

AN ANALYSIS OF INTERPLAY BETWEEN COMPETITION LAW AND INTELLECTUAL PROPERTY RIGHTS IN HEALTHCARE SYSTEM

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ABSTRACT

This research paper explores the intricate relationship between competition law and intellectual property rights (IPRs) within the healthcare sector. It examines how competition law principles intersect with the protection of IPRs, focusing on their impact on innovation, accessibility, and affordability of healthcare products and services. Through case studies and comparative analysis, the paper discusses the challenges of balancing competition and IPRs, highlighting the need for regulatory frameworks that promote both innovation and consumer welfare. It concludes with policy recommendations aimed at fostering a harmonious coexistence between competition law and IPRs to ensure equitable access to healthcare while incentivizing continued innovation.

Keywords: Healthcare, Accessibility, Consumer Welfare, Competition Law, Intellectual Property Rights

INTRODUCTION

Competition law serves as a cornerstone in fostering market dynamics that prioritize consumer welfare, fair trade, and the efficient distribution of resources. By advocating for open markets and discouraging monopolistic behaviour, competition law aims to cultivate an environment where businesses compete on merit, innovation thrives, and consumers benefit from a wide array of choices. In stark contrast, intellectual property legislation, while essential for incentivizing innovation, often grants exclusive rights that can potentially stifle competition. This intrinsic conflict between competition law and intellectual property rights (IPRs) creates a difficult situation in industries like healthcare, where affordability and accessibility are just as important as innovation.

In the context of the Indian healthcare industry, this article especially looks at how competition legislation and intellectual property rights interact. It aims to provide light on situations in which the defence of intellectual property rights may unintentionally stifle competition, so

restricting access to necessary healthcare goods and services, by examining a range of actions and practices within this sector. Although international viewpoints on intellectual property rights and competition law offer useful insights, it is crucial to recognize the distinct operational environment of the healthcare sector in India.

By exploring these complexities, this paper aims to provide insights into the challenges and opportunities at the intersection of competition law and IPRs in the Indian healthcare system. In the end, it looks to provide suggestions that strike a balance between the necessity of protecting intellectual property to encourage innovation and making sure that competition thrives, improving accessibility, cost, and the calibre of healthcare services for all parties involved.

RESEARCH METHODOLOGY

This research study examines the intricate relationship between intellectual property rights and competition law in the healthcare industry

using a qualitative research approach and secondary data analysis. This study attempts to understand the dynamics and difficulties faced by stakeholders in navigating the intersection of these two domains by a comprehensive assessment of the literature that includes case studies, industry reports, academic articles, and legal frameworks. Because of resource constraints, primary data collecting and experimentation are not included in this study; instead, it only looks at secondary data sources. To guarantee the accuracy and integrity of the analysis, ethical standards are maintained at every stage of the procedure. The study aims to reveal patterns, themes, and correlations relevant to comprehending the complex link between competition law, intellectual property rights, and healthcare innovation through the application of qualitative analysis approaches.

LITERATURE REVIEW

The literature review provides a comprehensive examination of past studies, theories, and models concerning the interplay between intellectual property rights and competition laws within the healthcare sector. It encompasses a wide array of sources, including scholarly papers, industry analyses, case studies, and legal doctrines. Key themes explored include the impact of intellectual property rights protection on innovation and availability of healthcare products, the role of competition regulations in safeguarding consumer welfare and stimulating market rivalry, and the challenges involved in balancing intellectual property rights with the imperative of ensuring accessible and affordable healthcare. By synthesizing and appraising these diverse perspectives, the review establishes a framework for understanding the dynamic and intricate dynamics inherent in this significant area of inquiry.

METHOD – COMPETITION LAW IN HEALTHCARE

Fair competition and patient choice can be enhanced by outlawing the use of brand names that are confusingly close to generic chemical names, as specified by the Trademarks Act and

the Drugs and Cosmetics Act. In addition, setting industry norms for medicine packaging and design components helps improve uniformity and reduce consumer confusion. It is imperative to acknowledge the distinct attributes of the Indian market and refrain from mindlessly implementing Western regulatory frameworks. Rather, emphasizing creative methods of market regulation can assist in overcoming obstacles and cultivating a competitive atmosphere that gives the needs of consumers and moral behaviour in the healthcare industry top priority.

