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Beyond Borders: The Globalization Of Intellectual Property Rights And Its Implications For Competition Law

Parineeta Goswami

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BEYOND BORDERS:
The Globalization of Intellectual Property Rights and Its Implications for Competition Law

Parineeta Goswami[1]

Abstract

Intellectual Property Rights (IPRs) provide a level of exclusivity, automatically limiting others' access. In contrast, antitrust law attempts to enhance competition and enhance market access, thus creating a seeming contradiction. However, an increasing perspective suggests that these areas could complement and reinforce each other. The choice of the right jurisdiction for a tribunal or court is of paramount significance in any controversy. This comes in when there are statutes whose interpretation must be done cautiously so that they are solved. Jurisdiction defines the power conferred on the judiciary to wield theirs.[2] *A court is delegated jurisdiction when they have insight regarding the cases they face, the parties before them, and whether the case issues are compatible with the jurisdiction's legal authority. The question of proper jurisdiction crops up when there is a case involving two legislations, particularly those that are against or overlap one another.*[3] *In this article, a jurisdictional conflict that occurs under circumstances of meeting between Intellectual Property Rights (IPR) and competition law is discussed. It aims to track the evolution from the difference between these two fields to convergence. Thus, the goal is to establish that they have autonomous operational domains and that it is both possible and essential to maintain their functions as separate entities.*

I. INTRODUCTION

Intellectual Property Rights (IPRs) create a temporary right in favour of the IPR holder to exclude others from using that IPR.[4] The time of exclusivity allows the holder of intellectual property rights to take advantage of the value attributed to the IPR. It is considered a reward or incentive for the inventor's labour in developing the IPR. Thus, the concept of Intellectual Property Rights bestows exclusive control to the owner of these rights for a specific duration. Competition law aims to prevent any actions, whether coordinated or unilateral, that could lead

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1 Assistant Professor of Law, UPES, Dehradun.

2 DIANE Publishing, TO PROMOTE INNOVATION: THE PROPER BALANCE OF COMPETITION AND PATENT LAW AND POLICY 26 (2003).

3 The term "competition law" in the United States is referred to as "antitrust law." Therefore, the term "antitrust" is used when discussing U.S. law, as it aligns with competition law principles

4 W.R. Cornish, INTELLECTUAL PROPERTY 43 (2003).

to anti-competitive behaviour. Its objective is to ensure continued and efficient market access.[5] Essentially, intellectual property safeguards the rights of individuals, while competition ensures the market's integrity. Consequently, it can be inferred that there is a conflict between the two sets of regulatory systems. Applying competition law to intellectual property rights has been a complex and contentious topic of discussion for many years. Competition laws aim to mitigate market distortions and discourage anti-competitive conduct, while Intellectual Property Rights enable the establishment of monopoly status or monopolistic activity among holders of Intellectual Property. Both laws were first believed to be contradictory. Still, after analysing multiple court cases, it is now widely acknowledged that the two systems are not in contradiction but rather mutually supportive. The interface between intellectual property rights and competition law requires ensuring that IPRs are not abused through excessive pricing, anti-competitive tying, or refusal of licence. Additionally, it is important to prevent the antitrust regime from being overly strict and to maintain incentives for inventors to innovate and create intellectual property. Ultimately, that is the fundamental force for economic expansion and, thus, a knowledge-driven economy. Once an Intellectual Property Right has been awarded, the holder has complete discretion to determine the most efficient method of utilising it. Is the intellectual property rights holder advisable to directly utilise the IPR? Alternatively, would it be more advantageous for the intellectual property rights owners to distribute and make the IPR broadly accessible by granting licences to others? The IPR holder's decision is based on commercial factors and depends on whether they obtain a net surplus by licencing the IPR compared to exploiting it themselves. The IPR holder may concentrate on product design and delegate the production process to other companies employing licencing, which is highly feasible. Considering the aims of Intellectual Property Rights and Competition law, it is evident that competition is not the ultimate objective of Competition laws, and safeguarding the expression of ideas is not the ultimate objective of IPR. They serve as the exclusive instruments for attaining the objectives outlined in each of these systems. Although the two systems have evolved into unique and divergent systems, their objectives are mutually supportive, aiming to foster dynamic innovation and enhance customer well-being. Competition rules ensure stable efficiency in the market for the intellectual property holder, while intellectual property rights establish a long-term system that provides incentives for innovation and growth. Given the coexistence of both laws, the primary concern is determining

[5] Richard Whish, COMPETITION LAW 17 (2005).

the appropriate forum for resolving matters that include both laws. Should the competition authorities intervene, or is this a problem to be addressed inside the IP forum?

II. LITERATURE REVIEW

A foundational work in this area is "The History of Intellectual Property"[6] by Bently and Sherman (2004), which offers a thorough historical examination of the evolution of copyrights, patents, and trademarks. The authors provide insights into the historical background that influenced the globalization of intellectual property by tracing the history of IPRs from medieval guilds to the current international legal system.

