

# Interface and Interplay Between Intellectual Property Rights (IPR) and Competition Law

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## ABSTRACT

Intellectual property rights (IPR) bestow exclusive legal privileges upon owners, restricting others' access and thereby potentially reducing market competition. In contrast, competition law (also known as antitrust law) aims to foster competition and enhance market accessibility. These two domains may appear fundamentally opposed, yet an alternative perspective suggests that they can not only coexist but also mutually reinforce each other.

This Paper endeavours to explore the interconnectedness and interdependence of IPR and competition law and seeks to unravel the common thread between these legal domains in the Indian context, providing a comprehensive understanding of their interplay. It underscores the essential role of both in bolstering a nation's economic efficiency. By coexisting harmoniously, IPR and competition law contribute to a more robust system, and this study offers practical guidelines to enhance the effectiveness of India's competition law framework and patent offices.

**KEYWORDS:** Competition Law, Intellectual Property Rights, Policies, Unfair Market

## INTRODUCTION

Intellectual Property Rights (IPR) grant an exclusive right to creators, allowing them to exclude others from certain acts related to their intellectual creations. This bundle of rights significantly impacts innovation and access. On the other hand, Competition Law serves as an instrument to intervene in markets and correct market failures. Its primary goal is to foster healthy competition among competitors, thereby promoting an economically efficient free market.

The interplay between IPR and Competition Law reveals intriguing aspects. While IPR empowers rights holders to exercise market power, competition law targets unfair monopolies. Despite their differences, both laws aim to strike an effective balance. As India is a member of the WTO, it is committed to structuring the regime governing the connection between IPR and Competition Law.

Intellectual Property (IP) represents the ingenuity of human creations, spanning science, technology, arts, literature, and imaginative works. Its protection serves as a catalyst for progress, incentivizing inventors and original thinkers. The legal framework safeguarding these rights is aptly known as Intellectual Property Law. Across nations, statutes recognize and honour creators' economic rights<sup>1</sup>, fostering industrial and technical advancements. This recognition not only fuels ideation and originality but also injects vitality into markets, spurring competition, and benefiting consumers.

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<sup>1</sup> The subject of Intellectual Property Rights, as outlined in the Second Edition of V K Ahuja's book.

Competition Law, on the other hand, plays a pivotal role in shaping economic growth, particularly in countries like India with a mixed economy. It establishes an arena of fair play, where market forces orchestrate the production of goods and services across sectors. By nurturing competitive, non-monopolistic markets, it enhances economic efficiency and consumer welfare.

Over time, as India steadily ascends as an economic powerhouse, the convergence of Intellectual Property and Competition Law assumes global significance. These intertwined legal realms secure competition, scrutinize anti-competitive practices, and pave the way for a dynamic marketplace.

In summary, Intellectual Property and Competition Law—once distant companions—are now entwined threads in the fabric of our interconnected world.

In recent years, the symbiotic relationship between Competition Law and Intellectual Property Rights (IPR) has gained momentum. These legal realms, once distinct, now converge to shape economic actions globally. Competition law, often hailed as the “Magna Carta”<sup>2</sup> for enfranchised enterprises, focuses on economic behaviour. It safeguards economic freedom, prevents defaults, and combats anti-competitive activities. Meanwhile, IPR shields intangible rights associated with innovation and human creativity. Unlike tangible property rights, IPR has a unique economic character. As India emerges as an economic powerhouse, the convergence of these legal forces assumes global significance, securing competition, innovation, and consumer welfare.

Intellectual Property Rights (IPR) grant exclusive rights to creators, allowing them to exclude others from using their innovations. These rights significantly impact innovation and access. In contrast, Competition Law intervenes in markets to correct failures and promote fair competition. It encourages competitors to compete freely, ensuring an economically efficient market.

The interplay between IPR and Competition Law reveals interesting aspects:

- IPR empowers holders with market control, while Competition Law targets unfair monopolies.
- India, as a WTO member, must harmonize IPR and Competition Law.
- Despite their differences, both laws aim to balance conflicting interests and address socio-economic anomalies.

This research aims to explore the relationship between these legal frameworks in the Indian context, referencing relevant case law.

