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INTELLECTUAL PROPERTY RIGHTS AND COMPETITION LAW – A HIDDEN CHEMISTRY AMIDST COVID-19 PANDEMIC

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ABSTRACT

During the COVID19 pandemic a word 'Duopoly' came across us frequently. A duopoly is a market situation that entails two competing companies that share the market. In this market, two brands can collude to set prices or quantity and make customers pay more money. In this context we are talking about Serum Institute of India and Bharat Biotech the manufacturers of covid vaccines Covishield and Covaxin respectively. Also, during this crisis enterprises felt compelled to take aggressive pricing measures to improve revenue collection while government was concerned about determining fair prices for essential commodities. Amid all this, 'Competition Act, 2002' came in light, significance of which was not put into much consideration by the government. Along with this the issue of Covid vaccines patent and compulsory licensing also caught the worldwide attention, which failed to reach the finish line. Abandoning the idea of compulsory licensing or patents and maintaining the pharmaceutical duopoly, resulting in creation of market imbalance and price discrimination was all protected by sensitive arguments like public health and emergency vaccination drive. The interface between competition law and IPRs protection is complex and multifaceted. It needs to be handled very carefully. It can be said that the countries including India requires the regulated market as well as free market in such times since both have their advantages and disadvantages and going with the operation of Competition law and IP invention is crucial, price needs to be stable, so that the supplier along with the buyer is able to fulfill their needs. A market without any regulating bodies will cause an unbalanced situation and once it goes out of control it is difficult to restore.

KEY WORDS: Covid vaccine, Compulsory Licensing, Competition, Fair price, Market, Intellectual property rights, CCI.

INTRODUCTION

In recent years it has been seen that the connection between competition law and Intellectual Property Rights (IPR) is the contemporary issue. As competition law deals with an efficient mechanism to counter anti-competitive agreements, regulating mergers and acquisitions, restricting the abuse of dominant position etc. On the contrary Intellectual Property Rights tries to strike a balance between the rights of the owner and social interest. It helps the owner of the intangible property gets exclusive right and commercial value for his intellectual creation.

India remained under a nation-wide lockdown since 25 March 2020 in the wake of the Covid-19 pandemic. During this period, both the Central and State Governments had been working towards ensuring access to and production of essential products and services. Businesses continued to face operational challenges due to the non-availability of work force, restrictions on opening facilities and the risk of further spread of the viral infection. For enterprises, the pricing of their products and/or services

increasingly became the most critical component of their business continuity plans. As a result, enterprises felt compelled to take aggressive and desperate pricing measures (amongst other steps) to improve revenue collection, which in certain cases potentially raised concerns under the Competitions Act, 2002. Competition regulators worldwide have attempted to ease the hardships and disruptions caused by providing exemptions and relaxations. These relaxations are issued for a short duration and renewed as per requirement. (Joshi, Khanna, and Agarwal, 2020)

These authorities have taken decisions and initiatives to cope with issues faced in the last few months. Apart from this, Government's vaccination program is the most callous, discriminatory, and iniquitous policy designed. The center has abdicated its responsibility and pushed the entire burden of procuring vaccines for the 18 to 45 age group wholly on to the states who do not have the resources to do so. The duopoly of the Serum institute of India and Bharat Biotech companies have got the license to profiteer and earn super profits at the expense of the people. The Serum Institute of India announced the price of Covishield as ₹400 per dose for state governments and ₹600 for private hospitals. The Bharat Biotech has gone further and fixed ₹600 per dose for state governments and ₹1,200 for the private sector. This is nothing but rank profiteering as said by some. (Karat, THECITIZEN, 2021)

