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Conflict between IPR and Competition Law: A Comparative Analysis between US, EU and India

HRITVIK DIXIT[1] AND DEEPSHIKHA UGHADE[2]

ABSTRACT

The jurisprudential differences between the competition law and IPR has time and again understood as being contradictory in their intent rather than being supportive of each other's objective. Competition law plays a conventional role by promoting market efficiency and preventing market distortions whereas, IPR's role is to promote innovations by providing protection and rights to requisite IP holders. This paper aims to deal with the conflict between the competition law and IPR providing the legal tensions between the two and expressing the understandings of several Courts while considering case laws from different time frames. It argues that the two legal regimes might be separate in their functioning but the framework of both the regimes is to promote innovation and consumer welfare. Furthermore, it talks about how US, EU and India has dealt with the questions arising out of this conflict; explanation and understandings of the same, considering instances where in both the laws were involved and were seen to be as against the objectives of each other. The paper puts forward certain recommendations for the Indian legal system to seek an agreeable and enclosing explanation for each of two legislations critically analyzing the jurisprudential outreach in India and other countries.

I. INTRODUCTION

The emerging conflict linking intellectual property rights and Competition policy regarding exercise of rights can be drawn back to 20th Century. The intellectual property rights provide a righteous absolute use and utilization to bestow a benefit to the IP holder. This helps to lay out an inducement to further pioneers innovators to introduce forward their innovation in the realm of intellectual property rights. Competition law ensures that there is equal and just competition in the merchandise by means of regulation-making procedures. It limits any monopolies taking

[1] Author is a student at Symbiosis Law School, Pune, India.
[2] Author is a student at Symbiosis Law School, Pune, India.

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place in the market. As a result, there are limitations exercised on the absolute entitlement which are permitted by the intellectual property rights.[3]

It is salient to lay hold into the thought that, competition law which by on its own does not deplore the bare proprietorship of domination power, but preferably makes attempts to acquire it which may be permitted to impede with the monopoly.[4] If competition law aims at static market regulations then intellectual property focuses on incentives for increasing dynamic competition which causes the tension between the two regimes.[5]

Lastly, the increasing tightness between intellectual property rights and competition policy is taken into consideration and given immense importance by the Courts in major jurisdiction like United States and European Union for resolving the conflicts. The countries have realized that the key to flourishing of the economy is through innovation. Hence, the basic trouble is the beforehand competitive collaboration between companies and utilization of intellectual property rights.

II. THE IPR-COMPETITION RELATIONSHIP

In the recent past, the regulating activities relating to protection of the patents and patent licensing were dealt under a single umbrella of competition law. The subject of patents, at that time was considered as monopolies.[6] In around 1970 the idea pertaining to formulation of antitrust laws emerged due to consistent market research, needs and applications of intellectual property rights protection by renowned scholars like Posner.[7] These newly developed anti-trust laws observed that not all IPRs have to be considered as monopolies despite some of them being a monopoly under certain conditions.

The emergence of technology based marketing platforms and digitally growing developments in this field led to increased innovations in the sector of digitally based and incentivized products such as *software.* The famous *Microsoft case* had a vociferous disclosure as to the excessively abundant market share (more than 90%) of the 'Windows Operating System' of all the Intel chip personal computers across the world. The share of 'MS Word' was 90 per cent as compared to 'Word Perfect' and that Microsoft's 'Internet Explorer' had captured more than 80 per cent of the web browser market from its rival *Sun Microsystem's Netscape Navigator*

[3] SD Anderman and Hedvig Schmidt, (2007) p.7
[4] Keith E. Maskus and Mohammad Lahouel (1999) p.12
[5] K. Jayant and A. Roy,2008, Competition Law in India, , p.176
[6] Motion Picture Patents Company v Universal Film Company Manufacturing Company, 243 US 5502 (1917)
[7] Posner R (1976)

during 2003.[8]

This monopolization and concentration of the market started off competition in the US as well as in the EU against 'Microsoft', to check upon its anti competitive policies[9]. These conflicts are inescapable and necessary when the dominant position in the market is abused by someone due technological advancement having IP protected solutions along with monies gained through self concentric markets. Only when alternative technologies are not available, intellectual property rights enable a pertinent monopolistic position in the relevant market for the IPR holders [10]. Critically speaking, the antitrust law acknowledges the fact that the creation of a monopoly over an IPR is necessary for a consumer oriented market. For example, market monopoly gained through exclusive skills, foresight, does not violate the antitrust law.[11] It is only when monopoly is acquired or maintained, or extended through unlawfully anti-competitive means that it can be termed as unlawful. Thus, theoretically it can be understood that IP is a *quid pro quo* for competition. Competition, whether static or dynamic, is not a natural phenomenon occurring all by itself with respect to all kinds of goods rather a complex evolutionary system[12].