In "Globalizing Intellectual Property Rights: The TRIPS Agreement" (2002),[7] Correa provides a comprehensive examination of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The book explores the negotiating procedures, the effects on developing nations, and the opportunities and problems brought about by the international harmonization of intellectual property rules.

In "Intellectual Property and Competition Law: New Frontiers" (2010),[8] Drexl and Lee analyze the evolving relationship between these two legal domains. The book examines the conflicts and opportunities that arise from promoting fair competition and intellectual property protection to spur innovation. It discusses the difficulties antitrust concerns present in the setting of intellectual property rights and offers insights into the legal framework necessary to achieve equilibrium.

"Global Intellectual Property Rights and the New Enclosures"[9] by May and Sell (2006) critically examines the impact of global intellectual property regimes on access to essential medicines, addressing the ethical and economic dimensions. The article discusses the ethical and financial implications. The essay provides insightful viewpoints on the difficulties encountered by emerging countries as it explores how international agreements and organizations have shaped the current environment.

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6 Bently, L., & Sherman, B., THE HISTORY OF INTELLECTUAL PROPERTY 25 (2004).
7 Correa, C. M., GLOBALIZING INTELLECTUAL PROPERTY RIGHTS: THE TRIPS AGREEMENT 836 (2002).
8 Drexl, J., & Lee, N., INTELLECTUAL PROPERTY AND COMPETITION LAW: NEW FRONTIERS 22 (2010).
9 May, C., & Sell, S. K., *Global Intellectual Property Rights and the New Enclosures*, XIII(IV) RIPE, 713, 559-586 (2006).

In "Intellectual Property and the Global Politics of Access to Medicines: A Critical Review of the Decade of IP and Public Health" (2011)[10], Shadlen reviews the contributions of the World Intellectual Property Organization (WIPO) and the World Trade Organization (WTO) in balancing intellectual property protection with public health concerns. The article provides a nuanced analysis of the role of these organizations in mediating the tensions between innovation incentives and access to essential medicines.

In "TRIPS Implementation and Technology Transfer: A Comparative Study"[11] (2009), Maskus and Eby Konan present a comparative analysis of TRIPS implementation in developing countries. The study assesses insightful viewpoints on the difficulties encountered by emerging countries as it explores how international agreements and organizations have shaped the current environment.

In "Intellectual Property and Competition Law: The Innovation Nexus"[12] (2018), Drahos and Frankel explore the dynamic relationship between intellectual property and competition, emphasizing the need for a nuanced approach that safeguards innovation while preventing anti-competitive practices.

"Intellectual Property and Antitrust: A Comparative Economic Analysis of U.S. and EU Law"[13] (2006) by Hovenkamp et al. provides a comparative analysis of U.S. and EU antitrust laws concerning intellectual property. The authors critically evaluate the challenges in preventing anti-competitive behaviour while respecting the rights of intellectual property holders.

In "Intellectual Property Rights and Economic Development" (2014),[14] Moser explores how the strengthening of intellectual property rights can affect innovation and economic development, particularly in emerging economies. The article provides a nuanced analysis of the trade-offs involved in aligning national IP policies with global standards.

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10 Shadlen, K. C., *Intellectual Property and the Global Politics of Access to Medicines: A Critical Review of the Decade of IP and Public Health*, XVIII(II) RIPE 113, 218-233 (2011).

11 Maskus, K. E., & Eby Konan, D., *TRIPS Implementation and Technology Transfer: A Comparative Study*," XXXVII(VII) WD 95, 1187-1198 (2009).

12 Drahos, P., & Frankel, S., INTELLECTUAL PROPERTY AND COMPETITION LAW: THE INNOVATION NEXUS 176 (2018).

13 Hovenkamp, H., et al., INTELLECTUAL PROPERTY AND ANTITRUST: A COMPARATIVE ECONOMIC ANALYSIS OF U.S. AND EU LAW 22 (2006).

14 Moser, P., *Intellectual Property Rights and Economic Development*, XXIII(VI) ICC 1452, 1453-1475 (2014).

III. OBJECTIVES OF INTELLECTUAL PROPERTY AND COMPETITION LAW

The notion of this tension is strengthened by the historical basis of intellectual property law, which originally sought to provide incentives for innovators and inventors.[15] The first purpose of implementing intellectual property protection was to provide inventors with compensation for disclosing their work to the public, thus allowing society to access information that would otherwise have remained confidential. Intellectual property rights are legal protections that recognise and reward the contributions of innovators who choose to share their work with the public. As a result, there was a significant focus on protecting the rights of the person who came up with new ideas, without much thought given to the wider advantages for society in protecting intellectual property.[16] During this era, intellectual property law primarily centred around the conventional connection between the innovator and the public, facilitating the explanation of the clash between intellectual property and competition. In this situation, the objectives of intellectual property and competition policy were different, with no common goals.[17] Intellectual property laws were designed to provide protection and incentives for innovators by granting them exclusive rights. On the other hand, competition laws tried to ensure a fair market by promoting access, which created a contradiction with the exclusivity offered by intellectual property.[18]