In order to maintain fair competition, protect consumer interests, and shape the dynamics of the healthcare industry, competition legislation is essential. For example, pharmaceutical corporations abusing their patent monopolies can raise drug prices and make it more difficult for people to have access to necessary medications. Competition authorities have two options for intervening: they can penalize businesses that engage in anti-competitive behaviour, or they can encourage generic competition by enacting laws requiring prescription medication licenses. These treatments encourage innovation by fostering competition among pharmaceutical companies, in addition to cost and accessibility.

In addition, competition law enforcement is essential in controlling mergers and acquisitions in the healthcare industry in order to avoid market consolidation that can lessen competition and raise costs. Competition regulators can protect patient access to a variety of healthcare providers and services and protect consumer welfare by closely examining mergers for possible anti-competitive impacts and enforcing restrictions to maintain competition. In general, encouraging innovation, affordability, and accessibility of healthcare services depends on the efficient use of competition rules in the industry. Competition legislation advances public health and the general well-being of society by creating a competitive marketplace

that promotes effectiveness, quality, and consumer choice.

INTELLECTUAL PROPERTY RIGHTS IN HEALTH CARE

Intellectual property rights, or IPRs, are essential to the healthcare industry because they safeguard research and development investments, encourage innovation, and facilitate access to medical innovations. Like many other markets throughout the world, the Indian healthcare industry is largely dependent on the protection provided by several types of intellectual property, such as patents, trademarks, and copyrights, to promote innovation and propel improvements in medical procedures, equipment, and medications.

Providing a framework for innovators to obtain exclusive rights to their ideas is one of the main purposes of intellectual property rights in the healthcare industry. Specifically, patents give inventors the temporary, usually 20-year, exclusive right to commercialize their ideas, giving them a window of market exclusivity to recover their R&D expenditures. Since of this exclusivity, pharmaceutical companies and makers of medical devices are encouraged to engage in the creation of novel therapies and technology since they will stand to gain financially from their discoveries.

Moreover, trademarks are essential for safeguarding the brands connected to healthcare goods and services. Because consumers frequently rely on reputable brands when making decisions regarding their health and well-being, brand awareness and reputation are crucial in the healthcare industry. With trademarks, businesses may create brand loyalty, protect their reputation in the marketplace, and set their products apart from those of their rivals.

Copyrights are another important tool for safeguarding intellectual property in the healthcare industry, in addition to patents and trademarks. Original works of authorship,

including software, textbooks, and medical publications, are shielded against unauthorized duplication and dissemination by copyright law. The advancement of medical research and education depends on the creation and sharing of important knowledge and information, which is encouraged by this protection.

Even though intellectual property rights are crucial for encouraging innovation and expanding access to medical technologies, they can present serious obstacles, especially when it comes to obtaining necessary medications and medical services. For example, the high price of patented medications may prevent patients in low- and middle-income nations, where healthcare finances are tight, from accessing some treatments. Policymakers and healthcare stakeholders need to find a balance between encouraging innovation and guaranteeing that everyone has access to reasonably priced healthcare in order to address these issues.

Compulsory drug licensing is one way to exploit the flexibilities in the intellectual property system to balance these conflicting interests. Governments may, in certain situations—usually related to public health emergencies or underutilization of copyrighted inventions—issue compulsory licenses to third parties so they can produce generic versions of patented medications without the patent holder's approval. This approach aids in promoting public health goals, lowering drug prices, and enhancing access to necessary medications.

THE AMBIGUOUS RELATIONSHIP BETWEEN INTELLECTUAL PROPERTY RIGHTS AND THE INDIAN COMPETITION ACT

As expressed by a pharmaceutical industry expert, there's a sentiment of frustration surrounding the alignment of anti-competitive practices related to intellectual property rights (IPRs) with the provisions of competition law. This sentiment is rooted in the perception that any issues pertaining to IPRs must be fit into the framework of "abuse of dominant position"

under **Section 4⁷²**, which may seem like a mismatched solution. However, this perspective overlooks the fact that the exemption for IPRs from **Section 3** applies specifically to agreements, rather than providing a blanket immunity from all provisions of the Competition Act. Thus, if there is an instance of an abuse of dominant position enjoyed by an IPR holder, the Competition Commission of India (“CCI”) would have jurisdiction to inquire into such abuse.”

