THE CONTRADICTORY NATURE OF REFUSAL TO LICENSE/DEAL IPR AS AN ANTI-COMPETITIVE AGREEMENT

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ABSTRACT

In this paper the researcher will explore the conflict and nexus between intellectual property protection and competition law and how the goals of both these laws converge under the same umbrella of consumer welfare, however, their processes and short-term goals are conflicting and often lead to problems such as overlapping jurisdictions, opposing precedents and the like. The intellectual property regime is definitely pro-competitive even though it may seem statically non-competitive due to the weightage given to an inventor's rights. In the long run, technological progress contributes far more to consumers' welfare than does the elimination of static efficiencies caused by non-competitive pricing.

India is in the nascent state of its administration of competition laws. There are substantial amount of cases that have come before the Indian competition authorities (CCI) and courts. There are not adequate precedents and jurisprudence that is available in India for directing the Indian authorities and courts regarding the interface between intellectual property and competition in the country. It thus, becomes essential draw a comparative analysis with the jurisprudence of the United States.

Thus, the researcher will also explore the dealing of such nexus in other jurisdictions and the principles laid down by TRIPS, and then give relevant suggestions for India for a better regime to harmonize the two sets of laws.

Keywords: IPR, Competition law, India, USA, anti-competitive agreements

INTRODUCTION

Why there is a clash in jurisprudence

Intellectual Property Rights involve endowment of exclusive license to the right holders, so as to exploit the outcome of their creations for a limited period of time. Section 3(5) of the Competition Act excuses rational use of creations and inventions like these, from the purview of competition law and it is specified that reasonable conditions required for guarding of such rights would not appeal to Section 3[1]. But Section 4(2) says that activities by enterprises that shall be treated as exploitation will be held to be correspondingly applicable to IPR holders as well. Section 3 prohibits anticompetitive practices, but this prohibition does not restrict "the right of any person to restrain any infringement of, or to impose reasonable conditions, as may be necessary for protecting any of his rights" which have been conferred under IPR laws like Copyright Act, 1957, Patents Act, 1970, the Geographical Indications of Goods (Registration and Protection) Act, 1999 (48 of 1999), The Designs Act, 2000 and the Semi-conductor Integrated Circuits Layout-Design Act, 2000. It means that an IPR holder cannot put any unreasonable conditions while licensing his

[1]Entertainment Network (India) Limited v. Super Cassettes Industries Ltd., (2008) 37 PTC 353 (SC).

intellectual property which will be considered as violating the competition law. It includes any restrictions between the licensor and the licensee to restrict production, distribution, refusal to deal, exclusivity conditions, restricting quantities and prices, patent pooling and tie-in arrangements. In such cases the competition commission can pass a variety of orders like cease and desist, changes to the licensing agreements as it deems fit. However, the problem arises because "reasonable conditions" has not been demarcated anywhere, and thus, it is implied that unreasonable conditions that are assigned to an Intellectual Property Right will attract Section 3.[2]

Other points of clash include Compulsory licensing, which forces IPR holders of certain rights to give up their exclusive right in the name of public interest, and the Essential Facilities Doctrine which imposes a duty upon firms controlling an "essential facility" to make that facility available to their rivals.[3]

However, the other side of the coin is that A different kind of awareness is necessary in cases where the integrated firm has an unassailable upstream position, i.e., there is no likelihood of competition struggle in the upstream market. That might happen, for instance, if the firm has exclusive control over a unique, irreproducible asset such as crucial intellectual property or an essential natural resource. Competitors in the downstream market are unavoidably reliant on the upstream monopolist. That, in turn, means that they are not truly independent downstream competitors. In other words, if the integrated firm is allowed to refuse to deal, it can eliminate its downstream rivals, leaving a single firm in both the upstream and downstream markets. If the integrated firm is coerced to sell its input at the monopoly price that an unintegrated firm would charge, then there may be a monopoly upstream and a competitive market downstream. But creating some competition in the downstream market may be of little or no benefit as long as there is an upstream monopolist. Thus, regulation is needed to be undertaken reluctantly when there is no possibility of competition in the upstream market, as was said by Carl Shapiro, faculty at Berkley University.[4]

Need for clarity

All these concerns have an antagonistic effect on the incentive to invent as grant of intellectual property right is a mode of providing incentive to the inventor for his invention. However, without this incentive, inventor will not be able to appropriate the full value of his invention because of 'free riders' problem attached with intellectual property due to its specific nature.[5] In the deficiency of any such incentive by the state, the individual will keep the invention to himself or have no encouragement to invent because such inventions require labor, skill and capital.

