COMITY OF COMPETITION LAW AND INTELLECTUAL PROPERTY RIGHTS

*SHLISHA D

Introduction:

In olden days, Intellectual Property Rights (IPR) and Competition Law were often considered as like poles of a magnet that repeal each other. They are both founded with the purpose of achieving economic development, technological advancement and consumer welfare. IPR are legal rights governing the use of such creations. This term covers a bundle of rights, such as patents, trademarks or copyrights, each different in scope and duration with a different purpose and effect.[1] Competition law seeks to prevent certain behaviour that may restrict competition to detriment consumer welfare.[2] As a result of this apparent antagonism between the two, the intellectual property rights regime was considered to be creating monopolies to spur innovation, while the primary object of competition law is to eliminate monopolies. As in, in short run, IPR encourages innovation and new products in the market, whereas in long run- Competition Law promotes consumer welfare by introducing new products to the market and maintaining the qualities of the goods in the market. In contrast, it been realized that both works in tandem and have complementary roles in driving innovation in today's technologically dynamic markets.[3]

Intellectual Property Rights represent a particular form of ownership and a property right in an intangible form. For example, copyright is granted when is idea is executed in some tangible form and its similar in case of other forms like the trademark, patents, designs etc.[4] The essential attribute of grant of intellectual property rights is the "exclusion of rights" which means the intellectual property right owner can exercise their right his rights to the exclusion of the whole universe.[5] On the other hand, competition law aims at attaining maximum possible production of resources and best possible allocation of the same. This can be one way of looking at the aims of IPR and competition law rights. However, competition and intellectual property law are the two different bodies of law have their independent and different area of operation.[6]

[1] Jayashree Watal, Intellectual Property Rights in WTO and Developing Countries, 2001 (Oxford University Press), at 1-5.
[2] Atul Patel, "Intellectual Property Law & Competition law", Journal of International Commercial Law and Technology, Vol. 6, Issue 2 (2011).
[3] Abir Roy & Jayant Kumar, "Competition Law in India", 2nd edition Eastern Law House, at p: 502.
[4] Simran Gurani, Intellectual Property Rights, C. Jamanadas and Company, 2017.
[5] Dr. BL Wadera, Law relating to Intellectual Property Rights, 5th edition, Universal Law Publishing and co.
[6] Supra at 3.

It is said that the relation between intellectual property (IP) and antitrust policy has always been unbalanced and challenging and that the Courts have seen an inherent conflict between the two legal regimes.[7] IPRs and competition are normally regarded as areas with conflicting objectives. The reason is that IPRs, by designating boundaries within which competitors may exercise monopolies over their innovation, appear to be against the principles of competitive market and level playing fields sought by competition rules, in particular the restrictions on horizontal and vertical restraints, or on the abuse of dominant positions.[8]

IP Laws are monopolistic in nature. They guarantee an exclusive right to the creators and owners of work which are a result of human intellectual creativity. Also they prevent commercial exploitation of the innovation by others. This legal monopoly may, depending on the unavailability of substitutes in the relevant market, lead to market power and even monopoly as defined under competition law. It is an advantage granted to the owner over the rest of the industry or sector. When this advantage or dominant position is abused, it creates a conflict between IPR and competition law.[9]

Hence, the aim of writing this article is to deal with the topics of Intellectual Property Law and Competition Law individually and discuss the interaction between both of them, i.e., by observing that whether and how both have a common goal and the conflict is only in the means to achieve the goal and not in the goal itself by the process of complementing each other.

Nature, History and Evolution of IPR

The concept of individual property both in real and tangible property is well established since ancient times. The duty of the common law and the criminal law is to protect private property from interference from the others. By the Fifth Amendment to the U.S. Constitution which protects private property against takings by the government without just compensation. The Forty-Forth Amendment, 1978 of the Constitution of India introduced a provision, Article 300-

[7] SCM Corp. v. Xerox Corp., 645 F.2d 1195, 1203 (2d Cir. 1981): The conflict between the antitrust and patent laws arises in the methods they embrace that were designed to achieve reciprocal goals. While the antitrust laws proscribe unreasonable restraints of competition, the patent laws reward the inventor with a temporary monopoly that insulates him from competitive exploitation of his patented art.
[8] Supra at 2.
[9] Adv. Vishnu S, Conflict Between Competition Law And Intellectual Property Rights http://www.articlesbase.com/intellectual-property-articles/conflict-between-competition-law-and-intellectual-property-rights3106578.html#ixzzOyxtTOwdR (Last accessed on 15th April,2018).

