Competition Law v. Intellectual Property Law: A Never Ending Tussle?

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I. Introduction:

Roscoe Pound, while propounding the theory of social engineering, in one of the jural postulates, held that "in civilised society men must be able to assume that they may control for beneficial purposes what they have discovered and appropriated to their own use, what they have created by their own labour, and what they have acquired under the existing social and economic order."[2] Intellectual property rights (IPRs) reward the author or innovator with the fruits of his or her labour. The protection of intellectual property rights is meant to promote creativity and innovation by rewarding innovator with an exclusive property right. These forms of rights can generally be considered as specie of intangible property, excluding others from exploiting a non-corporeal asset. They include patents, design rights, copyright, trademarks and other items. The conventional economic rationale for IPRs protection is that they promote innovation, including its dissemination and commercialisation by establishing enforceable property rights for creators of new and useful products and preventing rapid imitation from reducing the commercial value of innovation.[3]

It is well known that the economic community is best served by free competition in trade and industry. Competition laws or antitrust statutes protect competition. They are concerned primarily with cartels and the acquisition or maintenance of monopoly power by 'unacceptable' means. Its primary purpose is to foster competition, which in turn is indeed to encourage lower prices, better products and more efficient production methods. It brings opportunities of profit that stimulates business to find new, innovative and more efficient methods of production. It is in public interest that quality, price and service be the determining factor in the business rivalry. Competition laws are based on the premise that competition is always a stimulant and monopoly is narcotic[4].

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[2] See generally, W. Friedman, Legal Theory, Fifth Edition, Universal Law Publishing Co., p. 340.

[3] Alice Pham, Competition Law and Intellectual Property Rights: Controlling Abuse or Abusing Control?, Edition 2008, CUTS International, Jaipur, India, p. 3.

[4] Shashank Jain and Sunita Tripathy, *Intellectual Property and Competition Laws: Jural Correlatives*, Journal of Intellectual Property Rights, Vol. 12, March 2007, pp. 224-235at p. 225.

The relationship between intellectual property rights and competition issues has attracted mounting thought. Though IP law issues intellectual resources to the exclusive control of right owners, competition law strive to avoid market barriers and benefit consumers by encouraging competition among suppliers of goods, services and technologies. Divergence occurs between IPR and competition law because IPR creates monopoly market power, it confine competition, while competition law stimulates it. Competition law takes care of the unreasonable exercise of market power or the abuse of dominant position obtained as a result of the IPR.[5]

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, lead to 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. Therefore, equilibrium is desired between the monopoly privilege granted to the IP holder and the public interest (including consumer welfare, the competition from other producers, and national development prospects). Need of the hour is maintaining a balance between the two conflicting interests of competition policy and the protection of technological know-how.[6]

II. Intellectual Property Rights - Competition Law Dichotomy:

Often it is argued that intellectual property rights and competition laws are diametrically opposed concepts. The former create monopolies, whereas the latter strives to prevent them. Nevertheless, these seemingly conflicting concepts, actually strive towards the same objectives – innovation and consumer welfare. Intellectual property law allows for the establishment of enforceable and exclusive rights for the inventors of new and useful products, more efficient processes and original works of expression. The most repeatedly noted economic raison d'être for IP protection is that it encourages private investment in R&D and spurs innovation. Assigning exclusive rights to the outcomes of creative and intellectual efforts increases incentives to develop new products. IPR plays essential role in the dissemination of innovation and facilitating

[5] Silky Mukherjee, *Interface between Competition Law and Intellectual Property Law,* ABHINAV, Volume no. 1, Issue no. 2, p. 35; see www.abhinavjournal.com/images/.../5-%20Silky.pdf, visited on 12.1.2013 at 7 p.m.

[6] Pankaj Kumar, *The Interface between IPRs and Competition: Indian Scenario,* p. 9, electronic copy available at: http://ssrn.com/abstract=2097477, visited on 12.1.2013 at 5 p.m.

commercial development of ideas. In Kewanee Oil v. Bicon Corp.[7], the United States Supreme Court justifying protection of intellectual property observed that, offering a right of exclusion for a limited period is an incentive to investors to risk the often-enormous costs in terms of time and research and development. The right of exclusion granted to the creator of intellectual property promotes greater common goods of citizens and will have a positive effect on society introduction of new products and processes into economy, increased employment and better lives of our citizens.