A nexus between the two legislations (at a high level of abstraction) can be seen as complementing each other in evolving an efficient marketplace and long-run dynamic competition through innovations rather than being simply antithetical to each other.[13] Also, an IPR holder might sue their suspected competitors for violation, hindering entry to compete, or elongate its market power by preventing access to technology necessary for the next generation of products to emerge.[14] Here, the Competition law acts as a guardian of the IPRs protection to be justifiable and fair to fulfil its virtue towards the goal of welfare.

III. A GLOBAL PERSPECTIVE

The relationship of IPR and Competition is known in the national and international sphere and has not been overlooked in the global arena as well. If we recall the Havana Charter of 1948 which was introduced for International Trade Organization, it imposes an obligation on the members for prevention of restriction on competition and also for cooperation with the said

[8] Ahlborn C et al. (2001) Competition policy in the new economy: Is European competition law up to the challenge? p.156–167
[9] Anti competitive agreements and competition law are used synonymously in this article
[10] Survey conducted by the Organization for Economic Corporation and Development, 1981
[11] United States v. Aluminium Co. of America, 148 F.2d 416, 430 (2d Cir, 1945)
[12] Ullrich (2001) p.366
[13] Anthony (2000)
[14] Pham and Alice (2008) p.16

organization on account of such restraints.[15] There have been many instances in the global sphere which reflects the relationship of competition law and intellectual property rights.

In the year 1980, a resolution has been introduced and adopted by the United Nations General Assembly known as the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices. This resolution consisted of rules that were related to the abusive practices in the field of IPRs.[16] There are certain guiding principles provided under the Trips[17]Agreement of 1995 which are related to IPR and Competition law.[18] If there is a misuse of IPRs, the members have the authority to take necessary action against it in consistency of the provisions given under the Agreement.[19] To correct the misuse of IPRs compulsory license, fines and injunction is available as a remedy. To the members, discretion is provided to state the abusive intellectual property exercises in their particular state legislations.[20] A substantial discretion is provided to the member states under the TRIPS Agreement for the evolution and advancement of competition law to the positioning and management in the area of IPR.[21] The Anti-Competitive Guidelines for licensing of IP has provided threefold leading principles that are read together to retain the lawfulness of a huge diversification of IP licensing terms and arrangements.[22] Foremost, for the objective of anti-trust analysis, IP is efficiently equivalent to any other case of possessions. Secondly, IPR cannot be expected to form market force for fulfilling the objectives of anti-trust analysis. Lastly, IP licensing is considered to be promoting competition in the market as it paves the way by combination of supportive factors of production for the firms.[23]

IV. INTERFACE BETWEEN US, EU AND INDIA

UNITED STATES

In the United States the main Acts that is applicable to IP licenses are the Sherman Act and the Anti-trust laws in general. Anti-trust laws were introduced to curb the activities involving monopolies of trusts which were established to reveal numerous merchandise undertakings at that schedule. The main focus of the Act was to confront and restrain the blend of organizations and their undertakings that pose suffering or threat to the competition in the market. Hence,

[15]Article 46, Havana Charter (2011)
[16] Frederick M. Abbott,(2004)
[17] Trade In Intellectual Property Rights
[18] Abir Roy and Jayant Kumar (2008) Competition Law in India p.183
[19] Article 8.2, TRIPS Agreement
[20] Article 31(k), TRIPS Agreement
[21] Article 40, TRIPS Agreement
[22] Hans Ullrich (2004).
[23] US Department of Justice and Federal Trade Commission, Anti-trust Guidelines for the Licensing of Intellectual Property (2011)

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these two Acts are very vital for preserving the freedom of free enterprise system and the economy.