A, which was added to the constitution which provided that "no person shall be deprived of his property save by authority of law."[10]

A definition of IPRs which says is that they are a composite of ideas, inventions and creative expressions plus the public willingness to bestow the status of property on them.[11]

Thus, the work of the IP theorists was to look beyond real property theory to justify exclusive rights in ideas. The principal basis for IP protection in India and even in the United States is the utilitarian or economic incentive framework which is fundamentally about incentives to invent and create.[12] For example, in the United States, both the Constitution and judicial decisions acknowledge the primacy of incentive theory in justifying Intellectual Property. The U.S. Constitution expressly conditions the grant of power in the patent and copyright clause on a particular end, namely "to promote the Progress of Science and useful Arts."[13]

During the late 19th century, the increasing pace of globalization engendered by faster and cheaper methods or transportation and communication, combined with the growing ease of imitation, produced a strong and continuing demand for improving the international legal frame work for the protection and enforcement of IPRs. IPRs have thus moved rapidly from being an esoteric subject confined to specialist's circles to become a major policy issue in international economic relations and a term recognized by the general public the world over.[14]

Meanwhile Intellectual Property transactions in the international market increased which gave rise to contradictions regarding IPRs and regional restrictions now to resolve these contradictions, various international conventions were enacted like the "Paris convention for protection of Industrial Property" was the first convention came up in 1883 established by Germany, France, Belgium and 10 other countries for the protection of Industrial Property, followed by "Berne Convention for the protection of Literary and arts" first of its kind for the

[10] The Constitution of India originally provided for the right to property under Articles 19 and 31. Article 19 guaranteed to all citizens the right to acquire, hold and dispose off property. Article 31 provided that "no person shall be deprived of his property save by authority of law." It also provided that compensation would be paid to a person whose property has been taken for public purposes.

[11] Sherwood (1990), as cited by Carlos A. Primo Braga in The Uruguay Round and the developing countries (1996), edited by Will Martin and L. Alan Winters.

[12] Herbert Hovenkamp, Mark D. Janis and Mark A. Lemley, IP and Antitrust, An analysis of antitrust principles applied to intellectual property law, pp. 1-3, Aspen Publishers, United States, 2009.

[13] 16 Constitution of the United States, Articles 1 & 8, cl. 8.

[14] The Review and Forecast on development History of IPR in the World, Xeumei an, School of Law, Gaundong University of Financial, Gangdoung, China, (August 11, 2010) www.ccsenet.org/journal/html.

protection of Copyright. It was in 1993 when WTO adapted these international conventions. WIPO (World Intellectual Property Rights Organization) was established in 1970 and it was in charge of 20 international conventions relating to protection of intellectual property rights. TRIPS (Trade Related Aspects of Intellectual Property Rights) agreement in 1994 achieved the goal to link international trade with people's intellectual property rights. It succeeded in providing a more unified higher platform.[15]

Now, to understand why the legislators thought that exclusive rights in inventions and creations would promote the public welfare, considering what would happen with the absence of any sort of IP protection. For any sort of invention and creation, it requires the investment of resources, i.e., the time of an author or inventors, and often expenditures on facilities, prototypes, supplies, etc. Since, in a private market economy, individuals will not be able to invest sufficiently in invention or creation unless the expected return from doing so exceeds the cost of doing so that is, unless they can reasonably expect to make a profit from the endeavor. Thus, to earn profit from a new idea or a work of authorship, the creator must be able either to sell it to others for a price, or to put it to some use that provides his/her with a comparative advantage in a market.[16] A creator who depends on secrecy for value therefore lives in constant peril of discovery and disclosure which would benefit the country. For example, once the idea of the intermittent windshield wiper is disclosed, others can imitate its design relatively easily. Once a book is published, others can copy it at low cost. Now, if the author of a book charges more than the cost of distribution in hope of recovering some of her expenditures in writing the work, competitors will quickly jump in to offer the book at a lower price. Competition will drive the price of the book towards its marginal cost which in this case is the cost of producing and distributing one additional copy. In this competitive market, the author will be unable to recoup the fixed cost of writing the book. More to the point, if this holds generally true authors may be expected to leave the profession in droves, since they cannot make any money at it.[17] Our government has created IP rights in an effort to give authors and inventors control over the use and distribution of their