## THE OBJECTIVES OF IPR AND COMPETITION LAW

Intellectual Property Rights (IPR) and Competition Law stand as two pillars of the modern economic landscape. Observations suggest that Intellectual Property Rights (IPR) and competition law often appear incompatible due to their differing approaches to market access and competition. IPR grants innovators exclusive rights over their creations, effectively establishing a temporary monopoly that restricts others' access. This protection shields inventors from commercial exploitation, providing incentives for innovation. Conversely, competition law focuses on preventing the abuse of monopoly power and promoting dynamic market access. While IPR encourages competition among innovators through licensing, it simultaneously restricts competition for a period, ending when rights revert to the public domain.

According to a UNCTAD<sup>3</sup> document examining the intersection of competition policy and intellectual property, IPR aims to foster innovation by granting inventors exclusive rights, allowing them to recoup

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<sup>2</sup> United States v Topco Associates Inc. (1972), 405 US 596 (610)

<sup>3</sup> unctad.org, 17 August 2016, [https://unctad.org/system/files/official-document/ciclpd36\\_en.pdf](https://unctad.org/system/files/official-document/ciclpd36_en.pdf)

research and development investments. Conversely, competition law prioritizes efficiency, economic growth, and consumer welfare by limiting private property rights for the community's benefit. Competition is seen as essential for economic vitality, fostering innovation and enhancing competitiveness.

In essence, IPR emphasizes individual rights and temporary monopolies to protect innovations, while competition law safeguards market interests and consumer welfare by curbing practices that harm overall market health. Despite their apparent opposition, both ultimately strive to enhance consumer welfare.

### **EXPLORING GLOBAL PERSPECTIVES: NAVIGATING THE “TRIPS AGREEMENT, COMPETITION LAW AND INTELLECTUAL PROPERTY RIGHTS”**

The TRIPS Agreement, established as part of the Marrakesh Agreement in 1994 and operational since January 1, 1995, serves as a cornerstone of the World Trade Organization (WTO) framework. Its fundamental objective is to harmonize and regulate intellectual property (IP) rights worldwide, promoting a level playing field for international trade and innovation. Encompassing various forms of IP, including patents, trademarks, copyrights, industrial designs, geographical indications, and trade secrets, TRIPS sets minimum standards that all WTO member countries must uphold. Building upon existing multilateral IP conventions such as the Paris Convention, Berne Convention, Rome Convention, and IPIC Treaty, it incorporates substantive provisions and outlines enforcement measures and dispute settlement procedures. While TRIPS intersects with competition law, achieving a balance between IP protection and competition concerns poses challenges. Disputes arising from TRIPS matters are adjudicated under the General Agreement on Tariffs and Trade (GATT) 1994, with oversight by the TRIPS Council within the WTO. In essence, the TRIPS Agreement is pivotal in shaping global IP standards, fostering innovation, and ensuring equitable trade practices.

Firstly, member states are permitted, through express provisions or legislative revisions, to adopt suitable measures to prevent the abuse of Intellectual Property Rights (IPRs), as well as constraints on trade or the international transfer of technology. Secondly, there's a supportive interpretive framework favouring the adoption of measures necessary to prevent the misuse of IPRs by holders and mitigate anticompetitive licensing practices, as delineated in Article 40—a specialized provision complementing Article 8.2 of the TRIPS Agreement, establishing protocols for such actions. The TRIPS Agreement explicitly emphasizes that the preservation and enforcement of IPRs should contribute to the advancement of technological innovation and the transfer and dissemination of technology, benefiting both producers and users of technological knowledge while promoting social and economic welfare and maintaining a balance of rights and obligations.

These objectives and propositions of the TRIPS Agreement, aimed at achieving competitive equilibrium, are outlined in Articles 8(2), 31(K), and 41, and have garnered praise for their alignment with the interests of developing nations. Article 8(2) specifies that appropriate measures consistent with the agreement may be necessary to prevent the misuse of IPRs or practices that unreasonably restrain trade or harm international technology transfer. Article 40 of TRIPS addresses the control of anticompetitive practices in contractual licenses, acknowledging that certain licensing practices may have adverse effects on competition and technology dissemination, allowing members to adopt suitable measures to address such practices.<sup>4</sup>

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<sup>4</sup> Article 40(1) and Article 40 (2), TRIPs Agreement

Article 3(k) of TRIPS provides for the remedy of compulsory licensing to address unilateral anticompetitive practices. Additionally, the WIPO Development Agenda<sup>5</sup> of 2007 introduced 45 recommendations, including measures to address anti-competitive processes related to intellectual property. These recommendations include providing technical cooperation to developing countries, especially Least Developed Countries (LDCs), to better understand the interface between IPRs and competition policies, as well as promoting pro-competitive IPR licensing processes and facilitating exchanges of information and experiences on IPR-related competitive outcomes within WIPO.

