

## **INTERFACE BETWEEN COMPETITION AND INTELLECTUAL PROPERTY LAW**

Competition law regulates the market to prevent anti-competitive agreements, abuse of dominant position, regulating mergers and combinations to benefit the consumers. On the other hand, Intellectual Property law acknowledges the right of individual in promoting novel ideas, innovation, novel design by rewarding. It can be easily said that relationship of these legislations stands contradictory and conflicting. Intellectual property implies in its possession a right of exclusion which gives intellectual property right owner a privilege to exclude the whole universe. While, competition law aims at attaining maximum possible production of resources and best possible allocation of the same. Individual rights confronts larger interest. Judiciary also finds it difficult to determine the precedence of one legislation over the other. In a leading case, *Aamir Khan Productions v. Union of India*<sup>1</sup> a clear demarcation was framed between the extent of protection of IPR rights and need of competition for innovations in high technological areas. Bombay High Court held that

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<sup>1</sup>2010 (112) Bom L R 3778

Competition Commission of India has jurisdiction to issue notice in case of abuse of dominant position which cannot be challenged in the pretext of absolute right of copyright holder. However, most of the time it seems impossible to separate operation of two laws in their respective interest. Various sectors are trapped in this hassle. Pharmaceutical is an important one of those sectors facing the real tussle between patented drugs and generic drugs. It is quite difficult for those sectors interfacing the two laws to give preference to one law over the other.

Taking reference of other countries, this is a conflicting domain in every legal system. The case of *Microsoft Corp v Commission*<sup>2</sup> case refers to the conflict of competition law and Intellectual Property in the field of technology. Microsoft was ordered to disclose information so as to allow its competitors to compete on an equal footing with Microsoft. The European Commission saying the act of Microsoft an abuse of a dominant position under Article 82, gave more importance to fair competition. The balance shifts from one law to other depends on the nature and circumstances of the cases and there are no set rules to apply in contradictory situation. It requires a proper balance for co-existence of two laws.

Tossing the other side of the coin can show a different picture altogether. These two legislations can function together if there exists a balance between the two and parallel importing, compulsory licensing are some of ways already present to strike

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<sup>2</sup> (2007) T-201/04

this balance. An intellectual property holder can pass the distribution right to other which can help many developing countries to enjoy the benefit of IP protected original goods in lesser price. Same principle applies when Government holds the compulsory licence for a patented innovation. It can be the judicial system, the Government or the executors to facilitate the principles of harmony to get benefit of provisions of law. Recently, the Hon'ble Delhi High Court allowed parallel importing by generic drug producer Cipla in *F. Hoffmann-La Roche Ltd. and Anr. v. Cipla Limited*<sup>348</sup>, case. The Court interpreted the provision of parallel importing for benefit of this country. Roche is selling the said drug at exorbitantly high price while Cipla was importing the same drug at a lesser price. It lies on the judiciary to harmonize the principle of law for the betterment of economy as well as general people. The Competition Act, 2002 has a general exception to the use of intellectual property rights. It is desirable that balance must be maintained to give freedom to innovators, artists and the like in their work until it is not abusing fair market competition causing higher price. If balance is tilted to one side it can prejudice the other ultimately affecting the larger interest and that cannot be allowed by the Hon'ble Courts.

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<sup>348</sup>(2008) DLT 598, MIPR 2008.