970.

The compulsory licensing in Chapter 8 of the Patent Act was added by way of amendment, and no repeal was made to the Competition Act.¹⁰ The Competition Act has not barred the operation of Section 4 on Intellectual Property Rights. While enacting a law, the legislature has complete knowledge of the existing rules and, therefore, where an express provision for repeal of an earlier statute is not provided, it must be presumed that the legislature did not intend to repeal the existing ordinance.

The CCI is well equipped with provisions to regulate the abuse of dominance by pooling Intellectual Property Rights.¹¹ Section 61 excludes the jurisdiction of civil courts with any matter with which the commission is entrusted, and it holds power similar to that of a civil court under Section 32 of the Competition Act.

III. ROLE OF THE DIRECTOR GENERAL IN THE CASE OF PATENT MONOPOLY IN THE PHARMACEUTICAL MARKET

The Pharmaceutical Company has tried to monopolise the market for years using its pricing

¹⁰ Patents Rules, 2003, No. 12, Acts of Parliament, 2003 (India), https://www.ipindia.gov.in/writereaddata/Portal/IPORule/1_70_1_The-Patents-Rules-2003-Updated-till-23-June-2017.pdf (last visited May 3, 2025, 5:30 PM IST).

¹¹ Ministry of Corporate Affairs, Government of India, *Report of Competition Law Review Committee* (2019).

strategies so that there is no entry of new competition. Companies have abused dominance and anti-competitive activities through excessive pricing and unfair resale agreements, which fall directly in the purview of Section 3(5). Under the Act, a dominant firm abuses its dominance if it charges 'unfair prices' to its customers, including both unfairly high or excessive prices and unfairly low or predatory prices. In such a case, the Director General has the power to investigate firstly whether prices charged are excessive and do not reflect the economic value, and whether excessive pricing is prejudicial to the consumer interest and demands regulation. The DG determines whether the pharmaceutical product is unfairly priced using three tests: the price cost comparison test, the earlier price of the dominant price test and the economic value test.

In the pharmaceutical or medicine sector, doctors suggest the prescription of drugs to consumers. Hence, consumers are not the primary assessors of the product's value. It is also evident that Pharmaceutical Companies' abusive strategy to reach out to medical practitioners and encourage them to begin prescribing their drugs to patients justifies them as actual assessors of the value of the product and not consumers. Thus, if there is a price hike, it has prevented thousands of patients from accessing medicine, which could substantially increase their lifespans and even lead to remission. Antitrust laws seek to redeem the consumer's position.¹² Concerning the supplier in the marketplace, to ensure cost-effective and efficient transactions¹³.

In India, there are about 3,000 pharmaceutical companies, whose products are manufactured in over 10,563 industrial units, supplied through 65,000 stockists, with an intense penetration of private retail chemists numbering about nine lakhs. Thus, unlike the European market, the Indian market is private; hence, *laissez-faire* policies cannot be sustained. Even in the UK, CMA's findings in Pfizer and Flynn Pharma, the UK adopted new legislation granting the UK government the power to control generic drug pricing.¹⁴ Based on such a price hike by pharmaceutical companies, the DG of the CCI has jurisdiction over such activities triggered by Section 4 of the Act.

¹² Jenisha Parikh & Kashmira Majumdar, *Competition Law and Consumer Law: Identifying the Contours in Light of the Case of Belaire Owners Association v. DLF*, 5 NUJS L. REV. 249 (2012).

¹³ ROBERT H. BORK, *THE ANTITRUST PARADOX: A POLICY AT WAR WITH ITSELF* 6-7 (2d ed. 1978).

¹⁴ Health Service Medical Supplies (Costs) Act 2017, § 4, No. 23, Acts of Parliament, 2017 (UK).

IV. CONCLUSION

The intersection of Competition Law and Patent Act in the pharmaceutical sector underscores the pressing need for a balanced legal approach that safeguards innovation and public welfare. This article brings to light how the CCI and its Director General, with powers given under the provisions of the Competition Act, play a crucial role in patent monopoly cases and keep dominant positions from being misused by unfair price practices. While doing so, the Patents Act makes sure that creators get their just reward for innovation. The actual question as we traverse the intricate legal landscape is not one of jurisdiction but one of justice: how do we permit continued access to life-saving medicines while encouraging genuine innovation? Coordinate our laws, protect the public interest, and keep our eyes on how market power and human need are changing are the answers.