

Intellectual Property Rights, And Competition Law
Prof. K D Raju
Prof. Niharika Sahoo Bhattacharya
Rajiv Gandhi School of Intellectual Property Law
Indian Institute of Technology, Kharagpur

Lecture - 43
Summary

Dear students this is the last part of this particular course, we were happy to offer this particular course and there were a lot of objectives. Because, in India the IP and competition law is a new area, a new branch of law and economics which came into play very recently through a number of cases that came before the competition commission and other relevant authorities.

So, the main objective of this course was to know about the interface, our focus of the course was on the intellectual property versus competition law. So, what were the different categories? In the beginning, in the first part of our course, it was introduction to intellectual property law which contained all the 7 categories of intellectual property law; starting from patents, trademarks, copyright and then geographical indications, integrated circuits and undisclosed information and also the designs.

So, all 7 categories of intellectual property law were explained in the first part and in the second part we discussed about the introduction to competition law. And, within the competition law we tried to understand what are the two major domains of competition law i.e. the abuse of dominance and anti-competitive practices. And after this particular module which gave bare minimum of understanding of competition law, we moved to competition law versus intellectual property law, that was the core of our course.

The core discussion of our course was on competition law and intellectual property law and we discussed the different concepts of intellectual property law as well as the competition law. So, simply we can see that in the interaction between intellectual property and competition law the borderline is very thin. And intellectual property law gives monopoly rights for a minimum period of time, at the same time the competition law never prohibits monopolization, but it prohibits the abuse of monopolization.

And you can see the different categories of the competition law branch and different prohibitions like in the areas of tying, cartelization and monopolization and the geographical distribution of markets and so forth. And how these intellectual property protection interfaces with the competition law, how the technology areas for example, in the United States as well as in European Union the Microsoft was heavily fined. The Microsoft was a major software company, not only software company. Because of the technology, company was fined.

The reason was that the authorities in US as well as in the European Union found that this company was engaged in different activities which were against the allowed monopolization within the intellectual property framework. They violated some of the provisions of the competition law. So, they were heavily fined, but when we come to India, the branch of competition law itself is very new to the Indian authorities. And according to the TRIPS agreement we fully complied with the intellectual property law.

So, we came out with a set of intellectual property legislations and then a new competition law. So, the jurisprudence is simply emerging and the next part Niharika will explain to you, in the second half, about the Indian law in detail. And, in the last part of we were discussing about the different jurisdiction, a comparative jurisdiction of the US as well as the European Union.

If you look into United States you can see that the antitrust law is considered as one of the very important *magna carta* of business. Because, this is one of the first country which came out with a law on competition. It promotes competition in the United States. The antitrust law is very strong in the United States and is considered to be one of the rich jurisprudence.

The rich jurisprudence which has emerged for a period of more than a century, is also guiding principles to other countries as well. So, we discussed the pros and cons of the antitrust law from the very beginning. And also in the module we discussed almost all important cases with regard to competition law versus intellectual property law. And then we switched over to the European Union as well as the Indian competition law.

So, these were the module which we covered. Actually entire course itself is modelled in such a way that, the students of this particular course can understand the entire area of intellectual property and competition law and whether they are really conflicting or supplementing. And, we said many times that the competition law supplements the intellectual property law rather than conflicting with each other.

And, my colleague Niharika will explain to you the next modules which we tried to present before you.

Thank you sir.

Hello all. So, brief introduction was given by Professor Raju, after going through the different fields of intellectual property law we are now in a position to understand that the aspects of competition law are not restricted to patent per se, it is applicable throughout all forms of the intellectual property law. And these are depending on the jurisdiction whether it is US or European Union or India, the main motto of both IP and competition law remains the same: to promote innovation and promote a fair competition for the welfare of the society.

So, having set these two aims of IP and the competition law, in the Microsoft case particularly the European court of justice has said that in case of these European Union and particularly also in India, monopoly or dominance is per se not bad. However, abuse of dominance is considered to be anti-competitive in certain cases. It is said that when there is an IP holder, in addition to the intellectual property, there is a greater responsibility for the dominant player or the IP holder.

And, further the case becomes much more complicated when this IP in the form of patent or other than patent becomes the technological standard which becomes the standard essential patent. So, the holder of the standard essential patent right has more responsibility towards the society and towards the other probable licensees.

So that the development of the new products are not stopped or the consumer per se are getting all the benefits as explained in the principles of the competition law. So, if you look into the jurisprudence of India, India has basically followed the competition law

from the European jurisdiction. Earlier when there was MRTP Act, it basically got inspired from the US Sherman's Act and Clayton Act, where the act was basically to control the monopoly.

But, when the Competition Act of 2002 came into practice, it is now more on the following path of the European jurisprudence and law. And, if you compare US, India or European Union; in India as well as the European Union, the European commission on the competition or the Indian CCI; both are like administrative bodies which control the anti-competitive behaviour of the various firms.

Whereas, in the US FTC Federal Trade Commission as well as the department of Justice both of them take equal participation to determine the civil, the administrative as well as the criminal sanctions on these things. But having said this, the main motto remains the same to promote competition, fair competition and promote much more innovations. And in the European cases we have dealt with many cases starting from the Microsoft, then IMS and Magill, the jurisprudence was defined, the exclusionary abuse or exploitative abuse has been taken into consideration.

And even the latest judgment in the Huawei versus Jetty took into account both the Samsung and the Motorola decisions. And somewhere there is a responsibility from the patent holder not to grant injunction or not to think about injunction when there is a probable licensee who is willing to take your license under the FRAND terms. And, it is not on the part of this licensee to say that the patents are not valid or invalidation claim can be made.

So, as we saw through these cases, the jurisprudence is quite developing, also in case of India the Micromax-Ericsson case was one of the landmark cases, where not only the jurisprudential issue like a jurisdiction of the High Court has been challenged. So, these are still in a developing phase and with the upcoming ICT technologies and this telecom wars we are yet to see much more developments in this area; particularly in the Indian system.

Since, in the European Union there are case laws as well as soft laws in the form of guidelines whereas, the case laws has sometimes taken commission's view point as well

as also taken into consideration the soft laws, but in case of the India our case laws are just being developed.

So, much more developments are yet to be seen as the technology is developing and in this course we just wanted to give you a basic understanding of this IP and competition law, how these two fields of the study are complementary to each other. Individually IP holder per se cannot enjoy all the right, when it is going against the principle of the competition law.

We hope this course has been beneficial to you all and thank you for watching us throughout this lecture series. And, we will wait for your comments and valuable suggestions and we would be happy to answer your queries, if you have any.

Yes, I think the students have already completed half of the courses and the rest of the courses are going on. And, we encourage all the students to read more on the issues. And there is a one book available which I have written sometime back on IP and competition law which you may read and also the reading materials are also uploaded. Please go through that. So, the final question is not going to be too tough.

But definitely you have to complete the courses. And, we hope that this course is going to get each one of you and when you will go ahead this is going to be an important area of jurisprudence which is emerging between IP and competition law and this is a new area of the course. As Niharika already said that our objective is only to give some basic idea on the interplay between intellectual property and competition law.

So, we hope that this is going to be beneficial to all the students. And also we hope that this is going to be in advance stage in sometime. And, we wish all the participants of this course, all candidates of this course all the best for your remaining modules and also for the exam.

So, thank you so very much.

All the best to you all. Thank you.

All the best to all of you. Thank you.