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RELATIONSHIP BETWEEN COMPETITION LAW AND INTELLECTUAL PROPERTY LAW

By: Ms. Anupriya Yadav
Assistant Professor, Amity University, Lucknow
anupriya14.yadav@gmail.com

Competition Law basically provides for economic development of a country by restricting those practices which have adverse impact upon competition and to protect the interest of consumers. Intellectual property law means rights granted to the creators and owners of the work which is being produced by the human intellectual creativity. These rights promote and encourage the owners to work more effectively. These are given in scientific, industrial, literary and artistic domain. But the problem that subsists between intellectual property right and competition law is how to reconcile the grant of monopoly with competition law. Intellectual Property Right (IPR) provides market if investment of resources to produce ideas or to convey information is left unprotected, the competitors may take advantage and benefit by not being obliged to pay anything for what they utilize. Intellectual Property Right lessens competition while competition law engenders competition. A workable solution can be predicated on the distinction between the existence of a right and its exercise

This paper basically focuses upon the function of the law to bridge a gap between Competition Policy and Intellectual Property Law and to reconcile the conflicting relations between two divergent areas of law.

Keywords: *Dominant Position, Monopoly, WTO, TRIPS*

INTRODUCTION

Competition law basically provides for set of rules that guide and govern competition and govern competition. It is defined as" those measures that directly affect the behavior of enterprises and the structure of industry". It is a policy in which the government takes the responsibility for assuring competition among the enterprises, but does not otherwise interfere in their price and output decisions. The objective of competition policy is to promote efficiency and maximize welfare i.e. to ensure to consumer low prices and high quality, and to assure fairness a level playing field for the entrepreneurs who provide competition. Elements of such a policy as pointed out in the Raghvan's Report on Competition Law, are two:

I First, involves putting in place a set of policies that enhance competition in local and national markets. These would include a liberalized trade policy, relaxed foreign investment and ownership requirements and economic deregulation.

II The second is, legislation designed to prevent anti-competitive business practices and unnecessary Government intervention-competition law.[1]

Intellectual property is the creative work of the human intellect. The main motivation of its protection is to promote the progress of science and technology, arts, literature and other creative works and to encourage and reward creativity. Nations give statutory expression to the economic rights of creators in their creations and to the rights of the public in accessing those creations. The economic and technological development of a nation will come to a halt if no protection is given to intellectual property rights. Therefore, the contribution of intellectual property is *sine qua non* for the industrial and economic development of a nation[2].

WTO AND COMPETITION POLICY

Both Competition policy and WTO regime aim at establishing and maintaining a free market where the optimal allocation of economic resources through the price mechanism and competition among enterprises. Therefore, competition policy and the WTO share the same objective, namely, an economic system based on a market economy. Indeed, competition policy is an integral principle of the WTO regime, even though there is no WTO agreement on competition policy.

Competition policy is concerned with the governmental barriers to competition and private anti-competitive conduct. Governmental barriers to competition and private restraints of competition are closely related. Governmental barriers to competition impose restrictions on the freedom of enterprises to compete. Private anti-competitive conduct restricts competition by abusive conduct of a monopolist or collusive behavior of enterprises. Even if governmental barriers to competition have been removed or reduced, private anti-competitive conduct may offset the benefit of the liberalization of economy afforded by the removal or reduction of such barriers. Therefore, as the liberalization of trade progress through trade negotiations sponsored by the GATT/WTO regime, it becomes increasingly important to take measures to control anti-competitive conduct of private enterprises that will counteract the results of liberalization. In light of this, the introduction of competition policy into the WTO regime is a necessity if the effectiveness of the regime is to be maintained[3]. There are differences of views on if, when and how the introduction of competition policy into the framework should be made. Eventually, however, the issue of how to incorporate an agreement on competition policy will become an important agenda item for the WTO.

IPR AND WTO

World Trade Organization (WTO) is an international organization set up with the objective of ensuring smooth and free trade flow across nations. For this purpose, it provides a platform for negotiating agreements between the member countries. These agreements deal with agriculture, textiles and clothing, banking, telecommunications, industrial standards and product safety, food sanitation regulations and much more and are the foundation of the multilateral trading system.