[15] Supra note 1 at p: 12 & 13.

[16] Mark A. Lemley, The Economics of improvement in intellectual property law, available at htg2://heinonliineo2rEg/HOL/LandinP ge?collection=jounals&handle=heinjournals/tr75&div=39 &id=&page-las

[17] F.M. Schrerer, Industrial Markey Structure and Economic Performance 444 (2nd ed. 1980) ("If pure and perfect competition in the strictest sense prevailed continuously ... incentives for invention and innovation would be fatally defective without a patent system or some equivalent substitute."). Scherer goes on to note, however, that natural market imperfections may give advantages to first movers, reducing the need for IP protection.

ideas, and therefore encourage them to invest efficiently in the production of new ideas and works of authorship. Thus, the economic justification for IP lies not in rewarding creators for their labor, but in assuring that they (and other creators) have appropriate incentives to engage in creative activities.[18]

Nature, History and Evolution of Competition law

Competition policy can succinctly be defined as those government measures that directly affect the behaviour of enterprises and the structure of industry. The objective of competition policy is to promote efficiency and maximise Welfare.[19]

Competition policy essentially comprises two elements: the first involves putting in place a set of policies that promotes competition in local and national markets, which includes a liberalised trade policy, openness to foreign investments and economic deregulation; and the second comprises legislation, judicial decisions and regulations specifically aimed at preventing anti-competitive business practices and unnecessary government interventions, avoiding concentration and abuse of market power and thus preserving the competitive structure of markets. This element is referred to as competition/antitrust law.[20]

Monopolization in many jurisdictions, competition laws place specific restrictions on monopolies. Holding a dominant position or a monopoly in the market is not illegal in itself, however certain categories of behavior can, when a business is dominant, be considered abusive and therefore be met with legal sanctions. The role of the monopolists and firms is that while undergoing acquiring of market power have been subjected to greater scrutiny of their behaviour than their other counterparts.[21]

History of competition law can be traced back to Roman Empire: the modem day competition law has its genesis in the American antitrust statutes like Sherman Act of 1890 and Clayton Act of 1914. But it was only after the Second World War that the American concept of Competition law became widely accepted. European Community incorporated the provisions of Competition law in Articles 81 and 82 of Treaty of Rome, signed in 1957. Subsequently most of the major

[18] Sherwood (1990), as cited by Carlos A. Primo Braga in The Uruguay Round and the developing countries (1996), edited by Will Martin and L. Alan Winters.
[19] The definition of welfare in regard is the sum of consumers' surplus and producers' surplus.
[20] Anurag Gupta, "Competition law and Intellectual Property Rights: Whether Conflicting or Complementing Eachother to serve a Common purpose, 2 Asian Journal Law and Economics Vol. 2 [2011], Iss. 2, Art.5.
[21] Ibid.

countries, like China, Brazil, Russia, Singapore, South Korea and Japan established their own competition regimes. Today, over hundred jurisdictions have their competition regimes in place and any enterprise having aspirations to go multinational cannot afford to ignore this law.[22]

The Indian Parliament passed the Competition Act in 2002 and it received the President's assent in January, 2003. To fulfill the objectives of the Act, government established CCI with effect from October 14, 2003. Certain provisions of the Act were challenged in the Hon'ble Supreme Court and Hon'ble Chennai High Court. In response, the Government promised to carry out certain amendments to the Act. This amendment bill was introduced in Parliament in 2006 and was adopted in 2007.[23]