Globalization of IPRs has been largely influenced by a chain of international treaties and agreements designed to harmonize the protection and enforcement of intellectual property across frontiers. One critical agreement here is the Agreement on TRIPS, which was created under the watchful eye of the WTO. The application of TRIPS in 1995 was a watershed event in the international intellectual property arena. The accord created a set of fundamental standards to protect various forms of intellectual property, including patents, copyrights, trademarks, and trade secrets. The accord created a system for enforcing these rights and established a mechanism for resolving disputes in situations where TRIPS terms are breached. Apart from TRIPS, there are many more international agreements that enable the globalization of intellectual property. The Berne Convention and the Paris Convention are two treaties that

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15 "Patents can be traced back to the Middle Ages where inventor privileges took the form of royal grants. See Holyoak & Torreman, *Intellectual Property Law*," (Paul Torremans ed., 2008), 632.

16 Meir Perez Pugatch, INTRODUCTION: DEBATING IPRS IN THE INTELLECTUAL PROPERTY DEBATE: PERSPECTIVES FROM LAW, ECONOMICS AND POLITICAL ECONOMY 392 (2006).

17 Massimo Motta, COMPETITION POLICY: THEORY AND PRACTICE 56 (2004).

18 SCM Corp v. Xerox Corp, 645 F.2d 1195 (2003).

have played a significant role in determining international standards for the protection of copyright and industrial property.

The WIPO and the WTO play a central role in building the global system of IPR. The WIPO, founded in 1967, is dedicated to developing the global protection of intellectual property. This case study examines the consequences for farmers in both developed and developing countries. While seed patents can incentivize investment in research and development, concerns arise regarding the concentration of power in the hands of a few agribusiness giants and the potential negative effects on small-scale farmers who may face increased costs and limited seed choices. With time, the notion of what merits recognition has changed. Whereas previously only attention was being accorded to making inventions public, the focus is now on motivating innovation and creativity through the provision of incentives.[19] Understanding that intellectual property legislation functions as a type of competition policy is essential for harmonising intellectual property and competition policy. This change in strategy reduces the focus on individual rights in intellectual property law, leading to a harmonisation of the interests of those who hold rights with the wider societal interest in promoting innovation.[20]

As the primary objective of innovation is to enhance competition, the disparity between competition law and intellectual property decreases. These two legal fields, known for their intricate and argumentative nature, enable the interaction of apparently contradictory goals and can align towards the shared objective of improving competitive dynamics in innovation.[21]

During a time when the economic impacts of intellectual property rights were not well understood, competition law placed excessively strict restrictions on their use. Nevertheless, much investigation over the years has progressively corroborated the notion that safeguarding intellectual property rights does not contradict the goal of improving free market competition. Antitrust laws were not designed to accommodate jealous competitors who want to force successful rivals to redistribute legally acquired revenue. The main objective of antitrust law is to enhance efficiency by protecting the competitive process itself, rather than showing preference towards rivals.[22]

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19 Ilkka Rahnasto, INTELLECTUAL PROPERTY RIGHTS: EXTERNAL EFFECTS AND ANTI-TRUST LAW (2003).

20 Shubha Ghosh, *Competitive Baselines for Intellectual Property Systems, International Public Goods and Transfer of Technology under a Globalized Intellectual Property*, IP&IPG 793, 795-802(2004).

21 Gustavo Ghidini, INTELLECTUAL PROPERTY AND COMPETITION LAW: THE INNOVATION NEXUS (2006).

22 The terms "anti-trust law" and "competition law" are used synonymously in this article.

Antitrust has never contested or disrupted the fundamental purpose of intellectual property rights, which is to prevent the unauthorised use of creative accomplishments or a company's brand and reputation, therefore encouraging the development of new ideas. Antitrust law acknowledges the significance of intellectual property in fostering competition by discouraging the practice of free riding. This, in turn, incentivizes enterprises to create and innovate their products, thus boosting competition. Considering the convergence between the two disciplines, it is important to interpret the framework of IP law considering the fundamental concept of freedom of competition, which forms the basis of antitrust policy.[23] Although not conclusive, two main principles become apparent. First and foremost, it is necessary to provide a precise description of different types and quantities of Intellectual Property Rights, as they intrinsically limit competition and are seen as deviations from the goal of fostering competition. Legislative action, rather than interpretation, should be the sole means of allowing any expansion of the core of intellectual property rights.[24] Furthermore, it is crucial to embrace a pro-competitive approach to intellectual property legislation while ensuring the preservation of the rights and the legal framework that safeguards them. When faced with several conceivable interpretations of IP law, the most favourable choice should be the one that fosters competition, safeguards the economic interests of third parties, and preserves the competitive dynamics of the market. The definition of IP should align to foster competitive dynamism.[25]

IV. INTELLECTUAL PROPERTY AND COMPETITION LAW IN INDIA

The intersection of intellectual property and competition law in India is becoming increasingly significant, but the law governing conflict resolution between the two is comparatively underdeveloped. The issue becomes salient as the government attempts to balance the protection of innovation with the promotion of competition within its rapidly growing economy.