One such important agreement is the 'Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS)'. It for the first time brought laws relating to intellectual property into the international trading system. It was a result of the Uruguay Round of the multilateral trade negotiations. This agreement narrowed down the differences existing in the extent of protection and enforcement of the Intellectual Property rights (IPRs) around the world by bringing them under a common minimum internationally agreed trade standards. The member countries are required to abide by these standards within stipulated time-frame and promote effective protection of IPRs in order to reduce distortions and impediments to international trade. There are three obligations of member countries under TRIPS :-

- To provide minimum intellectual property rights protection through domestic laws.
- To ensure effective enforcement of these rights.
- To agree to submit disputes to the WTO Dispute Settlement System.[4]

The TRIPS agreement consists of following category of intellectual property rights:

- Patents
- Copyrights and related rights
- Trademarks
- Geographical Indications
- Industrial Designs
- Lay out Designs of Integrated Circuits
- Trade Secrets
- Plant Varieties

CONFLICT BETWEEN IPR AND COMPETITION POLICY.

IPRs and competition are normally regarded as areas with conflicting objectives. The reason is that IPRs, by designating boundaries within which competitors may exercise legal exclusivity (monopolies) over their innovation, they appear to be against the principles of static market access and level playing fields sought by competition rules, in particular the restrictions on horizontal and vertical restraints, or on the abuse of dominant positions. 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. However, ensuring the exclusion of rival firms from the exploitation of protected technologies and derived products and processes, do not necessarily bestow their holders with market power given that it is not dominance per se that is prohibited in terms of competition laws, but the abuse of such dominance. There are rare cases where the protected technology can be totally divorced from the process that has been in existence, such that there often exist other technologies, which can be considered potential substitutes to confer effective constraints to the potential monopoly-type conduct of IPR holders.

Rather than conflicting, there are areas where IPRs and competition complement each other. By creating and protecting the right of innovators to exclude others from using their ideas or forms of expression, IPRs provide economic agents with the incentives for technological innovation and/or new forms of artistic expression. This will create more inputs for competition on the future market, as well as promote dynamic efficiency, which is characterised by increasing quality and diversity of goods, which is also the objective of competition policy. Moreover, IPRs may create a race for innovation, as firms compete to exploit first-mover advantages so as to gain IPR protection. Therefore, both IPRs and competition policy are necessary to promote innovation and ensure a competitive exploitation thereof. It is necessary therefore to ensure their co-existence[5].

INTELLECTUAL PROPERTY RIGHTS IN COMPETITION ACT

The Indian competition law, namely, the Competition Act, 2002, as amended by the Competition (Amendment) Act, 2007, (the Act) deals with the applicability of section 3 prohibition relating to anti-competitive agreements to IPRs. An express provision [section 3 sub section(5)] is incorporated in the Act that reasonable conditions as may be necessary for protecting IPRs during their exercise would not constitute anticompetitive agreements. In other words, by implication, unreasonable conditions in an IPR agreement that will not fall within the bundle of rights that normally form a part of IPRs would be covered under section 3 of the Act.

In the Competition Act, 2002, as amended by the Competition Amendment Act, 2007, section 3, sub section 5,clause (i) in chapter II relating to Prohibition of certain agreements, states that: -

"Nothing contained in this section shall restrict –

- the right of any person to restrain any infringement of, or to impose reasonable conditions, as may benecessary for protecting any of his rights which have been or may be conferred upon him under: -

1. the Copyright Act, 1957 (14 of 1957);
2. the Patents Act, 1970 (39 of 1970);
3. the Trade and Merchandise Marks Act, 1958 (43 of1958) or the Trade Marks Act, 1999 (47 of 1999);
4. the Geographical Indications of Goods (Registration and Protection) Act, 1999 (48 of 1999);

5. the Designs Act, 2000 (16 of 2000);
6. the Semi-conductor Integrated Circuits Layout-Design Act, 2000 (37 of 2000).

An enterprise, which enjoys dominant position by virtue of the IPR, shall not enjoy any immunity if it engages in conduct considered abuse in terms of section 4. These abuses are in terms of section 4:

(i) directly or indirectly, imposes unfair or discriminatory condition or price;

(ii) limiting or restricting production of goods or provision of services or market;

(iii) limiting or restricting technical or scientific development to the prejudice of consumers;

(iv) denies market access in any manner;

(v) makes conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts;

(vi) uses its dominant position in one relevant market to enter into, or protect, other relevant market.[6]

CONCLUSION

In conclusion it can be said that the tension between competition policy and IPR's should be resolved. The authorities should keep a check and try to bridge the gap between the two. The monopoly pricing and abuse of dominance position basically in business strategies are the two factors which affects the relation between them. The exemption clause in competition laws which contains provisions related to IPRs is a noble idea. The competition authorities must ensure that the innovation objective which is the basis for IPRs should not violate the terms of competition laws. Though having a dominant position is not prohibited but its abuse is.

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