A Public Lecture on
"Interface between the Indian Competition Act 2002 and the IPR Laws in India"
by
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There are two opposing views on the interface between a competition law and IPR (Intellectual Property Rights) laws. The first contents that there is a tension between competition and intellectual property, arguing that competition law seeks to eliminate monopolies and encourage competition, while IPR laws reward creators and inventors with a limited monopoly. According to the proponents of this view, the main function of IPR laws is to properly assign and defend property rights on assets that have economic value. On the other hand, the main goal of competition law should be to minimise the adverse consequences of monopoly power arising from IPRs.

The second view contends that competition law continues to be a vital means of ensuring continued innovation and economic growth. The aims and objectives of IPRs and competition laws are complementary, as both aims to encourage innovation, competition and enhance consumer welfare. It is vitally important to preserve competition in innovation because competition ensures the best outcome for consumers.

Competition authorities are normally concerned with anti-competitive practices such as abuse of dominant position whatever be the source of such practices, rather than with the abuse of IPRs. The Indian Competition Act 2002 (CA 02) specifically refers to IPR laws. Section 3(5) of the Act states that agreements entered into for imposing reasonable conditions or restraining infringements of IPRs conferred under respective IPRs laws would not be actionable under the CA 02. The CA 02 applies to IPRs in relation to abuse of dominant position and combinations. Therefore, abuse of dominance due to an IPR is liable for action under the Indian Competition Act just as IPR-related dealings in combinations leading to an anti-competitive effect.

Thus, the issues involved are technical and multifarious and need to be dealt with in diverse ways. There have been cases such as Mahyco-Monsanto which prove that this subject deserves more attention than it has received in the past. In that case, Mahyco-Monsanto was found guilty of price gouging (pricing above the market price when no alternative retailer is available) in a Bt cotton case filed by the Andhra Pradesh Government and some civil society organisations before the Monopolies and Restrictive Trade Practices Commission of India. Mahyco–Monsanto was charging an excessively high royalty fee for its Bt gene, which made the seed too expensive for the farmers. As there was no competition due to their IPR on Bt cottonseeds, Mahyco-Monsanto had a monopoly and had acted arbitrarily.

As the Competition Commission of India is expected to be fully operational in near future, this public lecture, organized by the CUTS Institute for Regulation & Competition in association with the Federation of Indian Chambers of Commerce & Industry, by an eminent expert will help throw more light on this important interface.

Allan Asher is a Board Member of the United Kingdom Office of Fair Trading. He is a former deputy chairman of the Australian Competition and Consumer Commission and a former chief executive officer of the consumer watchdog organization EnergyWatch, UK. During his time at the ACCC he had a direct approach to seeking resolution of both competition and consumer protection issues.