In India, there exist two significant laws in the legal framework: the Patents Act and the Competition Act. Even though these laws have distinct goals, they share common goals in protecting consumer welfare, promoting innovation, and ensuring market competition. The main goal of the Competition Act is to prevent anti-competitive behaviour in markets, ensure

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[23] On the other hand, "limitations on such IPRs must also be by legislation and not interpretation." This is discussed in further detail.

[24] This is a policy guide for authorities required to interpret the law.

[25] Shubha Ghosh, *Intellectual Property Rights: The View from Competition Policy*, CIII Nw. U. L. Rev. Colloquy 344, 346 (2009).

fair competition, and safeguard consumer welfare. On the other hand, the Patents Act has a framework of issuance and protection of patents in place, coupled with provisions such as compulsory licencing to dissuade misuse of sole advantages by proprietors of patents.[26] While the two regimes have different objectives, there is a distinct overlap between them. Sections 140 of the Patents Act and 18 of the Competition Act both address issues of restrictive agreements and anti-competitive conduct but in distinct contexts. In addition, section 60 of the Competition Act provides its paramount jurisdiction over other legislation, indicating a potential conflict with the demands of the Patents Act.

The overlapping jurisdiction has led to ambiguity and confusion, particularly in cases where the exercise of intellectual property rights can have an impact on competition. The lack of clear instructions has provided room for subjective interpretation, and this has led to inconsistencies in court decisions and legal analyses.

.[27] Several significant legal cases have endeavoured to negotiate this intricate territory. An in-depth examination of case laws of the intersection of Competition Law and Intellectual Property Rights reveals the dearth of Indian legal precedents addressing the relationship between IP and competition and the jurisdictional conflicts that arise. The little options that exist are deficient in terms of judicial analysis and terminology that could effectively analyse the issue. The case of Aamir Khan Production v Union of India[28] was the inaugural instance that addressed issues of intellectual property and competition. The Bombay High Court ruled that the Competition Commission of India have the authority to handle cases concerning intellectual property rights when they directly violate the terms of the Competition Act. The court declared that "each tribunal possesses the authority to ascertain the presence or absence of the jurisdictional fact unless the legislation establishing the tribunal states otherwise." Based solely on the terms of the Competition Act, the Competition Commission of India has the authority to evaluate whether the initial set of facts exists. The principle of law has been reaffirmed in the case of Kingfisher v CCI[29], which clarified that all the matters that were brought up before the copyright board can also be examined by the CCI. The FICCI Multiplex

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26 Eshan Ghosh, *Competition Law and Intellectual Property Rights with Special Reference to the TRIPS Agreement* available at: http://cci.gov.in/images/media/ResearchReports/EshanGhosh.pdf. (last visited Jan. 05, 2025).

27 Jefferson Parish Hospital District No. 2 v. Hyde, 466 U.S. 2 (1984).

28 Aamir Khan Productions Pvt. Ltd. and Aamir Hussain Khan v. Union of India, 102 SCL 457 (Bom, 2010).

29 Writ Petition No. 1785 of 2012.

Association of India case[30] is a prominent authority that resolves the conflict between intellectual property rights and competition law. The court, based on section 3(5)[31] of the Competition Act, clarified that the Act does not limit aggrieved parties from bringing a case over the anti-competitive conduct of intellectual property holders to the Competition Commission. If a party engages in a banned commercial activity that harms the market or consumer welfare while exercising an Intellectual Property Right, the non-obstante provision stated in Section 3(5) would not be applicable. The CCI has noted that intellectual property regulations do not possess an absolute overriding influence on competition law. The scope of the non-obstante clause in section 3(5) of the act is not unlimited. The analysis determined that the rights provided by section 14 of the Copyright Act do not grant intellectual property holders the ability to act capriciously and are not in line with the provisions of the competition laws. In the recent Micromax/Ericsson dispute[32], the issue of jurisdiction was contested. The argument revolved around Ericsson's purported demand for unfair, discriminatory, and excessively high fees for licencing its standard essential patents. Ericsson argued that the Patents Act already incorporates an adequate framework to prevent the abuse of patent rights. Hence, any apprehensions about the improper utilisation of patent rights, including the abuse of market power, ought to be addressed within the confines of the Patents Act. Therefore, the Competition Act does not have authority over matters concerning patents. The Delhi High Court cited section 27 of the Competition Act and section 84 of the Patent Act to support the possibility of using the remedies offered by both acts concurrently. The authority of CCI cannot be overridden solely based on the participation of another regulatory agency in the same matter. Neither the Controller of Patents nor a Civil Court have the authority to determine the Competition case. However, the primary objective of the examination conducted by CCI will be limited to finding if Ericsson has participated in any type of monopolistic conduct. Therefore, the current verdict exemplifies the Supreme Court's effort to establish a balance