## DISPARITIES

The conflict between competition policy and the framework of intellectual property rights (IPR), especially concerning patent legislation, has been a contentious matter. The tactics utilized to achieve their respective objectives create an overlap between competition policy and patent law. While competition policy demands the absence of unjust constraints on competition, patent laws offer inventors temporary monopolies to safeguard their innovations from competitive exploitation.

IPR protection functions as a means to stimulate innovation, benefiting consumers by fostering the advancement of novel and enhanced goods and services while also fostering economic growth. It provides innovators the authority to prevent others from commercializing their innovative products and processes for a limited duration, enabling them to recover research and development expenses and earn reasonable profits, thereby encouraging further innovation.

In contrast, competition law plays a vital role in bridging market voids, regulating anticompetitive practices, deterring the misuse of monopoly influence, and ensuring optimal resource allocation. Its objective is to benefit consumers by ensuring fair pricing, a wider selection, and superior quality. Competition law ensures that the dominance associated with IPRs does not impede competition and that innovators are motivated to introduce new products or services to the market competitively.

Despite their inherent disparities, these two legal frameworks frequently coexist, each constraining the rights of the other. The interface between competition policy and patent law is particularly noticeable in sectors like pharmaceuticals, where issues such as Pay for delay/Reverse delay settlements, discrimination in patient assistance programs, and perpetual renewal of patents present challenges. The concept of 'Compulsory Licensing' aims to find a compromise between intellectual property rights and competition law, ensuring that IP rights holders cannot exploit their privileges to suppress market competition. This ensures that innovation is fostered while safeguarding consumer well-being.

## INTERPLAY BETWEEN IPR AND COMPETITION LAW

India, as an independent nation, has taken proactive measures to safeguard intellectual property rights (IPR) through various laws, both to comply with international treaties and conventions and for domestic protection and growth. Intellectual property law and competition law are recognized as crucial legal frameworks that collaborate to regulate markets with the shared goal of consumer welfare. Traditionally, these two areas of law were seen as opposing forces, with IPR creating monopolies to incentivize innovation while competition law aimed to eliminate monopolies. However, it's now understood that they function in harmony, each playing complementary roles in fostering innovation in dynamic markets.

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<sup>5</sup>Accessible via: <http://www.wipo.developmental/recommendations/html> accessed, 4<sup>th</sup> February 2020

IPR protection incentivizes innovation by granting exclusive rights to creators within defined boundaries, such as patents, copyrights, trademarks, and trade secrets<sup>6</sup>. This exclusivity allows innovators to recoup their investments and earn reasonable profits, stimulating further innovation. Conversely, competition law focuses on promoting maximum resource production and allocation efficiency while preventing monopolistic behaviour that could harm consumers. It views monopolies as inefficient and detrimental to market competition, striving to ensure fair access and pricing for all market participants.

The interaction between competition law and intellectual property arises from their shared objective of societal benefit. While IPR encourages innovation disclosure to society, competition law intervenes when monopolistic behaviour hinders market competition. This interaction can be complex, especially in sectors like pharmaceuticals, where issues such as patent abuse and market domination pose challenges.

In today's technologically advanced world, IPR protection has gained global attention due to international agreements like the Trade-Related Aspects of Intellectual Property Rights (TRIPS) under the World Trade Organization (WTO). Similarly, competition law focuses on preventing market domination through practices like abuse of dominant position and price-fixing cartels<sup>7</sup>.

Both IPR and competition law aim to promote innovation and efficiency in the economy<sup>8</sup>, albeit through different means and approaches. While IPR grants temporary monopolies to innovators, competition law strives to keep markets open and competitive. Balancing these conflicting approaches is crucial, ensuring a fair trade-off between innovation incentives and market competition. Ultimately, both laws work towards the common goal of maximizing societal welfare through dynamic and fair market competition.

## COURT RULINGS

In recent times, both the EU and the US have encountered numerous cases concerning conflicts between intellectual property rights (IPR) and competition law. Conversely, India has experienced relatively few cases involving such conflicts, indicating that this convergence is still in its nascent stages within the country<sup>9</sup>.