A good year after SARS-CoV-2 was first discovered, there are now five vaccines available against the virus, but they are in short supply; so much so that India and South Africa have called for a relaxation of patent protection rules. The problem, however, is that suspending patent protection in one's own country is of no use if no local company is technically capable of producing such vaccine. (Hilty, 2021). Here, duopoly comes in for help by speeding up production with the help of government grants. Article 40 of the TRIPS agreement recognizes that some licensing practices or conditions pertaining to IPRs which restrain competition may have adverse effects on trade and may impede the transfer and dissemination of technology. In such cases, compulsory licensing works as a bridge between IPR and Competition law. which as said by Supreme Court might not be helpful in critical time like this. Competition law and IPRs policies are bound together by the economics of innovating and an intricate web of legal rules that seeks to balance the scope and effect of each policy. However, in case of covid vaccines this balance could not be made.

COMPETITION LAW AMID COVID-19 – RECAP 2020

Since the Covid-19 was declared a pandemic, the demand as well as the prices of products such as face masks and hand sanitizers in India has increased many-fold. In exercise of its powers, the Ministry of Consumer Affairs, Govt. of India, has therefore vide notification dated March 13, 2020; brought hand sanitizers and face masks under the purview of the ECA for the period until June 30, 2020. The Ministry has, further vide a notification dated March 21, 2020, determined the fair retail prices for face masks, fabric used in production of masks and hand sanitizers. While the Govt. of India ensures fair pricing of essential goods and services, prices of all other important commodities and services can be freely determined by businesses. In some circumstances, such pricing decisions

could prove to be to the detriment of the consumer. (Abhay Joshi, 2020)

The pricing related conduct that may potentially raise concerns under the Competition Act can broadly be divided in two categories – unilateral conduct and collective conduct, which are briefly discussed below. (Joshi et al, 2020)

Unilateral Conduct

- **Price gouging:** Businesses may unilaterally increase the prices of their products/services unjustifiably, commonly known as price gouging, with a view to increase their revenue and earn opportunistic profits. Under the current circumstances, such excessive pricing of products may attract scrutiny by the CCI, if it is found to be detrimental to the interest of the consumers. While price gouging is not expressly defined under the Competition Act, any unjustified/unfair pricing may be analyzed under provisions of the Competition Act as being anti-competitive. For instance: An exponential increase in price of a product from the price being charged previously, with only an intention of profiteering from the current crisis, may attract scrutiny of CCI in addition to scrutiny by other regulators.

- **Differential Pricing:** The businesses may unilaterally charge differential prices from certain set of consumers based on an unjustified criterion, including type of consumers such as hospitals, public institutions, individuals etc., or based on the income of consumers in an area. Such action by an entity may potentially harm the interest of the consumers and other customers as well. For instance: The CCI had, in a matter, initiated an investigation into the allegation of charging different trait fee in different states, without justifications.

The Competition Act, under Section 4, prohibits an entity from abusing its dominant position by imposing an unfair or discriminatory price in purchase or sale of goods or services. It was therefore critical for business entities to make sure that their pricing decisions are based on reasonable business justifications and are not implemented in an arbitrary, discriminating or unfair manner. Joshi et al. (2020)

Collective Conduct

The Competition Act, under Section 3(3), prohibits entities engaged in same or similar businesses from entering into an agreement to determine the purchase or sale prices of a product or service directly or indirectly, and presumes such conduct to have an Appreciable Adverse effect on competition (AAEC). In this regard, the CCI issued a clarification/advisory, acknowledging the disruptions caused in the supply chain due to the ongoing pandemic and the probable need for businesses to coordinate certain activities. In its advisory, the CCI noted that in order to cope with the significant changes in the supply and demand patterns arising from this extraordinary situation, businesses may need to coordinate certain activities by way of:

- Sharing data on stock levels,
- Timings of operations,
- Sharing of distribution network and infrastructure,
- Transport logistics,
- R&D data etc.

In its advisory, the CCI clarified that coordinated conduct which results in increasing efficiencies, is protected from retribution within the Competition Act.