Whereas, competition laws attempt to make sure that new technology, products and services are traded or licensed in a competitive atmosphere. In the current evolving market, new technologies are constantly replacing the old as competitors try to increase efficiency, improve their products or create new products in order to maintain their share of the market. Antitrust laws promote competition by prohibiting anticompetitive mergers, collusion and exclusionary uses of monopoly. The US Supreme Court explains the goal of antitrust or competition law is not to protect business from the working of the market. It is to protect the public from the failure of the market. Market mechanisms are not always sufficient to ensure that dominant companies do not pre-empt the competitive process. It is for this reason that competition laws in nations all over the world prevent companies from monopolising or attempting to monopolise any part of trade and commerce. The free market system requires that a failing market be repaired, reinstituted and redeveloped. A free market needs protection against distortion. Where there are agreements with intent or the effect of preventing or restraining competition, such agreements must be prohibited and their effects repaired.[8]

In some case, there is a dichotomy between intellectual property rights and competition law / policy. The former endangers competition while the latter engenders competition. The existence of IP rights promotes market momentum and rivalry, as companies vie to be the first to, for example, patent a particular product. Competition laws, on the other hand, are used by the state to restrict players who are using anti-competitive agreements or practices to foreclose markets, to save them from having to innovate or price products reasonably.

[7] 416 US 470 (1970). In Biswanath Prasad Radhey Shyam v. Hindustan Metal Industries (1979) 2 SCC 511, it was observed that the fundamental jurisprudence behind intellectual property is to encourage scientific research, new technology and industrial process.

[8] Aditya A Kutty and Sindhura Chakravarty, *The Competition-IP Dichotomy: Emerging Challenges in Technology Transfer Licenses*, Journal of Intellectual Property Rights, Vol. 16, May 2011, pp. 258-266 at p. 260

II. I. Competition Law v. Patent Law:

The specific subject matter of a patent is "the guarantee that the patentee, to reward the creative effort of the inventor, has the exclusive right to use an invention with a view to manufacture industrial products and putting them into circulation for the first time, either directly or by grant of licenses to third parties as well as the right to oppose infringements."[9] Patent is a property and its owner has a right of exclusivity. However, this right is not unrestricted. As most properties, it is also subject to limited restrictions essential for the maintenance of an ordered society for the benefit of the public. An owner of intellectual property does not have absolute right to use it in any manner without restriction.[10]

Although a contract in regard to use of patent may include restraints which causes or likely to cause an appreciable adverse effect on competition within India, if it involves only reasonable and legal conditions imposed under patent law, it is not within the prohibition of the Competition Act.[11] However, if they affect the marketplace which lead to market distortion and interfere with competition, such as manipulating market demand or erecting barriers for the competitors to enter the market, such restrictions are subject to competition law especially when the person possesses monopoly power and there is wilful acquisition or maintenance of that power distinguished from growth or development as a consequence of superior product, business acumen and historic accident.[12]

The following conditions and infringements are held by the courts violating the competition law:

- Patentee fastening upon the ownership of the articles sold by him control of the prices at which his purchaser shall sell [United States v. General Electronic Company 272 US 476]
- A group of competitors entering into a series of separate patent licensing with the knowledge that all other concerns in the industry would accept similar licenses, thereby giving a strong inference that agreements are the result of a concerted action. [United States v. United States Gypsum Co. 333 US 364]

[9] Centrafram v. Sterling Drug (1974) ECR 1147
[10] US v. Microsoft Corp. 253 F.3d 34 (D.C. Cir. 2001)
[11] D.P. Mittal, Taxmann's Competition Law and Practice, 2nd Edition, 2008, Taxmann Allied Services (P) Ltd., p. 220
[12] Ibid.

- Agreement for payments of royalties on production of unpatented articles indicating not to manufacture them and only to sell the patented articles is in purpose and effect increase the area of patent monopoly and is invalid. [Gypsum Co. case]

II.II. Competition Law v. Copyright Law:

The crux of copyright protection lays in commercial exploitation, which means that nobody can illegally copy, sell, hire, trade or otherwise use the copyrighted article. In essence the copyright law is concerned with preventing imitation and copying and not conferring any right. The author has right to exploit the copyright commercially to his advantage and also a right to claim authorship and to protect his reputation and honour in relation to his work. Infringement of rights confer right to claim remedies. However, he has no right under the law to act in concert to restrain competition.

