

## Intellectual Property and Competition Law: The Innovation Nexus

*There has been a long fought battle between the IP Laws and Competition Law and their objectives seem to be contradicting each other. The issue note highlights the common objectives of framing both the set of laws which include promoting innovation, creativity and a better market for consumers.*

Intellectual Property (IP) is the creation of mind. Intellectual Property Rights (IPRs) are the exclusive rights granted to the inventor/ creator of intellectual property to exclusively exploit his intellectual property. The law dealing with Intellectual Property offers a bundle of rights (economic as well as moral rights) to the owner of property for a specified period of time. The prime objective of IPRs is to reward the inventor for his invention and at the same time encourage new & innovative products to the market. Intellectual Property is divided under two main heads: The Industrial Property, which encompasses the trade marks, patents, industrial designs, geographical indications and circuit layouts and the other head is Copyright- which is related to literary, dramatic and artistic work.

Throughout the world, member countries of World Trade Organization (WTO) follow similar system of granting rights to the creator of intellectual property. Member countries have signed Trade Related Agreements on Intellectual Property Agreement (TRIPS) which stipulates minimum standards of regulation. Member countries have to bring their domestic laws in conformity with the TRIPS agreement. In contrast to this, till now, no multilateral rules for competition law exist.

The term 'Competition' is not defined in Indian Competition Act but is generally understood to mean the process of rivalry to attract more customers or enhance profit. In some jurisdictions such as the US, some experts have defined Competition law, as law that promotes or maintains market competition by

regulating anti-competitive conduct by companies<sup>1</sup>. It can be said that Competition Law, also termed as the 'Antitrust Law' in some jurisdictions has been enacted with the intention to promote competition in the market and provide a level playing field to all market players in the market. Competition Law aims to foster competition as an instrument for accelerating growth through better products and economic efficiencies besides maximising consumer welfare by offering better products at lower prices. Innovative products to the market are an important by-product of increasing competition in the market which gives the seller an early mover advantage.

IP laws at the outset, offers a bundle of rights, which includes right to exclusive selling (often termed as monopoly) to the IP owner to make good his invention, whereas competition law emphasises on increasing competition in the market. The objective of IP Rights may also be understood as protecting individual (inventor) interest and rewarding him by giving exclusive right to sell, whereas Competition Law on the contrary focuses on increasing consumer welfare. This situation apparently creates a tension between the founding principles of IP laws and competition law. There appears a conflict in the objectives of the laws as one focuses on individual interest while the other on promoting collective interest through increasing competition. Now, a question arises whether IP & Competition laws are at odds with each other? To address this we need to

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<sup>1</sup> Taylor, Martyn D. (2006). International competition law: a new dimension for the WTO.(2006), published by Cambridge University Press.

understand, whether IP laws & Competition laws overlap? If they do not contradict, then do they have anything in common?

Arguing that intellectual property creates a “monopoly” does not automatically mean that it creates the kind of monopoly which competition law is supposed to tackle. Indian legislation is largely silent on the issue of the relationship between competition and IPRs; however it gives a special mention to IPR in relation to Anti-Competitive Agreements. The IP owner can impose reasonable restrictions to protect his rights as given under the respective IP laws. It is to be understood that competition law is not against monopoly *per se*, instead the goal is to prohibit anti-competitive conduct. A company that achieves a monopoly without entering into anti-competitive conduct will not violate the principles of competition law at all. In sum, the argument is that there is no tension in the goals being sought by intellectual property rights and competition law (there might however be some tension in the means through which the goals are sought to be achieved). The goals in both cases are the same – promotion of innovation, consumer welfare and more product choices.

The clear shift towards viewing IPRs and competition law as complementary to each other can also be seen in the 2003 Report by the FTC that note that patents do not necessarily confer monopoly power on their holders, and further that, even where a patent confers a monopoly power that alone does not create an antitrust violation<sup>2</sup>. This report concludes that both IPRs and competition make significant contributions towards innovation, consumer welfare and in order to

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<sup>2</sup> Federal Trade Commission, To Promote Balance of Competition and Patent Law and Policy, October 2003 available at <http://www.ftc.gov/os/2003/10/innovationrpt.pdf>, last accessed on 24<sup>th</sup> September 2013.

maximize these benefits, an appropriate balance between the two needs to be struck.

Competition Law has never questioned or interfered with the most primary function of IP rights: preventing free riding of creative achievements and/or the firm’s identity and reputation, acting as an incentive to innovate<sup>3</sup>. In fact, the former acknowledges the role of IP in promoting competition because by preventing free-riding, firms are encouraged to produce their own innovative products, which necessarily leads to competition. The competition law promote innovation and consumer welfare by prohibiting certain actions that may harm competition with respect to either existing or new ways of serving consumers<sup>4</sup>.

It can be safely concluded that Intellectual Property and Competition are not in conflict with each other and work towards some common goals. These two branches of law, being multifaceted, allow for the interaction of seemingly conflicting objectives and are capable of converging on the ultimate goal of enhancing the competitive dynamics of innovation<sup>5</sup>. The common objective of framing of both the laws is promoting innovation, creativity and a better market for consumers.

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<sup>3</sup> Gustavo Ghidini, Intellectual Property & Competition Law: The Innovation Nexus (2006), published by Edward Elgar Publishing Ltd.

<sup>4</sup> US Antitrust Guidelines for the Licensing of Intellectual Property available at <http://www.justice.gov/atr/public/guidelines/0558.htm#bak7>, last accessed on 27th September 2013.

<sup>5</sup> Giorgio Monti, Article 82 EC and New Economy Markets, Competition, Regulation and the New Economy 48-49 (2004).

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