Competition law is a tool for promoting social welfare by deterring practices and transactions that tend to increase market

[2] Aamir Khan Productions Pvt. Ltd. v. Union of India, (2010) 4 Comp LJ 580 (Bom).

[3] Unite States v. Terminal Railroad Association, [1912] 224 US 383.

[4] CD Policy Rounds Tables, Refusal to Deal, 2007, (DAF/COMP(2007)46), p. 11 [Hereinafter DEF/COMP(2007)46].

[5] Abir Roy, Jayant Kumar, Competition Law in India, Easter Law House, (2nd Edition), p. 325.

power. [6] Competition law aims at maintaining allocative as well as productive efficiency in the market. Productive efficiency refers to production of output at the lowest conceivable cost and allocative efficiency refers to optimal allocation o resources to their most valued use.

An appropriate address of the rudimentary nature of intellectual property rights and competition law discloses that both aim at creating competence in the market. In the long run, both have the intention of consumer welfare. It is relevant to note that intellectual property does not have much marginal cost, and the major cost incurred is due to research, development and invention of new technologies along with some expenditure of bringing these technologies into the market. Thus, absence of monopoly rights and other issues raised regarding intellectual property in the competition law regime, might disallow the inventor to recover cost of research and development and thereby discourage investors to invest in bringing such new technologies,. This will have the effect of dynamic inefficiency of the market and a subsequent decrease in competition.

Thus, intellectual property regime is definitely pro-competitive even though it may seem statically non-competitive due to the weightage given to an inventor's rights. In the long run, technological progress contributes far more to consumers' welfare than does the elimination of static efficiencies caused by non-competitive pricing. From an economist viewpoint, intellectual property law is principally concerned with the provisions of adequate *ex ante* incentive (and increasing competition in innovation markets), while competition law is primarily concerned with *ex post* incentives (and increasing competition in product markets).[7] Debra Valentine stated, both are deviating tracks to a same goal.[8]

There exist various technologies which may be termed as alternatives for the purpose of conferring effective constraints to effective exclusive type conduct of the IP right holders. Like, in the case of Microsoft, copyright over Windows exists with Microsoft Corp., a very well-known and successful popular operating system for the Intel based computer system. In this case since there exists alternative operating systems such as Mac, OS, etc., the possession of IP over Windows and its exclusivity with Microsoft Corp. do not give market power to Microsoft Corp. it shall be noted that what plays effective role in giving monopoly over market power is the application of entry barriers, and not the IP right, hence shifting the balance of competition in favour of Microsoft Corporation[9]. Hence, Monopolistic positions in relevant market structure, if have to be attributed to grant of IPR, can be only when there exists no alternative technology in the market for attaining the same objective, and that also must be done after considering the balance of convenience between the rights of consumers and the rights of inventors, taking into

[6] John E Lopatka, Willam H Page, Economic Authority and the Limits of Expertise in Antitrust Cases, 90 Cornell L rev 617, (2005).

[7] Patrick Rey, Presentation at FTC/DOJ Hearing on Competition and Intellectual Property Law and Policy in the Knowledge-Based Economy, 2002, http://www.ftc.gov/opp/intellect/020522refdoc.pdf .

[8] Debra A. Valentine, Intellectual Property and Antitrust, http://www.ftc.gov/speeches/other/speech35.htm.

[9] Microsoft Corpn. v. Commission of the European Communities, T-201/04, 2007 ECR II-1491.

account the need for incentive for new technologies and inventions.

Thus, a balance is to be maintained between both, as is often attempted to be achieved through trade-offs.

Indian Jurisprudence on the nexus between competition law and IPR

Whether IPR is a self-sustained code and immune from application of competition law

It has been recently contended in a move by IPR owners to resist the application of Indian competition law to IPR[10] on the ground that each IPR statute is a "self-contained code" and competition law may not be the appropriate remedy for a right created by each of them. The Supreme Court of India has discussed the term 'self-contained code' in several judgments and held that the subsequent conditions need to be ascertained for a self-contained code:

1. It is a complete legislation for the purpose for which it was enacted;[11]

2. It provides for all possible situations that may arise in relation to that purpose;[12]

3. It contains an adjudicatory machinery;[13]

4. It provides for an appeal;[14]

5. It contains provisions for offences;[15]

6. It contains comprehensive provisions pertaining to investigation,[20]inquiry, and trial for offences;[16] and

7. It gives power to duly authorized officers to search, recover and arrest, and record statements of witnesses[17].

The literal meaning of a self-contained code is a law that is complete and exhaustive. While some of the criteria set out by the Supreme Court of India are met by various provisions of India's IPR laws, it is clear that the Patents Act, 1970, the Trade Marks Act, 1999 and the Designs Act, 2000 have not fulfilled all the conditions set out above. Such legislation, though dealing with the creation and maintenance of IP rights, fails to tackle the existence of such rights in the market, where they must co-exist with other rights and the economics of supply and demand. There is no common theme in the entire regime and neither do any of the IPR laws expressly include functioning of the Competition Act, thus, IPR does not have immunity rom competition law.

IPR under the purview of Competition Act

As one pharmaceutical industry expert lamented, "owing to the blanket exemption under Section 3(5), the square peg of any anti-competitive practice tethered to the use of IPRs must now be brought through the round hole of "abuse of dominant position" under Section 4."[18]

Section 3(5) is integrated in the Competition (Amendment) Act, 2007 to deal with intellectual property and anticompetitive practices. This provision generally excludes IPR protection, but this is subject to

[10] Micromax Informatics Ltd., In re, [2013] CCI 77

[11] Offshore Holdings (P) Ltd. v. Bangalore Development Authority, (2011) 4 Bom CR 212; Bondu Ramaswamy v. Bangalore Development Authority, (2010) 7 SCC 129.

[12] Supra

[13] Girnar Traders v. State of Maharashtra, (2004) 8 SCC 505.

[14] Supra

[15] CBI v. Rajasthan, (1996) 9 SCC 735.

[16] Supra

[17] Moti Lal v. CBI, (2002) 4 SCC 713

[18] Debolina Partap, Intellectual Competition, 5(9) LEGAL ERA, (November 2014).

"reasonable" condition and the unreasonable conditions or abuse Section 3(5) is incorporated in the Competition (Amendment) Act, 2007 to deal with intellectual property and anticompetitive practices. This provision generally excludes IPR protection, but this is subject to "reasonable" condition and the unreasonable conditions or abuse of dominant position will attract Section 3. However, this section relates only to arrangements amongst parties.

Exclusions from the applicability of Section 3 have been given to those persons that are pursuing protection of their intellectual property rights as well as contracts for the export of goods. However, the CCI would still be authorized to investigate the rationality and reasonableness of the restraint while exercising intellectual property rights.[19]

Abuses are explained in section 4 as follows:

• Imposition of unfair or discriminatory conditions on price

• Limiting or restricting the production of goods or services or market

• Restraining or confining technical or scientific development to the prejudice of consumers

• Concluding of contracts subjective on the condition of acceptance by other parties of supplementary obligations which have no use or no connection with such contracts.

• Denying market access in any manner

• Using dominant position to protect or enter into another market

The merger or forming consortiums for R&D may also affect effective competition. The exclusive licensing and cross licensing may give rise to competition issues in the case of grant back clause and market dominance. Patent pooling can be another restrictive practice which may be used to facilitate price collaboration.[20]

However, it is important to differentiate such abuses from normal exercise of an intellectual property right.

The conflict between Competition law and IPRs came even during the time of Monopolistic and Restrictive Trade Practices Commission (MRTP Commission, predecessor to the Competition Commission) in the case of *Vallal Peruman and Others versus Godfrey Phillips India Limited*[21]. The commission observed: "Trademark owner has the right to use the trademark reasonably. This right is subject to terms and conditions imposed at the time of grant of trademark. But it does not allow using the mark in any unreasonable way. In case, trademark owner abuses the trademark by manipulation, distortion, contrivances etc., it will attract the action of unfair trade practices." While bestowing the goods for sale in the marketplace or for advancement thereof, the holder of the trademark certificate misappropriates the same by manipulation, distortion, contrivances and embellishments etc. so as to deceive or confuse the consumers, he would be baring his own self

[19] Government of India Report on Competition Policy (Planning Commission, 2007), http://planningcommission.nic.in/aboutus/committee/wrkgrp11.wg11_cpolicy.pdf

[20] Raju KD, Interface between Competition law and Intellectual Property Rights: A Comparative Study of the US, EU and India, Intellectual Properties Rights: Open Access, 2014, https://www.longdom.org/open-access/interface-between-competition-law-and-intellectual-property-rights-a-comparative-study-of-the-us-eu-and-india-ipr.1000115.pdf.