In ***United States v. Paramount Pictures Inc. et al***.[13], the Supreme Court lay down that a copyright may not be used to deter competition between rivals in the exploitation of their licenses. The fact that the defendants owned copyrights to their films and merely licensed their use by the exhibitors did not entitle them to conspire with each other to fix uniform prices for admission to be charged by the exhibitors. Nor did it justify the conspiracy between each distributor defendant and its licensees to fix and maintain uniform minimum admission prices which had the effect of suppressing price competition between exhibitors.

In ***United States v. Microsoft Corp***.,[14] the government contended that Microsoft had illegally bundled its web browser, Internet Explorer, with its Windows operating system. Although Microsoft did not require computer manufacturers to install Internet Explorer along with its licensed operating system, it provided the browser software free of charge and included in its license provisions that essentially prohibited the manufacturers from installing any other browsers. Thus, although Microsoft did not technically require manufacturers to install Internet Explorer, the manufacturers' perceived need to include browsers on computers meant that they would install Microsoft's product by default. The government therefore claimed that Microsoft violated the law

[13] (334 US 131)
[14] 253 F.3d 34, 47 (D.C. Cir. 2001)

by tying its browser to the operating system in an effort to foreclose competition in the browser market.

In ***Volvo AB v. Erik Veng (UK) Ltd.***[15], the Court ruled that the right to exclude was 'the very subject matter' of copyright in spare parts. It was entitled to sue for copyright infringement those who had imported a spare part from a country where Volvo enjoyed no protection. The court added that in three circumstances a refusal by a dominant firm to supply a dealer on fair terms might be abusive: charging unfair prices, refusing to supply spare parts to dealers to whom they refused a license and failing to supply spare parts for old models, when there were a significant number of them on the road.

III. IPR and Competition Law Interface - Indian Perspective:

The roots of Indian law on competition can be traced back to Articles 38 and 39 of the Constitution which lay down the duty of the State to promote the welfare of the people by securing and protecting a social order in which social, political and economic justice is prevalent and its further duty to distribute the ownership and control of material resources of the community in a way so as to best sub-serve the common good, in addition to ensuring that the economic system does not result in the concentration of wealth.[16]

III.I. Interface among Statutes:

Until 2002, India did not have a competition law regime. The earlier regime consisted of the Monopolies and Restrictive Trade Practices Act (MRTP) enacted in 1969. MRTP was, however, sought to be replaced by the Competition Act, enacted in 2002 and amended in 2007. After the enactment of this Act, the nexus between IP and competition has been a subject of constant debate among specialists. In light of global developments, including the obligations under the TRIPS and the resultant amendments to the IP regime in India, the ability of the competition regime in India to be able to deal with market power created by IP became very relevant.[17] The Statement of Objects

[15] [1988] ECR 6211
[16] Atul Patel, Aurobinda Panda, Akshay Deo, Siddhartha Khettry and Sujith Philip Mathew, *Intellectual Property Law & Competition Law*, Journal of International Commercial Law and Technology, Vol. 6, Issue 2 (2011), p. 123.
[17] Gitanjali Shankar and Nitika Gupta, *Intellectual Property and Competition Law: Divergence, Convergence and Independence*, 4 NUJS L. Rev. 113 (2011), p. 129.

and Reasons of the Competition Act states clearly that the Competition Act is being enacted inter alia, to prevent practices which have an adverse effect on competition and to promote and sustain competition in the markets. The laws relating to protection of Intellectual Property Rights, prevalent in India are The Patents Act, 1970, The Designs Act, 2000, The Trade Marks Act, 1999, The Copyright Act, 1957, The Semiconductor Integrated Circuits Layout-Design Act, 2000, The Geographical Indications of Goods (Registration & Protection) Act, 1999. etc.

Raghavan Committee Report on Competition Law observed in paragraph 5.1.7 that: All forms of intellectual property have the potential to raise competition policy/law problems. Intellectual property provides exclusive rights to the holder to perform a productive or commercial activity, but this does not include the right to exert restrictive or monopoly power in a market or society. It is desirable that in the interest of human creativity, which needs to be encouraged and rewarded, intellectual property rights need to be provided. This right enables the holder (creator) to prevent others from using his/her inventions, designs or other creations. But at the same time, there is need to curb and prevent anti-competition behaviour that may surface in the exercise of the intellectual property.