After globalization, India has responded positively by opening up its economy, removing controls and resorting to liberalization. In quest of increasing the efficiency of the nation's economy, the Government of India acknowledged the Liberalization Privatization Globalization era. As a result, the Indian market faces competition from within and outside the country. This led to the need of a strong legislation to dispense justice in commercial matters and the Competition Act, 2002 was passed. Healthy and fair competition has proven to be an effective mechanism which enhances economic efficiency. Therefore the purpose of implementing the competition law was to curb monopolies and encourage competition in Indian market. Competition laws involves in formulating a set of policies which promote competition in the market. These are aimed at preventing unfair trade practices. It is also framed with the intention of curbing abuse of monopoly in the market by the dominant company. Consumer welfare and a healthy competition in the market are the main objectives of the Competition Law.[24]

Functional Aspect of Intellectual Property and Competition law: Complementing Eachother

Having a deeper knowledge into the areas of operation of both legal regimes, its easily noticeable that competition law and IPR do complement eachother. It should also be appreciated that the operational area of both is different, intellectual property right deals with the grant of rights by state whereas competition law deals with use of those rights. At the same point, the rationale

[22] Supra note 2 at p:121.
[23] Supra note at 9.

[24] Supra note 2 at p: 121 and 122.

behind both meets at the same point. This can be further elucidated by looking at the reasons for grant of intellectual property rights.[25]

- Rationale for intellectual property rights:

The existence of intellectual property regime is based on following reasons;

i. Incentive to Invent

Grant of Intellectual property right is a mode of providing incentive to the inventor for his invention. At the same time, without this incentive, inventor will be not be able to appropriate the full value of his invention because of "free riders"[26] problem attached to intellectual property because of its "specific nature".[27]

ii. To Encourage Disclosure

In the absence of any incentive by the State, the individual will keep the invention with himself. Incentive, in the form of temporary monopoly rights, encourages inventor disclose his invention to the public. In India, patent is granted only when the inventor gives complete details about his invention to the patent office, which is put in the public domain after 20 years. Thus, this has multifarious advantage. First, it increases 'common knowledge pool'. Secondly, if the information about the intellectual property is useful in the ulterior development of other assets, disclosure increases the pace of economic development by increasing the information available to other investors. Thirdly, in case of patents, the patent office publishes the specification and claims of the patent in their official journal, which can be used by others for research and development even before the expiry of patent term.[28]

iii. Commercialization of Technology

[25] Supra note 3.

[26] Free rider essentially refers to the person who enjoys benefits of a commodity without paying anything for that. If a new idea is freely appropriable by all condition of existence of communal rights to new ideas, incentives for developing such ideas will be lacking. The benefits derivable from these ideas will not be concentrated on their originators. If we extend some degree of private rights to the originators, these ideas will come forth at a more rapid pace. This is same as the common law doctrine of unjust enrichment.

[27] The specific nature of Intellectual property is non rival and non excludable. In the absence of any protective legal regime, non rivalness and non excludability of intellectual property has caused problems of the production of such goods. "Non-rival in use" means that one individual can consume the good in question without any fear of can the consumption of the same good by another person. "Non-excludability" means that it is difficult or impossible to prevent someone who has not paid for the goods from consuming it.

[28] Supra Note 3, p at 504.

Intellectual Property rights helps in greater commercialization of inventions. Intellectual property helps in further licensing of those property rights to entities that are better able to exploit those rights in an economic efficient manner.[29]

iv. To Increase Dynamic Efficiency

To increase dynamic efficiency refers to the development of new products and processes resulting in socially desirable products innovations. Grant of temporary monopoly by the State encourages individuals as well as corporations to invent and ripe the fruits of invention in the specified time.[30]

Apart from this, justification of intellectual property regime can also be found in Locke's 'theory of property'.[31] However, Locke's theory of property is itself subject to slightly different interpretations. One interpretation of the theory is that society rewards labour with property purely on the instrumental grounds that we must provide rewards to get labour. In contrast, a normative interpretation of this labour theory says that labour should be rewarded.[32] The later interpretation has been widely accepted in the form of Tocke's Labour Theory'.[33]