However, the CCI cautioned that only such conduct, which is necessary and proportionate to address the concerns arising out of Covid-19, would be granted favorable consideration and that businesses must not take advantage of the current situation to contravene the provisions of the Competition Act. Therefore, during the current circumstances, businesses should not engage in coordinating and taking collective decisions on pricing of products/services to meet the challenges being faced by their business during the crisis. (Abhay Joshi, 2020)

Measures taken by Antitrust Authorities of Other Jurisdictions

Competition regulators and other authorities across the globe issued advisories and guidance for the businesses which were struggling to deal with the crises, to help them navigate through these challenging times. With respect to pricing of essential products, the Competition and Markets Authority ("CMA") of the UK, was quick to issue a warning on excessive price increases and the possible introduction of statutory rules. The CMA also launched a task force to combat rise in prices of essential drugs. (Kaur, 2021) Similarly, the European Competition Network of national regulators in the EU issued a joint statement on the application of anti-trust laws in the EU during the crisis, explicitly stating that the regulators would not hesitate to take strict action against companies trying to take advantage of the vulnerable situation by abusing their dominant positions. The Department of Justice of the United States, in the same vein also set up a task force to address Covid-19 related anticompetitive conduct inter alia price gouging. Other jurisdictions like Brazil, Greece and South Africa reviewed possible anti-competitive conduct of increased prices for face masks and hand sanitizers or issuing words of caution against indulging in any anti-competitive practices. The Italian Competition Authority started its investigation into the alleged unjustified price increases of face masks and hand sanitizers on certain platforms like Amazon and eBay.

COVID VACCINE AND COMPETITION COMMISSION OF INDIA

Natco v. Bayer, Compulsory Licensing, and Competition law –

IP laws in India have long made provision for the grant of a compulsory license. However, section 84 of the Patents Act, 1970 (Patents Act), the provision under Indian patent law that provides for the issue of a compulsory license, was enforced for the first time in Natco v Bayer, (Natco Pharma Limited v. Bayer Healthcare LLC, 2019) in relation to Bayer's patented drug 'sorafenib tosylate'. In Natco v Bayer, the Controller General of Patents, Designs and Trademarks of the Indian Patents Office (Controller) concluded that all three grounds on which a compulsory license could be granted under Section 84 of the Patents Act were satisfied. A compulsory license for the manufacture and sale of sorafenib tosylate was granted to Natco for the balance term of the patent, subject to the payment of a royalty of six percent of the net sales of the drug to Bayer. (Natco Pharma v. Bayer Corporation, 2012) Many in India believe that Bayer's failure to substantiate the costs involved in developing Nexavar was one of the principal reasons why the Controller found reason to issue the compulsory license. Nexavar was accessible to only two percent of the total number of

potential patients, despite four years having lapsed since the grant of the patent. The controller's reliance on ground that is, 'that the patented invention has not worked in the territory of India', has caused much concern. The controller interpreted the expression 'worked in the territory of India' to imply that a patented product must be manufactured in India to a reasonable extent or that the patentee must grant a license to third parties to manufacture the patented product in India. (Muthappa, 2012)

It is also relevant to note that the Controller found that Bayer failed to contribute to the transfer and dissemination of technology, to counterbalance the exclusive rights granted by a patent with the obligations of a patentee that arise under the Patent Act. It appears, therefore, that like a competition authority, the Controller balanced the interests of a patent holder, on the one hand, with the interests of promoting and sustaining competition, on the other hand. Muthappa. (2012)

Covid vaccine price issue and Competition Commission of India (CCI) –

Although the Nexavar and Covid vaccine issue differ in their severity or emergency of the situation it is also true that one cannot avoid the difference in decision making approach by the authorities.

In CCI vs Bharti Airtel & Ors 2018, (IndianKanoon, 2018) the Supreme Court maintained that the CCI is the only authority competent to deal with issues related to competition across the economy, including in sectors with their own regulators.