Therefore, agreements concerning intellectual property rights are subject to competition law to the extent of restraint provided. In pursuance of this although, Section 3 of the Competition Act deals with anti-competitive agreements but an exception has been carved for IPRs under section 3(5). It preserves the rights of the IPR holder to prevent infringement and protect these rights. The exception allows for reasonable conditions to be imposed by the IPR holder to protect the rights granted by the relevant IP law; this ensures that the IPRs are not frustrated. At the same time, the exception is only allowed for the purpose of protection of the rights to the extent granted by the IP law; hence there is requirement of reasonableness.

Section 4 of the Competition Act deals with abuse of dominant position. It is the abuse and not the existence of a dominant position, which is prohibited by law. It explains what is meant by abuse of dominant position enumerates the practices which are to be considered abusive. An exception has not been carved in section 4 for a number of reasons. Firstly, IPRs may not confer a dominant position in the market. The legal monopoly conferred by IPRs may not necessarily lead to

an economic monopoly and it is the latter that the competition law is concerned with. Secondly, even if IPRs do grant a dominant position, mere existence of market power is not prohibited under section 4; it needs to amount to an abuse of dominant position. Competition policy is willing to accept the dominance, if any, that may result from the exercise of IPRs by the holder; only when this amounts to abuse does competition law interfere. In the event of such abuse, the fact that the source of market dominance is IPRs is of no relevance. Therefore section 4 makes no exception for IPR-sourced market power.

III. II. Contribution of Indian Judiciary Bridging the Interface:

The conflict between IPRs and the competition law came up for the first time before the Monopolies and Restrictive Trade Practice Commission in India in ***Dr Vallal Peruman v. Godfrey Phillips (India) Ltd.***[18]**.** The Commission observed, a registration certification held by an individual or an undertaking invests in him/it, an undoubted right to use trademark/name etc. so long as the trademark is used strictly in consonance with the terms and conditions subject to which it was granted. However, if while presenting the goods and merchandise for sale in the market for promotion thereof, the holder of the certificate misuses the same by manipulation, distortion, contrivances and embellishments etc. so as to mislead or confuse the consumers, he would be exposing himself to an action of indulging in unfair trade practices, violating the provisions of competition law.

Recently in the Delhi High Court in the case of ***Hawkins Cooker Ltd v. M/s Murugan Enterprises***[19] held that dominance of firms could not be encouraged by Courts if such dominance was abused by the companies by creating a monopoly in the market with respect to the "trade-marks" thereby affecting the market share of other firms who are in direct competition with such dominant firms. Here the Murugan enterprise's use of the Hawkins trademark to show compatibility of the gasket was held to be not unlawful.

In ***Entertainment Network (India) Ltd. v. Super Cassette Industries Ltd***[20]**,** the Supreme Court observed that a copyright owner has complete freedom to enjoy the fruits of his labour by earning an agreed fee or royalty through the issuance of licences. Hence, the owner of a copyright

[18] (1995) 16 CLA 201.
[19] [2008(36) PTC 290(Del).
[20] MANU/SC/ 2179/2008.

has full freedom to enjoy the fruits of his work by earning an agreed fee or royalty through the issue of licences. But, this right, to repeat, is not absolute. It is subject to right of others to obtain compulsory licence as also the terms on which such licence can be granted.

In ***Gramophone Company of India Ltd. v. Super Cassette Industries Ltd.***[21] the court held that, if the statute that confers the copyright itself is read down in cases involving purely commercial work, the provisions of the Competition Act, 2002 cannot be applied/interpreted in a manner that excludes an anti-competitive agreement which supposedly seeks to protect any and all copyrights whether or not conferred by the statute. The exemption under Section 3(5) of the Competition Act is not a blanket one and must be available to only such cases where the restrictions imposed are reasonable and necessary for protecting the rights conferred by the Copyright Act.

In ***FICCI - Multiplex Association of India Federation House v. United Producers/ Distributors Forum***[22], the Competition Commission of India harmoniously interpreted the provisions of the Competition Act, 2002 and the Copyright Act, 1957. The order pertained to a dispute between an association of multiplex owners, and three associations of film producers and distributors: United Producers/Distributors Forum, the Film and Television Producers Guild of India Ltd., and the Association of Motion Pictures and TV Programme Producers. The multiplex owners had alleged in 2009 that the film producer and distributor associations were acting as a cartel, and that they had almost complete control over the Indian film industry. The multiplex owners also demonstrated that the film producers and distributors had impeded distribution of films in multiplexes so as to pressurise multiplex owners to meet their demands for a higher shares of revenues — the revenue sharing arrangement between the multiplex owners and film producers/distributors was in fact revised in June 2009 resulting in a 15% to 20% hike in ticket prices for the general public in September-October of that year. The Competition Commission found the twenty-seven producers/distributors guilty of having acted as a cartel in violation of Section 3(1) of the Competition Act which prohibits enterprises, persons, and associations of enterprises or of persons from entering into agreements in respect of the production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India.