⁷³While exclusions from Section 3 have been granted to individuals seeking to protect their intellectual property rights and agreements for the export of goods, the CCI still retains the authority to evaluate the reasonableness of any restraints exercised in the course of enforcing intellectual property rights.⁷⁴

The relationship between IPR and competition policy has been the subject of extensive debate, especially following legislative reforms enacted in numerous developing countries, as mandated by the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) in 1995. While IPR is widely acknowledged for its role in fostering innovation by providing legal monopolies, it also raises concerns regarding competition, particularly in sectors like food and healthcare where the diffusion of intellectual property is considered paramount to incentivizing invention. Notably, discussions surrounding IPR and competition law have primarily revolved around patents, with limited consideration given to how other forms of IPR, such as copyright, trademarks, and design, may also give rise to competition law issues.

This paper endeavours to explore the utilization of IPR within the Indian healthcare industry and

to identify the competition law challenges that emerge as a result. By delving into the intricacies of how IPR is employed in this context, this research seeks to shed light on the nuanced interplay between intellectual property rights and competition law in the healthcare sector.

IMPACT OF HEALTHCARE MARKETS AND CONSUMERS

The influence of healthcare markets on consumers is not limited to accessibility and cost; it also encompasses patient empowerment and care quality. Providers are motivated to offer top-notch services in competitive markets in order to draw in and keep patients. Patient outcomes, contentment, and the general healthcare experience may all improve as a result of this. Additionally, competition encourages innovation in the provision of healthcare, which results in the creation of novel therapies, cutting-edge equipment, and consumer-beneficial care models.

Alongside the advantages of competition, customers in healthcare markets may have restrictions on their options and a lack of information asymmetry. Consumers may find it challenging to make well-informed decisions regarding their care due to complicated price systems, opaque billing procedures, and a lack of clear information on provider quality. Furthermore, the growing trend of hospital mergers and acquisitions in the healthcare sector may restrict customer choice and stifle competition, which could result in higher costs and worse services.

Furthermore, broader social and economic issues, such as differences in access to insurance coverage, income, and education, have an impact on how consumers are affected by healthcare markets. Underprivileged and marginalized groups may suffer from worse health outcomes as a result of increased obstacles to receiving care. Targeted initiatives to increase insurance coverage, enhance access to care, and address social

⁷² Debolina Partap, Intellectual Competition, 5(9), <https://www.legaleraonline.com/articles/intellectual-competition> (last visited: 31st March 2024 IST 09:30)

⁷³ Vinod Dall, Injunctions Sought By SEP Holders – Abuse of Dominance or Protection of IPRs?, <https://www.legaleraonline.com/articles/intellectual-competition> (last visited: 31st March 2024 IST 09:45)

⁷⁴ Planning Commission, GOVERNMENT OF INDIA REPORT ON COMPETITION POLICY, 2007, <https://www.india.gov.in/website-planning-commission#:~:text=The%20Planning%20Commission%20was%20set,the%20service%20of%20the%20community>. (last visited: 31 MARCH 2024 IST 11:00)

determinants of health are necessary to address these discrepancies.

Healthcare markets have a wide range of complex effects on consumers, including affordability, quality, empowerment, and accessibility. While access, affordability, and quality of care can all improve with competition, there are still issues that need to be resolved to make sure that healthcare markets meet the needs of all customers and advance equitable health outcomes. These issues include information asymmetry, market consolidation, and disparities in access. Policymakers can seek to increase consumer welfare and the general health and well-being of society by encouraging competition, openness, and equity in healthcare markets.

THE SIGNIFICANCE OF MARKET DEFINITION IN COMPETITION LAW ANALYSIS

The Competition Act stipulates that the accurate identification of the market is a crucial need for any consideration of competition law. The applicable product market and the relevant geographic market⁷⁵ are the two main components that must be carefully examined in this crucial process.

Finding the relevant product market⁷⁶ is a very complex and multidimensional process that requires a thorough analysis that takes into account many factors. First, it entails closely examining the products or services in question's final usage or physical attributes. This means being aware of how customers use the items and the unique qualities that differentiate them from competing products on the market.

Second, the evaluation explores the dynamics of pricing for the products or services, including elements like price differentials, pricing strategies, and price elasticity of demand. Determining the limits of the market and possible alternatives that customers can think about require an understanding of pricing dynamics.