Under the Title 15, Chapter 1 of the Sherman act of 1890 there are various sections which prohibit monopolistic activities such as Section 2 and Section 7. The sections which are applicable to intellectual property laws are Section 15 and Section 16. The Chapter under the Sherman Act refers to prohibition of monopolistic activities and conspiracies taking place in the market which restrain the trade.[24] Furthermore, the *(FTC Act) Federal Trade Commission Act and Robinson-Patman Act* might be put into action to search the finance related activities which are restricted and are more likely to have antitrust significance.

It can be said that the federal courts are competent and have jurisdiction over the anti-trust laws and intellectual property laws as both the laws come under the field of federal matters. Hence, the conflict that emerges is when the anti-trust issue comes up in connection with the intellectual property claims. Over the years there have been major changes in the appropriate jurisdiction matter. Previously, the aims of both intellectual property and competition laws had put the DEPARTMENT OF JUSTICE (DOJ) and the FEDERAL TRADE COMMISSION ACT (FTC) at a cross road with each other for the purposes of the appropriate forum. As rightly established by the US courts, anti-trust law and its intersection with the IP rights are determined by the Anti-trust division of the department of justice (DOJ) and the Federal trade Commission Act (FTC). These two federal enforcement agencies complement each other when their authorities overlap.[25] In the current scenario, the jurisprudence reflects upon United States by showing that a balance is forming between the intellectual property and anti-trust laws and their objectives.

1. Jurisprudence and Cases

In the current scenario in US, the anti-trust law has grown much more tolerant in its method of action in case of a dominant behavior shown by a firm. Moreover, it is understood that that IP cases generally promote and add to competition rather than restrain it.[26] There have been a few changes since the time of Harvard School to a very lenient approach during the Chicago school. At the time of Harvard School, competition policy agencies and the courts had taken a stricter line towards the permissible borders of intellectual property utilization. The judicial decisions had taken an expansive view of abuse which was exceptional in nature. The FTC decided the cases with reference to anti-trust laws with the use of per se approach. They apprehended an

[24] Section 1, Sherman Act, 1890
[25] https://www.ftc.gov/tips-advice/competition-guidance/guide-antitrust-laws/enforcers
[26] R. Eccles and R. Ferla (2006)

extensive span of behavior which was sufficient to generate accountability for the commanding companies. In addition to this it also widened the prerogative of the deemed victims of economic utilization.[27]

In the case of *United States v. Griffith*, the Supreme Court pointed out that Section 2 under the Sherman act is in violation if the power is used for purpose to remove the competitors when coupled with intent to exercise the power.[28]

In the case of *Sears, Roebuck & Co v. Stiffel Co*, had stated that once a patent is issued it cannot be used for monopolistic activities beyond what is contained in the patent license. The IP holders control over the product when it leaves his possession is very limited and hence, the patent monopoly should not be used in conflict with the anti-trust laws.[29]

In the case of *International Salt Co., Inc. v. United States*, the US Supreme Court held that in a tying sale, a manufacturer makes a sale of a good or a service to the customer only if he/she buys another good or service of the same manufacturer and this is restricted under the law. It further stated that the anti-trust law and intellectual property rights are at a conflict as the former tries to punish individuals who indulge in monopolistic activities but the latter allows finite monopoly for a specific duration to the innovator as an inducement. Hence, as a result there is intrinsic conflict between the two laws.[30]

The US Supreme Court declared in *Twentieth Century Music Corp v. Aiken*, that

> '*The immediate effect of our copyright law is to secure a fair return for an 'author's' creative labor. But, the ultimate aim is, by this incentive, to stimulate artistic creativity for the general public good'.*[31]

The objective of IPR as discussed above is innovation in all areas and promotion of commercial interest is secondary. The goals of IPR and competition law are to stand as a custodian to the interests of the public and guarding the freedom of competition and trade in the market.