[30] FICCI Multiplex Association of India v. United Producers Distribution Forum (UPDF), 2011 CompLR 0079 (CCI).

[31] Section 3(5) provides that nothing in this section shall restrict the rights of any person to restrain infringement or impose reasonable conditions as necessary to protect their rights under the Copyright Act, 1957; the Patents Act, 1970; the Trade and Merchandise Marks Act, 1958; the Trade Marks Act, 1999; the Geographical Indications of Goods (Registration and Protection) Act, 1999; the Designs Act, 2000; or the Semi-conductor Integrated Circuits Layout-Design Act, 2000.

[32] Ericsson v. Competition Commission of India, W.P.(C) 464/2014 and other connected matters (arising from Micromax Informatics Limited v Telefonaktiebolaget LM Ericsson (Case No. 50 of 2013) and Intex v Telefonaktiebolaget LM Ericsson Limited (76 of 2013)).

between the patent regulator and the anti-trust regulator when dealing with cases that include both anti-trust and intellectual property rights and have overlapping aspects.[33]

The case of Aamir Khan Production v Union of India confirmed that the Competition Commission of India has the authority to deal with issues that include both intellectual property rights and competition law. Similarly, the Kingfisher v CCI case reaffirmed the CCI's jurisdiction to address matters of copyright infringement.[34] Nevertheless, there are ongoing difficulties in clearly defining the limits of authority between the CCI and other regulatory entities, such as the Controller of Patents. The Micromax/Ericsson case brings to the fore the challenge of ascertaining whether competition concerns relating to patent licencing must be regulated under the Competition Act or the Patents Act, an issue presently under debate in the Delhi High Court.[35] Notwithstanding such challenges, recent judgments demonstrate a deliberate attempt at achieving a harmonious balance between the goals of patent protection and the promotion of competition. The courts have stressed the need to interpret laws harmoniously so that neither system of regulation unnecessarily intrudes into the jurisdiction of the other. Although India's legal system acknowledges the significance of both intellectual property rights and competition law, further specificity and uniformity in resolving issues that arise between the two are still required. As the nation continues with its economic and technological advancements, it is imperative to settle these disputes to encourage innovation, improve competition, and protect consumers' interests.[36]

The global extension of IPRs has significant effects on competition law, with challenges and opportunities accompanying the two bodies of law converging. The impacts are around the complex role of finding a balance between protecting intellectual property to allow innovation and ensuring fair competition within the market. Providing robust protection of IPRs is very important in encouraging innovation through bestowing exclusive rights upon creators and inventors. However, too much protection can lead to anti-competitive practices, limiting market entry by competitors and even stifling innovation. The tension between intellectual property and competition law is evident in cases where companies use their exclusive rights to create monopolies, thus hindering market access and limiting customer choice. To attain the

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33 W.P.(C) 464/2014 & CM Nos.911/2014 & 915/2014 (March 30,2016).

34 Manju Bharadwaj v. Zee Telefilms Ltd., 20 CLA 229 (1996). See also Dr. Valla Peruman v. Godfrey Phillips (India) Ltd., 16 C.L.A. 201 (1995).

35 Abit Roy and Jayant Kumar, *Competition Law in India*, 202-203 (2008).

36 Lucy Rana & Tulip De, *India: Telefonaktiebolaget LM Ericsson v. Competition Commission of India available at* https://www.mondaq.com/india/antitrust-eu-competition-/480324/telefonaktiebolaget-lm-ericsson-v-competition-commission-of-india. (last visited Feb. 02, 2025).

right balance, there is a need to build complex legal frameworks and use strict enforcement mechanisms to discourage the abuse of intellectual property rights. One of the significant issues that arise due to intellectual property globalisation is the potential for the capture of markets and the formation of monopolies. Firms that have broad intellectual property portfolios, which cover patents, copyrights, and trademarks, can attain high market dominance, hindering fair competition.