Customer preferences are a key factor in determining the limits of the applicable product market. To effectively define market groups and discover potential replacements, it is critical to understand consumer preferences, tastes, and behaviours.

Furthermore, the evaluation looks at how the definition of the market is affected by internal production, taking into account whether products or services are created solely by the company or are supplied from outside sources. This realization is essential to comprehending the dynamics of competition and estimating the size of the market.

In addition, the classification of industrial goods⁷⁷ and the existence of specialist producers are considered in order to determine the distinct features and dynamics of the market. Competition authorities can precisely define the market thanks to this thorough review, which also makes it easier to conduct a thorough competition law study that tackles possible anti-competitive behaviour and advances consumer welfare and market efficiency.

CONCEPT OF COMPULSARY LICENSE OF DRUGS AND ITS INTERPLAY WITH COMPETITION LAW

Market definition⁷⁸ is an essential first step in analysing the competitive dynamics of a particular industry or sector in competition law analysis. In this procedure, the limits of the relevant market—which usually includes the relevant product market as well as the relevant geographical market—are drawn. Establishing market boundaries is essential because it offers a structure for analysing competitive activity, determining market dominance, and spotting possible anti-competitive actions.

The interaction of competition law with mandatory drug licensing highlights how crucial market definition is to protecting

⁷⁵ S. 2(s), Competition Act, 2002.

⁷⁶ S. 2(t), Competition Act, 2002.

⁷⁷ S. 19(7), Competition Act, 2002.

⁷⁸ European Commission, Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (2004/C 31/03), <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2004:031:0005:0018:en:PDF> (last visited: 31st March 2024 IST 11:47)

consumer welfare and facilitating access to necessary medications. Through a process permitted by intellectual property law, governments can license third parties to manufacture generic versions of copyrighted medications without the patent holder's approval. This is known as compulsory licensing⁷⁹. Although the main goal of compulsory licensing is to increase access to reasonably priced medications, its execution may have a substantial impact on competitiveness and market dynamics.

Compulsory licensing affects market definition in the context of competition law analysis since it might change the competitive environment in the pharmaceutical sector. Compulsory licensing can increase competition and possibly cut consumer costs by broadening the scope of the relevant product market and facilitating the entry of generic competitors. The impact of compulsory licensing on market definition is contingent upon several circumstances, such as the presence of governmental barriers to entry, the availability of generic alternatives, and the patent holder's market strength.

THE INFLUENCE OF TRADEMARKS ON MARKET DEFINITION IN COMPETITION LAW ANALYSIS

In the Indian healthcare industry, trademarks have an impact on product substitutability from both the supply and demand sides. A trademark permits a product to be permanently associated with one manufacturer, while a patent grants a legalized monopoly for a predetermined amount of time in respect to a product. Trademark owners respond to this accusation of an unending monopoly by saying that anyone can enter a market with a trademark and compete fairly with already-existing items. There is also no limit on the number of trademarks that can exist in a market. To illustrate this, consider the numerous cases of late entrants dislodging market leaders. Although this is a strong case in and of itself, competition law faces a number of

obstacles due to the Indian healthcare industry's monopoly on patented products and the trademark's unlimited lifespan. The idea that anyone can compete by using their own trademark implies that competition is feasible, which isn't the case when a patent creates a monopoly, as is the case in the pharmaceutical industry in particular.

Although it is commonly taught that the purpose of trademarks was to enable products to be easily associated with their creators, namely the medieval English artisan guilds, this swiftly evolved into a right for the creator rather than a consumer protection measure. There is proof that commodities exchanged with distant nations like Mesopotamia and Babylonia had Harappan markings engraved on them. The legal recognition of the trademark as a species of incorporeal property was first accorded by the Court of Chancery in the first half of the 19th Century. In *Millington v. Fox*,⁸⁰ it was decided that it was not necessary to establish any intention to deceive on the part of an infringer against whom an injunction to restrain his use of another trademark is sought.