EUROPEAN UNION

The *'European Economic Community'* (ECC) has been introduced by the *Rome treaty* which governs the competition in the market. Under the treaty, Article 81 imposes a bar on the agreements that affect the trade taking place between the member states past the limitations of

[27] https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-commissioners-react-department-justice-report-competition-monopoly-single-firm-conduct-under/080908section2stmtkovacic.pdf
[28] United States v. Griffith 334 U.S. 100 (1948)
[29] Sears, Roebuck & Co v. Stiffel Co 376 U.S. 225, 230 (1964)
[30] International Salt Co. Inc. v. United States 332 U.S. 392 (1947)
[31] Twentieth Century Music Corp v Aiken 422 US 151, 156 (1975)

competition. Furthermore, Article 82 of the said treaty refers to prohibition of abuses which are involved with them who are already in possession of a commanding position in the merchandise. The said provision focuses specifically on the licensing of intellectual property rights. In the treaty, prohibition is imposed only on the abuse of market monopolization. Both the Articles help in functioning of unoccupied motion of goods and services among the European Union member states.[32]

The Articles 81 and 82 under Council Regulation of 1962 were restored by Articles 101 and 102 independently by the Council Regulation of 2003. The Regulation was considered as the first regulation which has paved the path to rationalize competition law in the EU.[33] Section 2 of the Sherman Act in the United States and Article 102 of the EU treaty are similar in nature as both refer to prohibition of unfair trade practices that can influence a specific market which may possess the result of hindering economic relations between member states. The said Articles under the EU treaty acknowledge that the competition consists of a primary tool of the merchandise regulation which motivates the firms to manufacture the goods that are related to the wants of the consumers. It helps in encouraging inventions and innovations and pushes down the prices in the market.[34]

Furthermore, Article 101 of the Treaty puts limitation on agreement among two or more companies which restrict the basics of competition. In the European Union taking action against a cartel refers to a specific anti-trust enforcement. It consists of a cartel taking place and the actions taken by the cartel member results in reduction in the competition and incentives for new and innovative products in the market. The main aim of all prohibition categories is that the markets should function properly without any unfair indulgence and the consumers should benefit from the efficiency and productivity which is an outcome of fair and effective competition between the firms in the market.[35]

1. Jurisprudence and Cases

The European Commission comprises of twenty commissioners which are recommended by the member states, and agreed by the members of the European Parliament. The Director General IV possesses the authority for the competition policy. The appeals are to be made to the Court of First Instance (CFI) against the decisions of the commission. In addition, the appeals lie with the European Court of Justice (ECJ) from the CFI on grounds of law within

[32] Rahat Dhawan (2016) p.8
[33] EC Council Regulation No.1/2003 of 16 December 2002. Replaced Regulation (EEC) No 17/62 from 1 May 2004
[34] Raju KD (2014) p.16
[35] Daniel Glasl (1994).

the duration of two months from the time CFI notifies the parties its decision taken in the particular case.[36]

Earlier, European Commission played a limited a part in the matters pertaining to intellectual property and competition related issues. The matters related to IPR were out of the purview of the Articles 101 and 102 as long as the restrictions did not fall beyond the arena of a particular intellectual property right. In the year 1980, the ECJ carefully analyzed the tension between the two laws and the forum in which the cases are to be tried. [37]

In the case of *Parke v. Davis & Co*, the ECJ held that Articles 101 and 102 could be applied by the commission in situations where the use of patent was to fall into an abuse of the national protection. Furthermore, ECJ added that having mere ownership of IPR cannot give them a dominant position. Any abuse of such position will be taken into cognizance by the Competition Commission as there is danger that it may hamper the competition in the market. [38]

In the case of *Volvo v. Veng*, the ECJ held that the action taken by the possessor to permit to third party, also in cases involving logical royalties. In such a scenario a authorization for providing of parts which consists of the arrangement could not by itself be termed as an misuse of commanding position.[39]

The judicial practice of the European Court of Justice (ECJ) had classified dominance in the market in two types in the case of *United Brands*[40] which was further held in *Hoffmann-La Roche*[41], and *Michelin*[42]

i) An agreement specifically deters fair competition in the relevant market.

ii) Due to the current economic circumstances the said company is in a position wherein it does not have to pay attention to the other market players while forming its own strategies and behavior patterns in the relevant market.