But the Union government justified the new vaccine policy in the Supreme Court on grounds that it would help "make pricing, procurement and administration of vaccines more flexible and competitive and would further ensure augmented vaccine production as well as wider availability of vaccines" and ensure "market driven affordable prices." The Supreme Court (order dated 30 April 2021) invoked Articles 14 and 21 of the Constitution and asked the government to revisit the new policy that has made room for differential pricing. The Court did not refer to the Competition Act, 2002 even though the Center justified the new policy primarily on grounds that it will promote competition. (Singh, 2021)

Even if the interstate disparity is ignored, the new policy does not even help increase the supply. The supply is inelastic in the short run due to capacity restraints. Given the long gestation time to develop and test vaccines and secure approvals, competition among buyers will not automatically lead to the entry of new suppliers and higher output unless the government relaxes, intellectual property rights. Competition among states for a good whose demand is inelastic and the predictable reluctance of leading vaccine manufacturers including Moderna and Pfizer to directly deal with states has allowed the existing manufacturers to raise prices and charge similar entities differently.

The new policy adversely affects socio-economically weaker sections and economically weaker states, both of which account for a larger fraction of the population in younger age groups that are no longer eligible for free vaccination at most places. (Singh, 2021) Moreover, these states do not have adequate healthcare facilities to deal with the pandemic, while their already weak financial condition has been further

undermined by the pandemic and they are unable to buy vaccines. The new policy, therefore, not only violates Articles 14, 15(1) and 21 of the Constitution, but also abandons the longstanding commitment of the center to support weaker states within the Union.

CCI's SILENCE?

While the issues related to fundamental rights and federalism require the Supreme Court's intervention, the narrower but crucial issue of competition warrants Suo moto intervention by the CCI under Section 19(1) of the Competition Act, 2002. The CCI must investigate the abuse of dominance under Section 4 of the Act. Prima facie manufacturers in the hitherto duopoly market seem to have used their position of dominance to demand different prices for the same product from different consumers. While the center, state governments and private hospitals may appear to be different buyers, the ultimate consumer remains the same and is now facing both scarcity of vaccines and price discrimination. There is hardly any competition as the demand is inelastic and exceptionally large compared to the supply. In absence of state intervention, this allows the sellers to charge different prices to different buyers. Singh. (2021)

To begin with, the CCI needs to address two questions. First, is price discrimination necessarily bad? The Robinson-Patman Act (Federal Trade Commission, n.d.) in the United States and, also, the article 102 Treaty of the Functioning of the European Union (Consolidated Version, 2012) along with an order of the Court of Justice of the European Union suggest that price discrimination can be justified only when the difference in price reflects "the different costs of dealing with different buyers or are the result of a seller's attempts to meet a competitor's offering." Neither condition holds good in the case of Covid vaccines.

Second, is the Competition Act equipped to deal with cases involving price discrimination and stakeholders like the government? Section 4 Subsection 2(a)(ii) of the Competition Act defines "discriminatory price in sale or trade of goods or service" by an enterprise or group as a form of abuse of dominance. In the recent past, the CCI has in several cases – No. 62 of 2016, (2020) 13 of 2017 (2017) and 30 of 2017 (2018) – investigated the abuse of dominance resulting in price discrimination. So, prima facie, the CCI can investigate the potential abuse of dominance by manufacturers in the current case. So far as extending the CCI's ambit to non-business enterprises including the State is concerned, it is imperative that all anti-competitive choices in markets be brought under the purview of the Competition Act. (Singh, 2021)

IPR AND COMPETITION LAW – AN UNSUCCESSFUL MATRIMONY

In Covid vaccine patents issue, not entirely clear, but drugmakers and some analysts say waiving their patent rights will not do much to get COVID-19 vaccines to developing countries faster. That is because making the vaccines is far more complex than following a recipe, requiring factories with specialized equipment, highly trained workers, and stringent quality control – things that cannot be set up quickly. So alternatively, some are arguing that idea of patents and compulsory licensing should be abandoned, and the government must take the following steps: It must, using the wide powers it has under the Disaster Management Act and the Drug (Prices Control) Order, fix the price for procuring vaccines in bulk by the center. The

center must supply vaccines to the states as per a transparent formula. States should be allowed to decide the priorities for rolling out the vaccination program. (Karat, The Covid Vaccine Scandal, 2021)