[21] (1995) 16 CLA 201.

to an action of indulging in unfair trade practices.

The MRTP Act also governed this relation and tried to balance IPR and competition laws.

IPR in Anti-Competitive Agreements
Intellectual property rights may conflict with Section 3 as they are assets that can be dealt with under agreements between entities and can affect competition in an adverse and appreciable way.

IPRs have a fundamental nature of protecting the rights of an inventor however, they may have to be revoked or compromised in the interest of the general public and the interest of the market.

However, to find a nexus between the regimes, Section 3(5) of the Act declares that 'reasonable conditions as may be necessary for protecting' any IPR will not attract s. 3. The expression 'reasonable conditions has not been defined or explained in the Act.

In other words, licensing arrangements probable to affect unfavorably, the rates, quantities, quality or varieties of goods and services will fall inside the outlines of competition law as long as they are not in reasonable association with the bundle of rights that go with IPR. For example, a licensing agreement may comprise of some strains that negatively impact competition in a goods markets due to its effect of division of the markets among corporations that would compete using diverse technologies. Similarly, an arrangement that efficiently amalgamates the Research and Development activities of two or only a few enterprises that might believably engage in Research and Development in the pertinent field may damage competition for development of new goods and services. Exclusive licensing is another category of possible unreasonable condition. Instances of arrangements comprising of exclusive licensing that might raise anti-competition concerns contain cross licensing, by parties collectively possessing market power, grnt backs, and acquisitions of IPRs. A few such practices are described below:

(a) Patent pooling is a restrictive practice, which will not constitute being a part of the bundle of rights forming part of an IPR. Patent pooling takes place when the enterprises in a manufacturing industry agree to pool their patents and decide not to grant licenses to third parties, and simultaneously fix quotas and prices. They may earn supernormal profits keep new participants out of the market.

(b) Tie-in arrangement also another restrictive practice.[22] A licensee may be mandated to particular goods (unpatented materials, e.g. raw materials) solely from the patentee, thus barring the opportunities of other producers.

(c) Arrangement requiring loyalty even after patent expires.

(d) there could be a clause, which restricts competition in R&D or prohibits a licensee to use rival technology.

(e) A licensee may be subjected to a condition not to challenge the validity of IPR in question.

(f) A licensee may require to grant back to the licensor know-how or IPR acquired and

[22] Ajay Devgan Films v Yash Raj Films Private Limited, case No. 66 of 2012.

not to grant licenses to anyone else. This is likely to augment the market power of the licensor in an unjustified and anti-competitive manner.

(g) A licensor may fix and limit the prices of the invention at which the licensee can sell.[23]

(h) Excessive royalty by a dominant player in the market with regard to patents.[24]

Thus, it can occur in forms of all sorts of anti-competitive agreements and needs to be restricted, however, such restrictions must not be applied per say and the rule of reason should be allowed to prevail as the intention of the inventor plays a very important role. To put this into perspective, a re- read of all these forms of agreements may also lead to the thought that such agreements may take place to protect the intellectual property of the inventor who has invented his labor, skill and capital in these inventions and thus, needs to recover the costs and sustain himself.

Any more restriction than what is absolutely necessary may de-incentivize such inventors and their investors.

Conflict on Jurisdiction

In Amir Khan Private Limited versus Union of India[25], FICCI filed information against united producers/distributors forum (hereinafter called as UPDF) and others for market cartel in films against the Multiplexes. In order to increase their income, UPDF refused to deal with multiplex owners. Multiplex business is 100 percent dependent upon films. So this is refusal to deal and thus, by nature anti-competitive. The UPDF and others have almost 100 percent share in Bollywood film business. UPDF was indulging in limiting/controlling supply of films in the market by refusal to deal with Multiplexes. It is violation of Section 3(3) of Competition Act 2002. CCI prima facie investigated and noted that there is anticompetitive agreement and in addition, there is abuse of dominant position. So CCI directed Director General (hereinafter called as DG) to inquire into the matter. DG inquired into the matter and submitted a report that there is cartel. CCI issued a show cause notice. UPDF instead of answering to show-cause notice, the complainant approached the Bombay High Court. UPDF contended that films are subject to copyright protection[26]. Therefore Copyright board has the jurisdiction to deal with matter. Furthermore, contended that for exclusive license, only remedy is compulsory license available under Copyright Act. So the petitioner challenges the action taken by the CCI due to its deficiency in jurisdiction. Though, the issue was discussed earlier in Kingfisher v. Competition Commission of India.[27] However, considering the importance the issue, Bombay High Court deliberated the impugned case and its issue in great detail. The court adjudged that Section 3(5) provides that Section 3(1) shall not do away with the right to sue for infringement of patent, copyright, trademark etc. All the defenses which can be taken up by the copyright board can also be raised before CCI. Competition law does not bar