In the instance of “**FICCI- Multiplex Association v United Producers Distributors Forum**”,<sup>10 11</sup>“there was a collective decision by film producers and distributors, acting through the United Producers and Distributors Forum (UPDF), to withhold film releases to multiplexes to coerce them into accepting better revenue sharing terms. The Competition Commission of India (CCI) determined that UPDF engaged in cartel-like behaviour due to its ability to control film releases with a 100% market share. The CCI assessed the reasonableness of the action under Section 3(5)(i). Since a feature film encompasses various copyrights, including the right to sell, hire, or publicly communicate the film, the question arose whether this right includes the right not to sell or hire. It's noteworthy that copyright does not confer market power to the holder, especially in collective licensing through copyright societies. The CCI correctly concluded

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<sup>6</sup> Keith E. Maskus and Mohammad Lahouel, “Competition Policy and Intellectual Property Rights in Developing Countries, Interested in Unilateral Initiatives and a WTO Agreement(1999)”

<sup>7</sup> UNCTAD, “Objectives of Competition Law and Policy. Towards a Coherent Strategy for Promoting Competition and Development”, by UNCTAD Secretariat.

<sup>8</sup> W.K Tom and J.A. Newberg . “Antitrust and Intellectual Property : From Separate Sphere to Unified Field” 66 Antitrust L.J 1767 (1997-98)

<sup>9</sup> Forrester Ian S. Competition Law and IPR: Ten years on the debate still flourishes, <http://www.eui.eu/RSCAS/Research/Competition/2005/2005.pdf>.

<sup>10</sup> Case no 01 of 2009,decided on 25th May 2011

<sup>11</sup> Case no 01 of 2009,decided on 25th May 2011

that UPDF's restriction on film supply to multiplexes constituted an anticompetitive act under Section 3(3) of the Competition Act 2002". Upon examination, it was found that UPDF members operated at different levels of the film business, including production and distribution. As producers and distributors are not direct competitors and operate at different levels, their collaboration falls under a vertical agreement<sup>12</sup>.

In the groundbreaking case of "**Aamir Khan Productions vs. the Director-General**"<sup>13</sup>, the Bombay High Court addressed the intersection of competition law and intellectual property law for the first time. The ruling established that the Competition Commission of India (CCI) holds jurisdiction over all cases involving intellectual property rights (IPRs) and competition law.

Traditionally, disputes concerning IPRs were adjudicated by the Monopolistic and Restrictive Trade Practices Commission (MRTP Commission), the predecessor to the Competition Commission. However, with the enactment of The Competition Act, 2002, the CCI now oversees cases involving the convergence of competition issues with both IPR and competition law. Established on October 14, 2003, the CCI began full operations in May 2009 and comprises a chairperson and six members.

In the instance of "**Singhania and Partners LLP v Microsoft Corporation (1) Pvt, Ltd**"<sup>14</sup>, the petitioner entered into an agreement with Microsoft to purchase Windows Operating systems and Office 2007 from a Microsoft distributor. Following Microsoft's instructions, the petitioner acquired software for their LLP business and reimbursed the advance payment required by the distributor. However, after reimbursing the advance amount, Microsoft informed the petitioner that they could only purchase volume licenses and not Original Equipment Manufacturer (OEM) licenses, which are typically available only to those purchasing new machines. "The cost of volume licenses was twice that of OEM licenses. The petitioner alleged that different Microsoft dealers charged different prices for the same product, artificially distorting the market. With Microsoft holding a 90% market share, the petitioner argued that being compelled to purchase volume licenses at double the price of OEM licenses constituted an abuse of dominant position under Section 4(2)(a)(ii) of the Competition Act 2002".

Microsoft's defence was based on its licensing policies and the need to protect its intellectual property rights from unauthorized reproduction. It emphasized that its relationships with suppliers and traders were independent and did not involve principal-agent connections. "Microsoft argued that OEM licenses differed from those obtained through other channels and clarified that its agreements with OEMs did not mandate the installation of Windows on PCs. The petitioner contended that Microsoft's separate pricing for different licenses served to maintain its monopoly in the market and violated section 3(4)(e) of the Act by enforcing unfair prices".

The Competition Commission found no clear evidence to justify Microsoft's separate pricing for similar products under different licenses or to demonstrate that Microsoft's dominant position led to the exclusion of competitors from the market. However, "Mr. R. Prasad's dissenting opinion suggested that the Commission should consider all factors that may be anti-competitive, even those not raised by the petitioner. He highlighted the probability of Microsoft holding a dominant role, given its 80% market share in operating systems, and raised concerns about the accessibility and pricing of OEM licenses". Additionally, he pointed out discrepancies in pricing between different countries, which hindered competition in the market. Similar cases filed in the United States, specifically in the states of Iowa and

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<sup>12</sup> Ravikant Bharadwaj, KD .Raju and M. Padmavati, "Determining unreasonable use intellectual property rights in anti-competitive Agreements in India" (2013) I.C.C.L.R. 2013

<sup>13</sup> 2010(112) Bom LR3778

<sup>14</sup> Case no 36/2010, decided by the Commission on 22.06.2011

California, resulted in Microsoft being instructed to reimburse customers for the price difference between separate and volume licenses due to misuse of monopoly power.