To accelerate vaccine production, compulsory licensing must be invoked and the production of Bharat Biotech's Covaxin (research for which was publicly funded) be assigned to the six public sector drug companies and other private concerns. This is apart from speeding up the production of the Sputnik V vaccine in India by the various companies who have applied for its production. These efforts are to be supplemented by the urgent imports of vaccines from wherever they can be acquired. (Karat, The Covid Vaccine Scandal, 2021)

It is generally seen that IPR, and competition law have conflicting objectives. The reason behind that is that IPRs, by ascertaining limits within which competitors may exercise the exclusive legal rights (monopolies) over their invention, this seems to be against static market access and level playing fields in competition rules, specifically restricting the horizontal and vertical limits, or on the abuse of monopoly position.

The word 'competition' is used in different sense by IPR and Competition Law –

The connotation of 'competition' in both IPR and competition law are different. The main objective of permitting license in IPR is to encourage competition among the prospective innovators and concurrently restrict the competition in several ways and after a specified period, the rights go to the public domain ending the competition. The primary objective of competition law is to stop the abusive practices in the market, stipulate and encourage competition in the market and make sure that customers get the proper product at an affordable price with improved quality. (Parveen, 2019)

Intellectual property rights and competition law have been identified as an unsuccessful marriage. The former can be seen as promoting monopolies, while the latter is meant to combat them. In other words, IP regulation, on the one hand, works to establish monopoly rights, while antitrust law contests it. Parveen. (2019)

The Exception to IPR under Section 3(5) of the Indian Competition Act 2002 -

The Indian Competition Act 2002 is intended to avoid IPR interference. However, where the CCI considers that an Appreciable Adverse Effect on Competition (AAEC) is caused by IPRs, the Act provides for the prospect of acting. More importantly, Section 3(5) of the Indian Competition Act 2002 includes an exemption provision relating to the use of IPRs, which permits the use of these exclusive invention rights in a fair manner. "Fair use" means that Section 3(5) of the Act only requires IP holders to enforce "reasonable terms" on their IP security licenses without having complications with competition law. (Sood, 2020)

Indeed, unlike the former Monopolies and Restrictive Trade Practices (MRTP) Act of 1969, India's Competition Act does not forbid supremacy, but rather prohibits the exploitation of dominance per se. In view of the economic growth of the country post-liberalization and privatization, the Indian Competition Act was passed. The change has been from 'command-and-control" triggered policies to a free-market approach, and so now, "monopoly" is not bad per se, but it is justifiably exploitation of this "monopoly".

The exemption provision of Section 3(5) of the Indian Competition Act, 2002, however, find its limit in Section 4(2) of the Indian Competition Act, which provides that a misuse of a dominant position is to take place when an undertaking imposes unjust and discriminatory requirements or rates on the purchase and/or selling of products. Sood. (2020)

Therefore, the interests of IPR holders, to the detriment of customers, impose limitations to their use. This means that under Indian Law, when licensing the IPR, IPR-holders will not impose arbitrary limitations on inventions. There is no fixed list of "unreasonable" limitations, and this decision would have to be conducted on a case-by-case basis much of the time. Section 83(f) and (g) of the Patents Act, 1970, for example, provides that a patent proprietor or an individual acquiring the title or interest in a patent shall not adhere to activities that 'unreasonably' limit trade or adversely impact the international transfer of inventions and that the patented invention should be made available to the public at fair rates. (Sood, 2020)

TRIPS regarding IPR policy and Competition Law –

There are generally two approaches that have been adopted to prevent IPR abuse (Preventive Measures): (Parveen, 2019)

- Compulsory licensing (an involuntary contract between a willing buyer and an unwilling seller imposed and enforced by the state) and
- Parallel Imports (goods bought into a country without the authorization of the patent, trademark or copyright holders after those goods were placed legitimately into the market elsewhere).