In its *United Brands* decision, the ECJ defined 'dominant position' as that which corresponds to the latter alternative and stresses upon the independent formation of business conduct.[43]

[36] Article 31 of the Treaty Establishing the European Community
[37] S.Anderman, (1998) EC Competition law and intellectual property rights p.53-54
[38] Parke v. Davis & Co, Case 24/67(1968)
[39]AB Volvo v. Erik Veng (UK) Ltd, [1988] ECR-6211 C-238/87
[40]Ibid, p.10
[41]Hoffmann-La Roche & Co AG v. Comm'n, Case C-85/76, 1979 ECR 461
[42]N V Nederlandsche Banden Industrie Michelin v. Comm'n, Case C-322/81, 1983 ECR 3461
[43]United Brands Co & United Brands Cont'l BV v. Comm'n, Case C-27/67, 1978 ECR 207, 63-66

In case of *Magill*[44], court stated that an independent property possession and withholding to license shall account for misuse and breach of competition laws. This case elaborated a refusal to license program of a broadcast firm which schedules to a publishing organization which is keen in publishing a television guide. The ECJ held in the end that an appropriate remedy would be compulsory licensing. The court further held that by simply having possession of an intellectual property one cannot be said to possess a commanding position. The ECJ for the first time in this case had brought forward the doctrine of vital facilities into the intellectual property which involves competition law. This was said to be the case which had set precedent for the implementation of compulsory licensing.[45]

INDIA

In India, the intellectual property related competition issues are at a preliminary stage. Till 2002, there was no competition law regime in India. The previous regime which was introduced was Monopolies and Restrictive Trade Practices Act (MRTP Act). It was introduced in the year 1969. However, MRTP was replaced by the Competition Act in the year 2002. The patents act in India came into existence long back around 1970. It was been amended several times, the last one being in 2005.[46] After closely analyzing the global developments taking place including the provisions as provided in the TRIPS and the modifications made to the intellectual property system in India, has resulted in providing competition regime the ability to cope with the economic power formed by the intellectual property has resulted in becoming more relevant.

Anti-competitive agreements are dealt under Section 3 of the competition Act of 2002. It has introduced an exception for the intellectual property rights. It helps to prevent infringement, protect and preserve the intellectual property holder rights. The exceptions are applicable if the limitations imposed under the accord are rational and also provided that the competition policy should not come in conflict with the rational usage of intellectual property rights.[47]

The provisions related to misuse of commanding position is provided under Section 4 of the Competition Act, 2002 and it is similar to Article 82 of the EC Treaty. The Section explains the meaning of abuse of dominant post and the practices that fall under it which are considered as abusive. This provides a clear demarcation that it is considered as misuse and not mere extant of a dominant position which is restricted under the law.

[44] Magill TV Guide/ITP, BBC and RTE, [1989] 4 CMLR C-241/91 P & C-242/91 P, E.C.R. 1-743
[45] Ibid, p.12
[46]Kahn Zorina (1999) p.133
[47]G. Shankar and N.Gupta (2011)

It is important to note that there are no exceptions been made for intellectual property rights. There are not many rules provided under intellectual property rights conventions which deal directly with competition law. After analyzing both the laws it can be said that the reason behind this is competition law was considered something which is entirely different from intellectual property rights.[48]

There are various indirect rules of competition under the intellectual property system in the form of internal balancing mechanism. There are many mechanisms which are related for example to the object of protection whereas some relate to the duration and procedural matter. Few mechanisms deny protection wherein other restricts the protection. The two regimes should not be bifurcated as two entirely different laws as the relationship between the two depicts that they are not be isolated from each other.

Furthermore, an appropriate forum is not provided under the provisions of both the laws in case of a conflict between the two laws. After closely analyzing the case laws the interface between Competition law and intellectual property rights can be understood and it would show the lack of Indian jurisprudence in dealing with the conflicts of jurisdictions in resolving the tension between IPR and Competition laws.[49]

1. Jurisprudence and Cases

There has been an emergence of a discussion on IPR versus Competition law in India in the recent times. There have been a plethora of judgments from several High courts and the Supreme Court involving certain issues of IPR and antitrust agreements, clarifying their objective and applications. In *Aamir Khan Productions Pvt Ltd v Union of India,* the Bombay High Court held that the CCI has the jurisdiction to deal with competition cases involving IPR.[50] The court had further stated that every tribunal possesses the jurisdiction to display the existence of a fact related to jurisdiction, unless the statute establishing the tribunal provides otherwise. Hence, it can be said by reading the provisions provided under the competition act that it is clear that the jurisdiction to determine whether the facts of preliminary nature lies with the CCI.[51]