[23] FICCI Multiplex Association of India v United Producers Distribution Forum (UPDF), Case No. 1 of 2009.

[24] Micromax v. Ericsson, Case No. 50/2013.

[25] Suprra Note 2.

[26] Section 13(1) (b) and 14(1)(d)(ii)

[27] Writ petition number 1785 of 2009, Vodafone International Holdings BV v Union of India, 2009 (4) Bombay Cases Reporter 258 (DB).

application of other laws. Matter is sub-judice before CCI.

Jurisprudence on the nexus in other jurisdictions

Background in International Law

TRIPS can be recognized as *grundnorm* in respective of international law in regard to governance of intellectual property right issues. It played significant role in harmonizing and standardizing intellectual property rights. It also provides provisions regulating IPR in context of competition policy providing larger market and consumer welfare interests. In pursuance of the same, it provides taking of apt measures, otherwise in coherence with the broader agreement, for preventing the abuse of IPRs by right holders that pose restraints on trade or have potential to adversely affect the international transfer of secrets and technology[28].

It very well recognizes the fact that there might be some competition restraining IPR licensing practices that may adversely affect trade or impede the transfer of new technology.[29] To prevent such violations and circumvention of fair competition policies it authorizes the participating member States to take measures so as to prevent or control the abuses, provided, strictly, that such measures are in no manner inconsistent with the TRIPS agreement.[30] Further, the objective of Article 6 of the TRIPS Agreement is to provide for another important aspect of competition i.e exhaustion of rights. It aims to balance the rights, liabilities, and duties under the respective domains.[31]

To promote interface of IPR and Competition policies, TRIPS permits national authorities to issue compulsory licenses, which in turn permits the domestic use of respective IPRs by parties other than the original right holder of the IPR[32]. It authorizes non-commercial government uses in national emergencies; however, such authorization shall be subject to judicial review.[33] Article 40 of the TRIPS determines the anti-competitive licensing practices or conditions. It specifically bestows discretionary powers on the member states to specify intellectual property practices which amount to abuse in their state legislature.[34]

The essence of TRIPS Agreement in respect of IPR and competition interface can be enumerated as the following three guiding principles:

a. It is domain of each member State to formulate and reserve its own IPR related competition structure and policy framework.

b. There has to be consonance in respect of the TRIPS Agreement, in respect of IP safeguard, and the national IPR related competition policy.

c. The priority target shall be those practices which aim to restrict the dissemination of protected technologies.[35]

[28] Article 8.2, TRIPS Agreement.
[29] Article 40.1, TRIPS Agreement.
[30] Article 40.2, TRIPS Agreement.
[31] A.K Koul, "The General Agreement on Tariffs and Trade/World Trade Organisation: Law, Economics & Policies", 2005, p. 461.
[32] Article 31, TRIPS Agreement.
[33] Article 31(b), TRIPS Agreement.
[34] Article 40(2), TRIPS Agreement.
[35] Raghvendra Pratap Singh, Vishwanath Pratap Singh, Are IPR and Competition Law in Tussle? : An Interface Between IPR and Competition Law, CNLU LJ (7) [2017-18] 215

Jurisprudence in USA

'Antitrust law in general and the Sherman Act in particular are the Magna Carta of free enterprise. They are as important to the preservation of economic freedom and free enterprise system as the Bill of Rights is to the protection of our fundamental personal freedoms.'[36]