Under Article 31 of the TRIPS (Trade-Related Aspects of Intellectual Property Rights) Agreement provides for the grant of compulsory licenses, under the following situation:

- In the interest of public health
- In case of national emergency
- Anti-competitive practices

Secondly, there are many inferences regarding the interlink between competition policy and IPR that requires to be considered. Authorities regulating competition policy should consider each use relating to IPRs with reason approach. However, abuse of dominance laws could be applied to IPRs, and suitable remedies taken, this will reduce high potential cost regarding reducing incentives to innovate.

Curious case of 'Covishield' pricing –

Adar Poonawalla, CEO of serum Institute, issued a statement on April 24 to address the "ongoing public skepticism and confusion towards the pricing of Covishield". The statement tried to address the controversy over whether the price of the vaccine at ₹600 (nearly $8) per dose for private hospitals was more than its cost when it was exported. He said: "It is not a different price (for State and Central government supplies). All government prices will henceforth be ₹400 for new contract. The ₹150 per dose for the Central government was for prior commitment and contracts. It ceases to exist after we supply 100 million doses to them. We will also charge ₹400 to any government, let me clarify that." (Prasad, 2021)

These remarks had come in after the SII's statement of April 21 announcing the price of the vaccine for State governments (at ₹400 per dose) and private hospitals (₹600 per

dose) but which did not mention the price at which the vaccine should be sold to the center.

The April 24 statement, by remaining silent on the Health Minister's clarification, has kept the question over "differential pricing" alive.

As regards the higher pricing for private hospitals, the statement said, "The initial prices were kept very low globally as it was based on advance funding given by those countries for at-risk vaccine manufacturing". Prasad. (2021)

In the April 24 statement, Mr. Poonawalla also made the point that vaccines used in the universal immunization programme were sold at a far lower price as the volumes were large. He cited the example of pneumococcal vaccines that are sold at a higher price in the private market, while the government is charged only one-third the cost. Mr. Poonawalla brought in the issue of the investment needed to scale-up manufacturing capacity to fight the pandemic to justify the higher costs. But what he left unsaid was that based on his demand for ₹3000 crore to meet the cost of ramping up production capacity, the government had already agreed to advance that amount of SII, and ₹1,500 crore to Bharat Biotech. (Prasad, 2021)

While Mr. Poonawalla says that "only a limited portion of Serum's volume will be sold to private hospitals at ₹600 per dose", India is the only country that is selling the vaccines to private players.

This is one clear example of the void that sustains when IP rights like patents and compulsory licensing cannot be granted, automatically creating an anti-competitive market where price discrimination arises in the hands of monopolistic/duopolistic/oligopolistic market and enterprises involved there in, which in this case are pharmaceutical industries.

CONCLUSION

It is imperative for businesses to note that the Competition Act continues to be operational in full force, and the current circumstances cannot be relied upon to justify any anti-competitive pricing decisions. (Abhay Joshi, 2020) The CCI continues to be empowered to monitor and take Suo motu cognizance of any alleged or possible contravention of the provisions of the Competition Act. Although competition authorities globally, including India, have recognized the importance of collaborative efforts in times of crisis, they will continue to scrutinize any alleged exploitation of consumers or market vulnerabilities caused during the current circumstances.

But the CCI cannot afford to remain silent, particularly, when the rights of citizens are under threat due to arbitrary executive action that has created anti-competitive market condition that obstruct equitable access to vaccines.