In the case of *Kingfisher v. CCI*, it had been established that all the issues that had arisen before the copyright board can be considered by the CCI.[52] Prior to the Competition Act 2002, the

[48] Eshan Ghosh (2014)
[49] Rahul Dutta (2011).
[50] Aamir Khan Productions v Union of India, 2010 102 SCL 457 (Bom)
[51] Ibid p.14
[52] Kingfisher v. CCI ,Writ Petition No. 1785 of 2012

MRTP was enacted. The MRTP Commission in *Manju Bharadwaj v. Zee Telefilms Ltd* [53] and *Dr Vallal Peruman v. Godfrey Phillips (India) Ltd* categorically stated that where a person misuses a trademark by manipulation so as to mislead the consumers, legal actions can be taken against such person[54]. Section 4 does not provide any clause with regards to public interest or abuse of Intellectual Property rights as a ground for interference. Another feature of anti-competitive practice is establishment of the cartels. Cartel activity is widely prevalent in the Indian industry. For instance, Indian film industry is extremely famous for its uniqueness and copyright issues coupled with anti-competitive practices ruling the industry. In *FICCI Multiplex Association of India v United Producers/Distributors Forum (UPDF)*[55], a complaint was filed by the FICCI against UPDF and others stating that they were creating market cartels in films, against cinema halls. In order to raise their revenue, the UPDF had refused to deal with multiplex owners, considering the fact that the multiplex business is 100 per cent dependent upon films, this amounted to a refusal to deal, which was inherently anti-competitive. The CCI prima facie found there were an anti-competitive agreement and an abuse of market regulatory position. Interestingly, the UPDF approached the Bombay High Court challenging the actions taken by the CCI on the ground of lack of jurisdiction. They submitted that under Sections 13(1) (b) and 14(d) (ii) of the Copyright Act films were subjected to copyright protection; hence it was the Copyright Board that had the jurisdiction to deal with the present matter. This kind of issue was also raised and deliberated upon in the earlier matter of *Kingfisher v Competition Commission of India*[56].The Court ruled that Section 3(5) Competition Act 2002 provides that Section 3(1) shall not take away the right to sue for infringement of patent, copyright, trademark, etc. and that the defenses which could be raised before the Copyright Board could also be raised before the CCI.

The CCI had held that every person and association has the right of collective bargaining but they cannot make cartels and control the market in such a way that there is an adverse effect on the market causing an anti-competitive effect.[57] The UPDF contended that the CCI in an earlier decision in *Reliance Big Entertainment Ltd v Karnataka Film Chamber of Commerce*[58] had prevented the KFCC[59] from taking any action against exhibitors who were exhibiting the movie "Ravan" as long as they were willing and desirous to exhibit. Hence, considering this it

[53] Manju Bharadwaj v Zee Telefilms Ltd, (1996) 20 CLA 229
[54] Dr Vallal Peruman v Godfrey Phillips (India) Ltd, (1995) 16 CLA 201
[55] FICCI Multiplex Association of India v United Producers Distribution Forum (UPDF), Case No 1 of 2009, CCI order dated 25 May 2011
[56] Ibid, p.14
[57] CCI Order, 2012 para 23. p.48
[58] Reliance Big Entertainment Ltd v Karnataka Film Chamber of Commerce, Case no 25 of 2010
[59] Karnataka Film Chamber of Commerce

was their exclusive right to release a movie in any multiplex that they wished. They relied on an earlier Supreme Court decision in *Indian Performing Right Society Ltd v Eastern India Motion Pictures Association*[60] wherein a contention was raised that a feature film is nothing but a bundle of copyrights. The question here however, was whether a copyright holder can enjoy his right when the competition is being affected in the market. It was also pointed out that the Constitution of India under Article 19(1) (g) confers the right to practice any trade or profession. Therefore, there cannot be a restrain on this right under Competition law. The CCI herein ruled that the collaborative activity of the UPDF in not releasing films through the informant in this case was clearly violative of Section 3(3) of the Competition Act, 2002. More interestingly, it was held by the CCI that

> "*A copyright is a statutory right under the Copyright Act of 1957 and not an absolute right".*

For this, the CCI relied on the judgment by the Delhi High Court in the case of *Gramophone Company of India Ltd v Super Cassette Industries Ltd*[61].In an another judgment, in the matter of *Microfibres Inc v Girdhar & Co*[62] the Court observed that:

> *'The legislative intent of the Competition law was to grant a higher protection to pure original artistic works such as paintings, sculptures etc. and lesser protection to design activity which is commercial in nature. The legislative intent is, thus, clear that the protection accorded to a work which is commercial in nature is lesser than and not to be equated with the protection granted to a work of pure Article. It is therefore amply clear that greater protection ought to be accorded to original artistic works related to cinema rather than its commercial interests.*'

The Delhi High Court in the case of *Hawkins Cookers Limited v. Murugan Enterprises* held that a well-known mark cannot be permitted to create monopoly in the market on the basis of being a well- known mark by controlling the ancillary and incidental market. This is to be considered as an abuse of dominant position and is prohibited.[63]Under Section 27 of the Competition Act, 2002, the CCI has the authority to penalize IPR holders who abuse their authoritative position. Further, under Section 4 of the Act the Commission is also authorized to penalize the parties to an anti-competitive agreement, which is in contravention of Section

[60] Indian Performing Right Society Ltd v Eastern India Motion Pictures Association (1977) 2 SCC 820
[61] Gramophone Company of India Ltd v Super Cassette Industries Ltd, 2010 (44) PTC 541 (del)
[62] Microfibres Inc v Girdhar & Co, RFA (OS) no 25/2006 (DB), 2009
[63] Hawkins Cookers Limited v Murugan Enterprises, 2008 (36) PTC 290(Del)

3 of the Act. [64]

V. CONCLUSION AND SUGGESTIONS

A close relation is present connecting intellectual property rights and Competition laws. The intellectual property rights identify limits inside which the contenders implement their propriety. The competition law focuses at reduction of exploitation of an intellectual asset that falls beyond the scope of intellectual property rights.[65] On the other side, intellectual property rights grants temporary monopolies. It should focus on providing economically meaningful monopolies rather than temporary monopolies.

1. The actual understanding of the IP regulation ought to be that the competition law and Intellectual Property Law are not at contradicting positions with respect to each other. But, they complement each other by working in a synchronous manner encouraging inventions and consumer oriented market arena.

2. The term 'MARKET' can be broadly classified as

   i. A market for goods and services

   ii. A market for technology or innovation.

This will reduce the complexities and encourage the commission to deal with issues wherein IP is misused to fluctuate commodity prices or deter acquisition of protected technologies.

3. The guidelines provided can specifically point out the anti-competitive conduct of intellectual property owners under exclusive category. This will help in a crystal clear demarcation of property rights for the property rights holder. Moreover, a classification of illegal acts or anti competitive acts by the commission will lead to steep drop in number of cases.

4. Several jurisdictions discussed above and also others clarifies that extent of intellectual property rights does not necessarily confer market power. This judicial understanding should be absorbed by the Commission of India and cases involving intellectual property rights should be dealt under it.

5. The concept of pricing should be foundationally based on the capacity of the consumer in the relevant market and not through unequal or discriminatory prices which violates the very intent of Competition law.

[64] Shubha Ghosh (2009) p.5
[65] SILKY MUKHERJEE (2012) p. 8

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6. High pricing should be included as an abuse of dominant position in the market in the Indian Competition Act 2002. Section 4 of the Competition Act 2002, ought to be amended to include high prices as a criterion as well.

Thus, it can be concluded that the competition is not fundamentally the final goal of competition law and similarly, IP protection is not the final goal of IPRs policy but just a method to attain better efficiency and welfare in the long run.[66] There are certain conditions wherein the consumers would be benefitted by

i. permitting limited market restrictions,

ii. monopolistic profits and

iii. short-term allocative inefficiency

This has also been specifically incorporated amid those elements which are to be taken into consideration by competition officials in few competition statutes. In this regard an example can be given, that it has been contended that permitting cost to increase exceeding the marginal cost past a succession of short term monopolies that can induce active competition. Researchers do put forward arguments that involve swift innovation, rising significance of declining average costs, and system externalities has formed circumstances absolute for active competition for monopoly, in which short term monopolies will increase and decrease in the flow of speedy way in and way out.[67]

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[66] T.B Leary (2001) p.4
[67] J.A Ordover (2002) p.11

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