The US antitrust law bars particular business practices that adversely impact the competition in the market. Section 1 of the Sherman Act prohibits persons making a concerted effort to enter into agreement, contracts, and combinations in restraint of trade. But an individual person can refuse to deal with someone without being in violation of the first provision. This anti-trust principle was predominant from 1919 with the judgment of the US Supreme Court in Colgate case[37]. After this case, the practice is called the "Colgate doctrine." This doctrine permits a non-monopolistic manufacturer to choose the parties with whom he wants to deal. But there is a possibility of resale price maintenance (RPM) by such monopolist and eventually refuses to deal with traders who may refuse to agree to the price maintenance. In this context, the Supreme Court reexamined the "Colgate Doctrine" in Russel Stover Candies Inc. v. FTC. This decision headed to the "rule of reason" standard in judging RPM policies and progressively eliminating the "Colgate doctrine. It is thought-provoking to examine the patent protection setting where the patent holder refuses to deal in the backdrop of antitrust provisions. The US provision on the subject is contained in 35 U.S.C. § 271(d) which provides that: (d) No patent owner who may be eligible for relief for infringement or contributory infringement of a patent can be deprived of relief or deemed guilty for misuse or illegal extension of the patent right due to having done one or more of the following:

• Derived revenue from actions which if done by another devoid of his approval would create contributory infringement of the patent. • Licensed or authorized someone else to do acts which are if done without his approval would lead to contributory infringement of the patent. • Sought after application of his patent rights against infringement or contributory infringement. • Refused to license or use any rights to the patent. (Or) • Given license subject to conditions of any rights to the patent or the sale of the patented product on the attainment of a license to rights in another patent or procurement of a separate product, unless, in tat situation, the patent owner has market power in the relevant market for the patent or patented product on which the license or sale is conditioned.

In A&M Records, Inc. v. Napster, Inc., case, it was held that one of the typical element of copyright is the right to control the development of a derivative market by refusing to license copyright. Although it is probable that one-sided refusal to license copyright may lead to misuse of claim but the principle hypothesis is that the want to exclude is a presumptively effective business justification. Likewise, unilateral refusal to license diagnostic software is not to be considered an antitrust violation. However, in Blonder Tongue Labs. v. Univ. Illinois Found., it was held that the patentee can refuse a license however, it must not permit him to increase the monopoly of the patent by the beneficial attachment of conditions to its

[36] United States v. Topco Assocs., Inc., 405 US 596 (1972)

[37] United States v. Colgate & Co., 250 U.S. 300 (1919)

use. In Eastman Kodak Co. v. Image Technical Services, Inc., also it was ruled that power added by certain natural and legal advantage such as a patent, copyright, or business acumen may lead to liability if 'a seller exploits his dominant position in one market to expand his empire into the next'.[38]

Thus, USA also has a harsh regime to disallow any anti-competitive agreement. However, it is pertinent to note that the US Jurisprudence is clear and does not have problems of confusion of jurisdiction regarding these matters.

Analysis and Conclusion

The lacuna in Indian law lies mainly due to the multiple application of jurisdictions amongst statutes and thus, a confusion in the objectives aimed for. Though the overarching goal of the statutes regarding IPR and Competition law are the same, their applicability and adjudication differ and thus, the issue regarding the nexus between both must be carefully dealt with and clarified by the legislature to avoid discretion and overlapping decisions. This will save time and also be in consonance with the principles of natural justice due to the absence of arbitrariness and speedy disposal, once specific guidelines regarding the same are framed.

This paper deals mainly with Section 3 of Competition Act and IPR, but as mentioned above, Section 4 also have a major applicability in this nexus. There is existing jurisprudence on that matter but further suggestions can be made by future researchers on that account.

India should also develop such guidelines for better management of a largest market economy in the world. The exhaustion of IP rights to be reiterated in domestic laws so that parallel import of technologies can take place without violating patent laws, The interventionist approaches like IMS Health and Magill to be taken rather than the US approach like in the Trinko in refusal to deal cases. The enforcement policies must have a direct connection with economic policies and developmental goals of developing countries. It may differ from economy to economy and blanket imitation of US and EU policies and implementation in India is not going to work properly.

The guidelines developed by the US and EU in dealing with IP and competition issues can be used as a base on the background of TRIPs Agreement in order to deal with anti-competitive practices in technology licensing and transfer. More guidance is required in terms of legislative framework on the backdrop of available jurisprudence in the US and the EU which can be helpful in IP and competition policy formulation in countries like India.

In my opinion, though like the US we should also be cautious of the competition violations and protect against it, we should also remember that India is a developing country and in need of more incentivization to inventors and investors in our country, and thus, this difference in need of the countries must also be realized while clarifying the provisions under these laws, as intellectual property also has major pro-competitive effects when analyzed in trade-offs.

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[38] Supra Note 20.