If, however, the matter is not referred to the CCI, we have limited remedies. The Supreme Court's order (30 April 2021) repeatedly exhorts the executive to ensure that Article 21 is respected, while adding that the judiciary has no intention to interfere in policymaking. Using Article 21 as the point of departure renders the investigation of the problem and possible remedies open-ended. A reference under the Competition Act will require

companies to explain the economic rationale behind their pricing and nudge the Union government to demonstrate in concreate economic terms how the new policy enhances competition and clarify if economic efficiency enjoys priority over other considerations such as equity in public policy. (Singh, 2021)

Also, it is argued that the crucial fact, however, is that the modern vaccines, especially those from Biotech/Pfizer and Moderna and, if authorized, in the future from Curevac, which are all based on messenger RNA and can be readily adapted to mutations, are derived from technologies that are themselves protected by basic patents that have already been granted or are still to be granted. (Hilty, 2021) If the patent protection for vaccines were to be suspended, this would have to be the case for such basic patents, because they play a role in production. It is unlikely that this would increase incentives for the pharmaceutical industry to continue investing in such future technologies. Those who challenge patent protection at this point are therefore playing with fire.

The Natco v Bayer decision sets the precedent for making expensive patented drugs available for compulsory licensing under the Patents Act. However, questions remain as to whether competitors of dominant undertakings holding patent rights may use section 4 of the Competition Act to enable them to compete on the same market as the IP owner.

The CCI may be tempted to intervene when a patent monopoly fails to address social and developmental concerns and where public demand for a life-saving drug has not been met. (Muthappa, 2012) Though competition law is a tool used for the attainment of economic freedom and prosperity in developed economies of the EU and the US, in a nation such as India, competition law may be motivated by other considerations, including access to healthcare. Pharmaceutical countries may find great risk in operating in India if competition intervention is used to remedy social inequity rather than to ensure a competitive marketplace. In the case of duopoly of vaccine manufacturers Serum Institute of India and Bharat Biotech, the severity of the worldwide pandemic, for now, defended the shelving of competition law, patents, and compulsory licensing. But the queries which still needed to be discussed are:

- How is the government justifying the price discrimination maintained by the two drug manufacturers for quite a long time amid crises?
- How this pricing criteria was helpful to the already economically shattered market and people during the pandemic?
- How had this affected the competition in the market? Was this duopoly necessary or was it just convenient?
- How was the balance maintained between health of citizens and safeguarding someone's innovation through patents?

For now, we have relied on what Adar Poonawalla has to say on price discrimination, as discussed in above paras. However, this should not lead to avoidance of questions put above.

The Competition law applies to IPR in relation to abuse of dominant position and combination. Therefore, abuse of dominance

due to an IPR is liable for action under the Competition Act just as IPR-related dealings in combination leading to an anti-competitive effect. After analysis, it can be concluded that IPR is a right while on the contrary Competition law is regulating body which makes the regulations regarding the production, supply, distribution and storage of goods etc., to be performed by the enterprise while operating the market. IPR is said to be some benefit given to the creator of any product or author of any script to make exclusive use of it for a specified period. We can support this by labor theory according to which a person is liable to get the benefit of all hard work and labor work. (saxena, n.d.) It should be borne in mind that as mentioned in the above discussion, the only controversy occurring between IPRs, and Competition laws occurs due to the monopolistic impact of the IPRs. We must not ignore those short-term monopolies (Patents-20 years, Copyrights-life+60 years) are given by IPRs, which means that it supplies the innovator with benefits and encourages them to apply its industrial application as well. In these cases, the role of competition law is to enforce IPR regulations where IPR holders misuse their dominant roles, violating the 'fair use of their rights under section 3(5) of the Indian Competition Act. In such cases, appropriate powers should be granted to the CCI to deal with IP problems that create market distortions and are recognized by the jurisdictions. (Castle, 2009)

The rule of rivalry though does not go too far. From a competition law point of view, the threshold of its empowerment does not surpass such situations in which the IPR has a major adverse impact on competition.

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