- Rationale for competition law:

Competition law is a tool for promoting social welfare by deterring practices and transactions that tend to increase market power.[34] Competition law aims at maintaining allocative as well as productive efficiency (both together are termed as static efficiency) in the market. Productive efficiency means production of output at the lowest possible and allocative efficiency refers to optimal allocation to resources to their most valued use. Static efficiency is necessary for establishing a perfect/free market. A perfect market is defined as a place where there are number of sellers or in others words, there is no barriers to entry in the market. Perfect market gives the consumers widest possible choices and the lowest possible prices, which is possible only when

[29] Robert Stoner, presentation at FTC/DOJ Hearing on Competition and Intellectual Property law and Policy in the Knowledge based economy, Intellectual property law and policy in the knowledge based economy.
[30] Ibid.
[31] In theory of property, Locke has described a state of nature in goods are held in common through a grant from God. God grants this bounty to humanity for its enjoyment but these goods which cannot be enjoyed in their natural state. The individual must convert these goods into private property by exerting labour upon them. The individual should be rewarded for granting certain proprietary rights in the goods. See also J. Locke, Second Treatise of Government (P. Laslett Rev. Ed. 1963) (3rd Ed. 1698)
[32] Justice Hughes, The Philosophy of Intellectual Property, (Georgetown Law Journal 1998), p. 287
[33] Supra at 3.
[34] John E. Lopatka & William H. Page, Economic Authority and the Limits of Expertise in Anti trust Cases, 90 Cornell L Rev 617, 633-38 (2005).

market remain competitive. Monopolies are viewed as destruction to competition because in monopoly, since only one person can produce and sell a particular product, the price of the product will not be equal to marginal costa This results in creation of artificial scarcity and production below the optimal level at optimal price. This is often Considered as "deadweight loss".[35]

Complementing Eachother

In this regard, i would like to take the example of the authors and the inventors who are usually given protection by way of copyrights and patents under the Intellectual Property Laws of the respective countries. Thus, by granting them the right to exclude the others from using their copyrighted writings and ideas or even using their patented invention without permission would prevent the other people from benefiting from them. Thus, in economic terms, the various IP rights prevent a healthy competition in the sale of the particular work or even an invention protected by the respective IP rights which would allow the IP owner to create a sort of monopoly by raising the price of that particular work above the marginal cost of reproducing it.[36]

Now, the fundamental principle of our economic system is the proposition that free market competition will best ensure an efficient allocation of resources in the absence of a market failure.[37] Competition Law ensures that the markets are not unfairly dominated by a single firm, and by making sure that the recognized competitors do not collude to avoid the effects of competition. There is a limit brought upon the ability of the competitors either copy or reproduce the intellectual efforts of the first author or inventor. The existence of an IP right may enable those possessing such an exclusive right to charge monopoly prices or to otherwise limit competition. It has been seen that the relationship between these two regulatory systems at a high notion are, rather than being simply adverse to each other, that they complement each other in promoting an efficient marketplace and long-run dynamic competition through innovation.[38]

[35] Dead weightloss is a sort of inefficiency where in wastage of resources takes place because of lesser of production by the producer , even after having enough resources. In case of Intellectual property right the owners do not produce at optimum level i.e equal demand, to charge a higher price.
[36] Supra at 20.
[37] A market failure occurs when, owing to the inherent characteristics of the market, too much or too little will be produced or consumed.
[38] Ibid.

A proper discourse of basic nature of intellectual property rights and competition law reveals that both aims at producing efficiency in the market. In the long run, both aims at consumer welfare and they complement each other. In case of intellectual property goods, the marginal cost of production is very less. The cost incurred is cost of research and development and the cost of inventing new technologies along with ancillary expenditure incurred in bringing up that product in market. Absence of any monopoly right will disallow the inventor to recover the cost of research and development. This might result in discouraging investors to invest in bringing up newer technologies, which creates to invest mic inefficiency in the market. At the same time the disclosure requirement of intellectual property provides a pathway for further innovations. Thus, intellectual property regime is definitely dynamically pro-competitive even if it is statically non-competitive. In the long run, technological progress contributes far more to consumers' welfare than does the elimination of static inefficiencies caused by non-competitive pricing. From an economist perspective, intellectual property law is primarily concerned with the provision of appropriate ex ante incentive (and increasing competition in innovation markets), while competition law is primarily concerned with ex post incentives (and increasing competition in product markets).[39] But, as Valentine described, both are divergent paths to same goal.[40]