[21] Decided On 01.07.2010.
[22] Date of Order: 25th May 2011.

IV. Measures Combating Abuse of Monopoly:

In order to combat the IPR monopolies, Anti-competition laws often include two important measures namely compulsory licensing and parallel imports.[23] A compulsory license is where an IPR holder is authorized by the state to surrender his exclusive right over the intellectual property, as provided under Article 31 of the Trade-Related aspects of Intellectual Property Rights (TRIPS). Compulsory licenses are granted under certain circumstance such as in the interest of public health, national emergencies, nil or inadequate exploitation of a patent in the country, and for an overall national interest. A parallel import on the other hand includes goods which are brought into the country without the authorization of the appropriate IP holder and are placed legitimately into a market.

IV.I. Compulsory License:

A compulsory licence is an involuntary contract between a willing buyer and an unwilling seller imposed and enforced by the state. The three most prevalent compulsory licensing provisions are applicable where a dependent patent is being blocked; where a patent is not being worked; or where an invention relates to food or medicine.[24] Additionally, compulsory licensing may be implemented as a remedy in antitrust or misuse situations, where the invention is important to national defence or where the entity acquiring the compulsory licence is the sovereign. In these cases, the public interest in broader access to the patented invention is considered more important than the private interest of the right holder to fully exploit his exclusive rights.

By virtue of the Indian Patents Amendment Act, 2002, Chapter XVI, it is possible to apply to the Controller for a compulsory license once three years have expired from the date the patent was sealed.[25,] In most developing countries, few people have access to expensive medicines and in India, there is no universal health insurance. Licenses or the production and distribution of the medicines themselves are likely to cost the pharmaceutical companies amounts that are unlikely to be affordable by most of the population.[26] Therefore, compulsory licensing has a crucial role to

[23] Supra note 6 at p. 65.
[24] Supra note 3 at p. 24.
[25] Section 84 of the Patents Act, 1970 of India.
[26] Valentine Korah, *Competition Law and Intellectual Property Rights* in Vinod Dhall (ed.), Competition Law Today: Concepts, Issues and the Law in Practice, Oxford University Press, 1st Edition, 2007, p. 142.

play. On 9th March 2012, in India, the Controller General of Patents issued the compulsory licensing order in relation to Bayer's patented anti-cancer drug (Nexavar). Natco Pharma Limited is now free to manufacture and sell a generic version of Nexavar (a kidney/liver cancer drug that goes by the generic name of Sorafenib Tosylate) but will have to pay a 6% royalty on the net sales (every quarter) to Bayer.[27]

Section 31 of the Copyright Act, 1957 of India as amended in 2012 deals with compulsory licenses of works withheld from public. This section provides that if the owner of copyright in any "Indian work" has refused to republish or allow the republication or has refused the performance in public of the work and withheld the work from the public or has refused to allow communication to the public by broadcast of the work recorded in sound recording, the Copyright Board may, on the basis of a complaint received and after such inquiry as it may deem necessary, direct the Registrar of Copyright to grant to the complainant, a licence.

In ***Radio Telefis Eireann and Others v. Commission (Magill case)***[28], The ECJ, in its decision of April 06, 1995, confirmed that Radio Telefis Eireann (RTE) and Independent Television Publications Limited (ITP), who were the only sources of basic information on programme scheduling, which is indispensable raw material for compiling a weekly television guide, could not rely on national copyright provisions to refuse to provide that information to third parties. The Court held such a refusal in this case constituted the exercise of an IPR beyond its specific subject matter and, thus, an abuse of a dominant position.

IV. II. Parallel Import:

Article 6 of the Trade Related Aspects of Intellectual Property Rights recognizes the legitimacy of parallel importing from the country from where it had been licensed based on the principle of exhaustion of rights. Parallel import, which are goods brought into a country without the authorisation of the patent, trademark or copyright holders after those goods were placed legitimately into the circulation elsewhere. Some argues that unlike pirated copyright goods or counterfeit trademark goods, parallel imports are legitimate products since the IPR holders have agreed to put them into the market and thus implicitly authorised their subsequent use, be it being

[27] Shamnad Basheer, *Breaking News: India's First Compulsory License Granted,* see spicyipindia.blogspot.in 2012/03/breaking-news-indias-first-compulsory.html, visited on 10.1.2013 at 11 a.m.
[28] [1995] CMLR 718.

imported by an unauthorised distributor. The doctrine of exhaustion leads is based on the premise to allow the free movement of IP products by the owner so that everyone can exploit the benefits of such.