An exemplary instance is the legal case of United States v. Microsoft Corporation (2001)[37], in which Microsoft confronted allegations of antitrust violations of its monopolistic control over the operating system industry. The case underscored the intersection of intellectual property and competition law, emphasizing the need to curb anti-competitive practices while respecting the company's legitimate intellectual property rights. The consequences of globalised IPR vary among different economies. Emerging economies encounter specific difficulties as they aim to reconcile the necessity of stimulating innovation with the urgency of promoting competition for economic expansion.[38]

Stringent intellectual property protection often creates obstacles for enterprises in developing nations seeking to enter the market. The exorbitant licensing costs and stringent patent enforcement measures can potentially impede the capacity of domestic firms to effectively compete on a global scale. Furthermore, the transmission of technology from more advanced countries to less advanced countries is a matter of great importance, since it impacts their ability to fully engage in the global economy.[39]

The pharmaceutical industry offers a poignant and strong case in point. Intellectual property rights protection is crucial to the encouragement of pharmaceutical research, but it can block the supply of required drugs in developing countries. The TRIPS Agreement attempted to address this problem by allowing flexibilities like compulsory licencing, though challenges persist in ensuring a harmonious balance that promotes both innovation and public health. To realize the real effect of intellectual property and competition law interaction, it is imperative to study individual examples and cases. The case of Qualcomm is worthwhile to investigate when understanding how a company's monopoly in both the semiconductor and

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37 United States v. Microsoft Corporation, 253 F.3d 34 (D.C. Cir. 2001).

38 May, C., & Sell, S. K., *Global Intellectual Property Rights and the New Enclosures*, XIII(IV) RIPE 558, 559-586 (2006).

39 Pugatch, M. P., THE INTELLECTUAL PROPERTY DEBATE: PERSPECTIVES FROM LAW, ECONOMICS, AND POLITICAL ECONOMY (2006).

telecommunications industries crosses paths with intellectual property and competition law. Qualcomm, one of the dominant players in the mobile chipset market, was subject to antitrust scrutiny in some jurisdictions for purported anti-competitive conduct in the licencing of its dominant patents.[40]

V. Challenges in Harmonizing Intellectual Property and Competition Law

Harmonizing intellectual property and competition law on a global scale is a formidable task, given the diverse legal traditions, economic structures, and developmental stages of nations.

5.1 Differing National Approaches

The challenge of coordinating intellectual property and competition law arises from differences in national legal traditions, such as common law's reliance on precedent and civil law's focus on legislation. Historical and economic factors further shape countries' approaches, with developed nations emphasizing strong IP protection and developing nations prioritizing access to technology. Effective harmonization requires analyzing each nation’s legal culture, historical background, and economic priorities. Compulsory patent licensing for medications in Brazil demonstrates the tension between intellectual property protection and economic interests. Brazil employed compulsory licencing to enhance drug availability, questioning the traditional importance of strong patent protection.[41]

5.2 Developing vs. Developed Economies

The difficulties in aligning intellectual property and competition legislation become more noticeable when considering the differences between developing and developed economies. Technology transfer plays a crucial role in the worldwide dissemination of intellectual property. Nevertheless, emerging economies frequently encounter obstacles in obtaining innovative technologies because of stringent intellectual property regulations. The necessity of utilising technology to drive economic progress frequently conflicts with the obligation to safeguard the exclusive privileges of inventors. Sub-Saharan Africa, characterised by its varied economies and levels of development, serves as a prime example of the difficulties encountered by developing countries. Developing nations aspire to acquire technology to

[40] Qualcomm Inc. v. FTC, 969 F.3d 974 (9th Cir. 2020).
[41] Drahos, P., THE GLOBAL GOVERNANCE OF KNOWLEDGE: PATENT OFFICES AND THE POLITICS OF INNOVATION (2017).

advance their industries. However, the strict safeguarding of intellectual property by wealthy countries can hinder the exchange of knowledge and hinder the progress of innovation. Emerging economies may have insufficient institutional infrastructure and legal proficiency to adequately execute and enforce intellectual property and competition laws. To ensure that states can participate fairly in the global knowledge economy, it is necessary for harmonisation efforts to focus on addressing these capacity-building needs.[42]

5.3 Technology Transfer and Access to Knowledge

Technology transfer and access to knowledge are "central issues in the harmonization of intellectual property and competition law. Striking a balance between encouraging innovation through intellectual property protection and facilitating the dissemination of knowledge is a delicate task." One mechanism aimed at addressing technology transfer challenges is the creation of patent pools. Patent pools bring together multiple patent holders to license their technologies collectively, promoting collaborative innovation and addressing concerns related to anti-competitive behaviour. However, challenges arise in determining the terms of participation, the distribution of benefits, and the potential for abuse by dominant players within the pool. Striking the right balance requires a nuanced understanding of the specific industry dynamics and the potential impact on competition. Open innovation models and common approaches present alternatives to traditional intellectual property frameworks. These models emphasize collaborative knowledge creation and sharing, challenging the conventional notion that exclusive rights are always necessary for innovation. Achieving a harmonized approach that accommodates both open innovation principles and the need for incentives remains a challenge.[43]

VI. GLOBAL PERSPECTIVE OF INTELLECTUAL PROPERTY AND COMPETITION LAW

The interaction between IP and competition has attracted global interest. Since the 1948 Havana Charter for the International Trade Organisation, there has been a requirement for Members to forbid restrictions on competition and cooperate with the Organisation in dealing

[42] Barton, J. H., *Intellectual Property and Development: The View from Developing Countries*, XXV(I) STHV16, 17-42 (2000).