Moreover, in the rational exercise of its self-interest, an IPR holder may sue would-be rivals for infringement, deterring entry to compete, or prolong its market power by precluding access to technology necessary for the next generation of products to emerge. Thus, this is where competition law comes in to help IPRs protection to be fair and on the right track of its virtue towards the welfare goal.[41]

Thus, it has been held that competition is not the end goal of competition law just as IP protection is not the end goal of IPRs policy, but it is only a means to achieve improved efficiency and better welfare in the long run. In fact, even in some circumstances, the society would be better off by allowing for limited market restrictions, monopolistic profits and short-term allocative inefficiency when these can be proven to promote dynamic efficiency and long-term economic growth.[42]

[39] Supra at 29.
[40] Debra Valentine, Intellectual property and Antitrust Law: Divergent Paths to the same goal.
[41] Supra at 9.
[42] Supra at 20.

It should be well understood that the intellectual property regime and competition law complements each other only at the equilibrium. State can comfortably reward innovation through patents and copyrights so long as the compensation is not significantly in excess of that necessary to encourage investment in innovation, and the market power that results ls not used to distort competition in, for example, related Product or service areas.[43] According to Landes and Posner, for Copyright law to promote economic efficiency, it "must, at least approximately, maximize the benefits from creating additional works minus both the losses from limiting access and the cost of administering intellectual property protection.[44]

Conflict between Intellectual Property Rights and Competition Law: "Friends in disagreement".

As discussed above, competition and intellectual property law are complementary with each other because they seek to maximize social welfare in one way or the other. Competition law maximizes social welfare by condemning abuse of dominance. While intellectual property law does the same by granting temporary monopolies. The qualification attached to this is that intellectual property law should provide economically meaningful monopolies. Otherwise, competition law which by itself doesn't condemn the mere possession of monopoly power, but rather certain exercises of or efforts to obtain it, might be allowed to interfere with the monopoly.[45]

The relationship between Competition law and IPR Laws was depicted either as a pure contradiction or sheer contradiction.[46] United States court summarized this disagreement as follows: "The conflict between the anti-trust and patent laws arises in the methods they embrace that were designed to achieve reciprocal goals. While the anti-trust laws proscribe unreasonable restraints of competition, the patent laws reward the inventor with a temporary monopoly that insulates him from competitive exploitation of his patented article. When the patented product, as is often the case, represents merely one of many products that effectively compete in a given product market, few anti-trust problems arise. When, however, the patented product is so successful that it evolves into its own economic market, as was the case here, or succeeds in

[43] Robert Pitofsky: Challenges of New Economy: Issues at the Intersection of Antitrust and Intellectual Property.
[44] William M Landes & Richard A. Posner, An Economic Analysis of Copyright (1989) 18 J Leg Stud 325 (326)
[45] Supra at 3 at p. 508.
[46] Supra 20 at p. 13.

engulfing a large section of a preexisting product market, the patent and anti-trust laws necessarily clash. In such cases, the primary purpose of the anti-trust laws to preserve competition can be frustrated, albeit temporarily, by a holder's exercise of the patent's inherently exclusionary power during it terms".[47]

Intellectual property (IP) refers to creations of the mind: inventions, literary and artistic works, and symbols, names, images, and designs used in commerce. An Intellectual Property Right (IPR) is, an intangible right "protecting commercially valuable products of the human intellect"; it may comprise patents, copyrights, trademarks and other similar rights. An IPR includes the right to exclude others from exploiting the non corporeal asset.[48]