Parallel importing may be termed as the practice of putting for sale, a product protected by the copyright law (in general any Intellectual Property laws), which was legally purchased from one country, in the market of a second country, without the permission of the copyright owner by a lawful purchaser.[29] (For instance, the copyright owner of a book produced in India places the book on the market in India. A trader buys 100 copies of the book from India and imports them to China without the permission of the copyright owner of the book in China. This act of the trader bringing the books into China is called parallel import, the legality of which depends on the copyright law of the importing country (namely China in this example).

Thus, parallel importing arises when a business organization in a particular country obtains products or goods from licensed sources beyond the country's barriers when the prices of the same goods are higher as sold by another authorized importer is reasonably higher. The aspects of parallel importing can be overall pro competitive in nature leaving apart the fact that it disturbs the import channel of a particular nation. Prof. N.S. Gopalakrishnan and Dr. T.G. Agitha in a book on Indian Intellectual Property Law observed that under the Indian law there is no express provision recognising the right of importation. This would in fact enable parallel importation of works. Parallel importation means transportation of legitimate" goods, which are available at a cheaper rate in one country by independent buyers (e.g. book sellers), for sale in another country. This could act as an effective check on creating monopoly in the market. Hence, it is an important aspect to be borne in mind for a developing country like India.[30]

V. Conclusion:

From the above discussion it transpires that, the two disciplines aim at different but synergic objectives and each can indirectly serve the other by fulfilling its function. It has been the contention of many, that the fields of IP and competition must be strictly separated with the former

[29] Manoranjan, *Parallel Imports: A Gateway to Access to Knowledge In the view of the Copyright (Amendment) Bill 2010*, (2011) 6 MLJ 111 at p. 4, electronic copy available at: http://ssrn.com/abstract=1953038, visited on 14.1.2013 at 11 a.m.

[30] Pranesh Prakash, *Exhaustion: Imports, Exports and the Doctrine of First Sale in Copyright Law*, Manupatra Intellectual Property Reports, February 2011, Volume 1, p.159.

dealing with properly *assigning* and *defending* property rights, while the latter is concerned with the *use* and *exercise* of such property rights in the market. However, it is also undoubtedly true that in the modern economy, IP and competition have complementary roles in the ultimate goal of protection of consumer welfare. IP promotes innovation which in turn promotes competition in the market.

It cannot be ignored that the direct and immediate goals of these two realms of law do conflict sufficiently to need some mode of reconciliation – a middle path. This middle path can only be achieved by separating the functioning of the two spheres from each other. Allowing interference into each other's domains will lead to a conflict, which will necessarily have to be resolved by placing one superior to the other. Such a policy decision can be largely avoided if their operations are kept independent of each other. The challenge is to design rules both within IP law, i.e. the substantive law of patents, copyrights, trademarks, and trade secrets as well as outside IP law, i.e. substantive competition law in a manner that promotes dynamic competitive markets.[31]

In a country like India both IP and competition regimes are in a state of infancy and jurisprudence in respect of the relationship between them has not been entirely contemplated. Therefore, a balance between IPR and competition is most important in developing countries, especially India, which cannot afford to advocate the cause of development at the cost of citizens' rights, or to be left behind and therefore lose stakes in the international scenario.[32] IP and competition laws should work in harmony to maximise wealth by promoting innovation and economic progress. Where the scope of IP rights is ambiguous, competition law may be used as a tool to circumscribe its scope. However, careful balancing is necessary since over-enforcement of competition laws may undermine the objectives of IP.[33] Then only, the vision of putting an end to the tug of war between expansionist intellectual property protection and reductionist competition rules will be able to see light of the day.

[31] Supra note 17 at p. 119.
[32] Abhimanyu Ghosh and Deep Chaim Kabir, *Balance of Competition and Intellectual Property Laws in the Indian Pharmaceutical Sector*, Journal of Intellectual Property Rights, Vol. 12, May 2007, pp. 293-302 at p. 300
[33] Supra note 8 at p. 264.