[43] Rai, A. K., *Open Innovation and Intellectual Property*, XXVII(II) JLEO 266, 267-292 (2011).

with such restrictions.[44] From the 1960s to the 1980s, there was extensive discussion about the relationship between IPRs, technological transfer, and competitiveness. In 1980, "the United Nations General Assembly approved a resolution called the 'Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Activities.' This resolution included provisions that dealt with abusive activities related to IPRs.[45] The TRIPS Agreement incorporates explicit safeguards in this domain. The primary principles entail the delegation of competition policy concerning intellectual property rights (IPR) to national jurisdiction. Furthermore, there is a requirement for consistency between domestic competition policies concerning intellectual property rights (IPR) and the principles of IP protection specified in the TRIPS Agreement. Furthermore, there is an emphasis on tackling behaviours that are largely intended to hinder the spread of safeguarded technologies."[46]

Members have the authority to address any instances of intellectual property rights (IPRs) being misused if their measures are per the provisions specified in the Agreement.[47] An additional mandatory licence is provided as a solution to address the misuse of patents.[48] Moreover, fines and injunctions might be sought as legal remedies. Furthermore, Members possess the authority to establish and tackle harmful intellectual property practices through their respective state legislations.[49] Member states have a considerable amount of freedom under TRIPS when it comes to creating and enforcing competition laws related to intellectual property.[50]

The Anti-Competitive Guidelines for Licencing of Intellectual Property establish three fundamental principles that collectively support the legitimacy of various conditions and agreements in intellectual property licencing.[51] From an antitrust perspective, intellectual property is essentially equivalent to any other type of property. Furthermore, it should be noted

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44 Article 46, *Havana Charter for an International Trade Organization, 1948*, World Trade Law *available at* http://www.worldtradelaw.net/misc/havana.pdf. (last visited Dec. 6, 2024).

45 Frederick M. Abbott, *Are the Competition Rules in the WTO TRIPS Agreement Adequate?,* VII J. Intl. Eco. L. 687, 688 (2004).

46 Abir Roy and Jayant Kumar, COMPETITION LAW IN INDIA 183 (2008).

47 Article 8.2, TRIPS Agreement.

48 Article 31(k), TRIPS Agreement.

49 Article 40, TRIPS Agreement.

50 Hans Ullrich, *Expansionist Intellectual Property Protection and Reductionist Competition Rules: A TRIPS Perspectiv*e, VII J. Intl. Eco. L. 401, 403 (2004).

51 U.S. Department of Justice and Federal Trade Commission, *Anti-trust Guidelines for the Licensing of Intellectual Property*, April 6, 1995 *available at* http://www.justice.gov/atr/public/guidelines/0558.htm. (last visited Nov. 3, 2025).

that intellectual property rights do not inherently grant market power when evaluating antitrust matters. Furthermore, the licensing of intellectual property generally promotes competitiveness by allowing companies to combine complementary production elements.

International agreements are crucial in influencing the worldwide framework of IP and competition law. These agreements function as frameworks for aligning legal standards, settling disputes, and promoting cooperation among governments. This section examines the significance of international agreements, with a specific emphasis on prominent agreements such as the Agreement on TRIPS, as well as bilateral and regional trade agreements. Additionally, it discusses the latest developments in global intellectual property agreements.[52]

TRIPS acknowledged the significance of transferring technology, especially to developing nations. The clauses incorporated measures to incentivize developed nations to support the technical advancement of underdeveloped countries. Although the TRIPS Agreement has accomplished significant milestones, it has encountered both critiques and problems. The pact has faced criticism for its inflexibility, particularly in striking a balance between safeguarding intellectual property and addressing public health considerations. This was especially apparent in discussions on the accessibility of medications, as the stringent enforcement of patent rights prompted concerns regarding the pricing and availability of crucial therapies. Developing nations encountered difficulties in implementing TRIPS provisions because of their constrained resources and technological capabilities. The required criteria frequently surpassed the capacities of these countries, raising questions about their capacity to participate fairly in the global knowledge economy.[53]

Countries not only participate in multilateral agreements such as TRIPS, but they also form bilateral and regional trade agreements that frequently incorporate clauses of intellectual property and competitiveness. These agreements are deliberated between two or more countries to ease commerce by diminishing obstacles and harmonising regulatory systems. Bilateral and regional trade agreements often incorporate provisions that surpass the requirements set by TRIPS when it comes to intellectual property. Certain agreements offer prolonged patent durations that are above the minimum requirements set by TRIPS, thereby

[52] Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), 1994, World Trade Organization, *available at* https://www.wto.org/english/docs_e/legal_e/27-trips.pdf. (last visited Nov. 6, 2024).