IP is divided into two categories: Industrial property, which includes inventions patents, trademarks, industrial designs, and geographic indications of source; and Copyright, which includes literary and artistic works such as novels, poems and plays, films, musical works, artistic works such as drawings, paintings, photographs and sculptures, and architectural designs. Rights related to copyright include those of performing artists in their performances, producers of phonograms in their recordings, and those of broadcasters in their radio and television programs.[49]Competition law involves formulating a set of policies which promote competition in the market. These are aimed at preventing unfair trade practices It is also framed with the intention of curbing abuse of monopoly in the market by the dominant company. Consumer welfare and a healthy competition in the market are the main objectives of the Competition Law.[50]The provisions of the Competition Act, 2002 prohibits the exercise of anti-competitive agreements by the IPR holders since they are in conflict with the competition policies. Further, the Act authorizes the Competition Commission of India to penalise the IPR holders who misuse their dominant position. Furthermore, Section 45 of the Act the Commission is also authorized to penalise the parties to an anti-competitive agreement, which is in contravention of Section 3 of the Act.[51]

[47] SCM Corp v. Xerox Corp. 645 F 2d 1195 (1203) (2d Cir 1981).
[48] Supra at 9.
[49] Max Planck Institute for Intellectual Property, Competition and Tax Law (Last accessed on 27th April, 2018)
[50] Supra at 2.
[51] A Public Lecture on "Interface between the Indian Competition Act 2002 and the IPR Laws in India" by Allan Asher, Board Member of the United Kingdom Office of Fair Trading Friday, 29 May 2009, 3PM to 5PM, Federation House, FICCI, New Delhi (Last accessed on 27th April, 2018)

The major concerns of competition law in regard to intellectual property rights are the market power that may result from granting such rights, and the detrimental effects caused by the anti-competitive exercise of IP rights. At its simplest, market power can harm consumers by setting prices higher than those needed to secure cost effective production. Moreover, the harm caused by market power may extend beyond this, when the protection granted to firms allow them to slow or distort innovation. Under these circumstances, market power will limit the growth of productivity over time, and reduce the scope for sustainable increases in living standards.[52]

Intellectual Property Rights and Competition Law have been described as an unhappy marriage. The former may be seen to promote monopolies whilst the latter is designed is oppose them. In other words, on one hand, IP laws work towards creating monopolistic rights whereas competition law battles it. In view of this there seems to be a conflict between the objectives of both laws.[53]In order to combat, IPR monopolies anti-competition laws often include two major measures like parallel imports and compulsory licensing. A compulsory license is where an IPR holder is authorized by the state to surrender his exclusive right over the intellectual property, under the provisions of TRIPS. A parallel import includes goods which are brought into the country without the authorization of the appropriate IP holder and are placed legitimately into a market.[54]Innovation has always been a cause in a growing economy resulting in more innovation. The advent of fresh innovations gives rise to healthy competition at macro as well as micro economic levels. IP laws help protect these innovations from being exploited unlawfully. In view of this, IP and Competition laws have to be applied in tandem to ensure that the rights of all stake holders including the innovator and the consumer or public in general are protected.The common objective of both policies is to promote innovation which would eventually lead to the economic development of a country however this should not be to the detriment of the common public. For this the competition authorities need to ensure the co-existence of competition policy and IP laws since a balance between both laws would result in an economic as well as consumer welfare.[55]

[52] Sachin Kumar Bhimrajka, Study on relationship of competition policy and law and Intellectual property rights. Also available at http://www.cci.gov.in/images/media/ResearchReports/sachin report 20080730103728.pdf (Last accessed on 27th April, 2018)
[53] Supra note at 9.
[54] Supra note2.
[55] Ibid.

Conclusion

We shall understand one thing that the conflict between the two only arises because of Intellectual Property Rights being monopolistic in nature as one encourages monopoly the other eliminates monopoly. We shall not forget that IP laws grant monopoly only for a shorter period of time (Patent for 20 years, Copyright is lifetime of author plus 60 years) after which any invention or work falls in public domain for technological advancement, consumer welfare, and social welfare. We shall also not forget that none of the Indian laws are absolute in nature they all come with limits, liabilities and restrictions. Thus IPR and competition law does go hand in hand.