In the case of “**Shri Shamsher Kataria v. Honda Siel Cars India Ltd. & Ors**”<sup>15</sup>, “the informant, Shamsher Kataria, filed documentation under Section 19(1)(a) of the Act in January 2011, accusing Honda Siel Cars India Ltd, Volkswagen India Pvt. Ltd, and Fiat India Automobiles Pvt. Ltd of engaging in anti-competitive practices related to the sale of spare parts. Drawing on practices observed in the European Union (EU) and the United States, the informant alleged that car manufacturers in India were charging higher prices for spare parts and maintenance services compared to their counterparts abroad”. Additionally, there were severe restrictions on access to technical information, diagnostic tools, and software programs necessary for the maintenance and repair of automobiles by independent repair shops. The informant further asserted that the limitations on access to genuine spare parts and technical knowledge required for effective repair and maintenance of automobiles manufactured by the specified Opposite Parties (OPs) were not isolated incidents.

The Commission issued comprehensive directives under section 27 of the Act, including:

- Directing the parties to cease and desist from engaging in practices found to violate the provisions of the Act.
- Mandating the OPs to establish a system to make spare parts and diagnostic tools readily accessible through an efficient system.
- Allowing for the promotion or sale of spare parts in the open market without any restrictions, including on pricing. Original Equipment Suppliers (OESs) would be permitted to sell spare parts under their own brand names if they choose to do so. In cases where the OPs hold intellectual property rights over certain parts, they may impose royalties/fees through carefully drafted contracts to ensure compliance with the Competition Act, 2002.
- Prohibiting the OPs from imposing any restrictions on the operation of independent service providers.
- Encouraging the OPs to develop and implement effective systems for the training of independent service providers and to facilitate easy access to diagnostic tools. Compensation arrangements may also be considered for technical support and training certifications on a volume basis.
- Encouraging the OPs to standardize a greater number of parts to be used across different brands, such as types and batteries, which would reduce costs and provide more options for consumers and service providers.
- Prohibiting the OPs from imposing blanket conditions stating that warranties would be voided if consumers avail services from independent maintenance providers. However, the necessary safeguards may be put in place to protect the interests of consumers, and warranties may be voided only to the extent that damage occurs due to faulty repair work beyond the control of the OPs.
- Requiring the OPs to make information regarding spare parts, their Maximum Retail Prices (MRPs), availability over the counter, and details of alternative standard option maintenance costs, warranty-related statutes, and other relevant information accessible to the public and hosted on their websites.

## CONCLUSION

In the intricate interplay between Competition Law and Intellectual Property Rights (IPRs) in India's vibrant markets, a nuanced understanding is essential to navigate their complex dynamics. While inherent

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<sup>15</sup> Case no 03/2011 of Competition Commission of India

tensions exist due to their overlapping domains, it's crucial to strike a delicate balance. Competition law aims to curb monopolistic abuses, whereas IPRs often grant monopolistic powers to foster innovation. However, the ultimate goal is consumer welfare through a conducive environment for innovation. Competition fosters innovation by encouraging organizations to produce better products at competitive prices, while IPRs incentivize innovators to benefit from their creations. India's legislative framework would benefit from greater clarity regarding the Competition Commission's jurisdiction. Competition law should intervene where the exercise of IPRs exceeds reasonable conditions, as defined in the Indian Competition Act, 2002, without unduly stifling innovation.

IPR grants creators exclusive rights for a specified period, while competition law regulates the market to ensure a level playing field. While seemingly contradictory, these laws complement each other, intervening when one is misused. Competition law ensures consumer choice and fair pricing, while IPR rewards creators, benefiting the public. While IPR's monopoly position isn't inherently antithetical to competition policies, its misuse is.

In today's globalized world, these laws work in concert to foster innovation. They share a common objective but employ different approaches. Their regulatory mechanisms aim to strike a balance between monopolistic rights and societal interests, ensuring a fair and competitive marketplace.