[53] World Trade Organization, *TRIPS: Trade-Related Aspects of Intellectual Property Rights*, WTO, available at https://www.wto.org/english/tratop_e/trips_e/trips_e.htm. (last visited Nov. 15, 2024).

offering supplementary incentives for innovation. Agreements may contain clauses about data exclusivity, which safeguards the data provided by pharmaceutical companies to regulatory agencies to obtain marketing approval. This can influence the competition among generic drugs. Trade agreements frequently enhance trademark protection, guaranteeing that businesses may safeguard their names internationally. Although bilateral and regional trade agreements can promote economic collaboration, they encounter critiques and obstacles. The varied nature of these agreements can result in a lack of consistency in intellectual property rules. Differences in terms among agreements can lead to legal intricacy and difficulties for organisations that operate in different regions. Addressing power disparities between wealthy and developing nations can lead to agreements that may disproportionately benefit the more influential party, potentially worsening global inequities that already exist.[54]

The global intellectual property treaties are perpetually changing to keep up with the "changing conditions of the global economy. Understanding these tendencies is crucial in predicting upcoming developments in the integration of intellectual property and competition law. There is an increasing tendency towards open access and open innovation treaties that promote the exchange of knowledge and research findings. Institutions, researchers, and some industries are now exploring cooperative models that favour access over exclusivity". Open-access publication agreements aim to make scientific content available to the public at no cost. This movement disrupts the conventional subscription model, urging the sharing of knowledge without obstacles. Some industries are adopting open innovation platforms, where firms come together to exchange research, data, and intellectual property. This collaborative strategy aims to speed up innovation by dissolving the old silos. With an increasing emphasis on sustainability and the environment, there is a shift towards the inclusion of green IP agreements. These may encourage the development and sharing of green technologies by offering IP-related incentives to innovators in this area. Certain nations and regions have introduced green patent programs that provide accelerated patent examination or other incentives for environmentally beneficial inventions. These programs are designed to promote innovation in green technologies. Treaties can contain provisions that promote the transfer of clean technologies to developing countries. This is part of larger global initiatives to combat climate change and ensure sustainable development.[55]

[54] Keith E. Maskus, INTELLECTUAL PROPERTY RIGHTS IN THE GLOBAL ECONOMY (2000).
[55] International Chamber of Commerce, INTELLECTUAL PROPERTY AND COMPETITION (2009).

With the increasing growth of the digital economy, "there is an increase in digital trade agreements that cover intellectual property matters concerning digital products and services. Agreements can have provisions on e-commerce and digital trade that cover matters such as the protection of digital copyrights, treatment of digital goods and services, and cross-border data flows". Agreements can seek to promote digital innovation through the creation of a favourable climate for developing and safeguarding digital technologies.[56]

VII. CONCLUDING REMARKS

The complex interaction between IPRs and competition law demonstrates a delicate dance of individual interests and market protection. While IPRs confer temporary exclusivity to encourage innovation, competition law seeks to avoid anti-competitive conduct and ensure market access. Starting as opposing forces, a deeper understanding has been developed through case laws to the effect that these two regulating frameworks are complementary, not contradictory. The coexistence of IPRs and competition law requires a fine balance. The goal of both regimes is not an end in itself; instead, they are tools to promote innovation, economic development, and consumer well-being. Intellectual property rights guarantee the protection of the interests of individual innovators, while competition law guarantees the maintenance of market dynamics. The problem arises when IPRs can enable monopolistic behaviour, which contradicts the spirit of competition. The relationship is made more complex by the globalisation of intellectual property rights, driven by international agreements and institutions like TRIPS. Case studies across industries like medicines, technology, and agriculture illustrate the challenges and benefits of uniform intellectual property rules on a global level. The need to balance offering incentives for innovation with assuring the availability of essential products is realized.

With time, there has been a shift in perspective, recognizing that incentivizing intellectual property aims to encourage innovation and not just reveal ideas. This adjustment brings intellectual property law closer to competition policy. A balanced approach to IP and competition law requires clearly defined IPR limits and a pro-competitive interpretation to foster market dynamics. An integrated legal framework is essential to protect innovation while preventing anti-competitive behavior, ensuring fair competition. Continuous legal adaptation,

[56] European Commission, *Digital Trade: The EU's Perspective*, EU Digital Agenda, 2022, *available at* https://ec.europa.eu/digital-strategy/policies/digital-trade. (last visited Nov. 15, 2024).

enforcement, and stakeholder dialogue are crucial for sustaining economic growth and technological progress.

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