Therefore, the primary goal of a trademark is to unambiguously identify the product's place of origin.⁶² A trademark serves the purpose of informing the buyer, or potential buyer, about the origin or calibre of the goods, as well as pointing out to him the trade source or middlemen that the items pass through enroute to the market. It must therefore be differentiated from a property mark, which indicates that a piece of moveable property belongs to a specific individual.⁶⁴ Although registration grants an indefinite and exclusive right with regard to a registered mark, it does not, in the literal sense of the word, establish a monopoly in the mark. Trademarks give rise to exclusive rights as indications of the source and quality of goods; it is only when related to goods that they have life or value. A trademark is not a type of copyright.⁸¹ A trademark cannot exist in vacuum

⁷⁹ World Trade Organization, TRIPS Agreement (1994), art. 31

⁸⁰ *Millington v. Fox* (1838) 3 My & Cr 338.

⁸¹ Porterfield & C.R. Byrnes, Philip Morris

and should not therefore be considered property. It can only exist in connection with the goods in relation to which it is used or intended to be used.⁸²

THE EXTENSION OF PATENT MONOPOLY THROUGH TRADEMARKS IN THE PHARMACEUTICAL INDUSTRY

Trademarks have a major effect on competition and customer welfare in the pharmaceutical business by expanding the reach of patent monopolies. While trademarks⁸³ offer extra protection by enabling businesses to set their products apart from rivals in the marketplace, patents only give inventors the temporary right to manufacture and sell their discoveries. This distinction essentially extends the monopoly period beyond the patent term by enabling trademark holders to maintain brand loyalty and command premium prices even after the patent protection expires.

Pharmaceutical firms can establish their brand awareness and reputation among consumers by using trademarks, which are important assets. Trademarks foster brand loyalty by providing consumers with incentives to stick with a certain product even in the face of generic competitors. Therefore, even after their patents expire, pharmaceutical companies can continue to dominate their respective markets and generate profits.

Trademarks allow patent monopolies to be extended, which has important ramifications for consumer welfare and competition law. Pharmaceutical businesses can restrict customer choice and discourage potential competitors from joining the market by using trademarks to protect market exclusivity. Furthermore, the option to charge higher costs for branded prescriptions may make problems with affordability worse, especially for patients who depend on these drugs for basic medical needs.

POLICY RECOMMENDATIONS AND FUTURE DIRECTIONS IN ADDRESSING THE INTERPLAY BETWEEN TRADEMARKS AND PATENT MONOPOLY IN THE PHARMACEUTICAL INDUSTRY

Enhanced Regulatory Oversight: In order to stop the pharmaceutical industry from abusing trademarks to maintain patent monopolies, government agencies and regulatory bodies should strengthen their oversight procedures. This involves keeping a close eye on the branding tactics used by pharmaceutical corporations to extend their exclusive market access past the expiration of their patents.

Promotion of Generic Competition: By providing incentives for the manufacture and distribution of generic medications, policy efforts should work to create a more competitive environment. Simplifying the approval procedure for generic drugs and providing incentives to producers might increase competition and lessen the impact of extended patent monopolies made possible by trademarks.

Transparency and Pricing Regulation: More openness in pharmaceutical pricing is desperately needed, especially for branded medications that profit from prolonged patent monopolies. To reduce the impact of trademark-driven monopolies on medicine pricing and to maintain patient affordability, policymakers should investigate regulatory tools such as price restrictions and transparency requirements.

Encouragement of Innovation: Lawmakers must continue to create an atmosphere that is supportive of innovation in the pharmaceutical sector even as they tackle the problems caused by trademark-driven patent monopolies. This entails encouraging research and development, promoting the creation of ground-breaking medicines, and striking a balance between the demands of public health and intellectual property protection.

International Cooperation: In order to handle the complications resulting from trademarks

⁸² American Home Products v. Mac Laboratories, AIR 1986 SC 137, 154.

⁸³ <https://www.wipo.int/trademarks/en/faq.jsp> (last visited: 30 March 2024 IST 09:15)

and patent monopolies, international cooperation is essential given the global nature of the pharmaceutical sector. To create coordinated strategies for addressing these concerns globally, policymakers should work together and share knowledge with their international counterparts.

Consumer Education and Empowerment:

Promoting a more transparent and competitive pharmaceutical industry requires educating customers about their rights and available treatments. To guarantee that patients are knowledgeable about generic alternatives and how trademarks affect prescription prices, policymakers should give priority to consumer education programs. This will increase patient choice and welfare.

Policymakers can work toward a more transparent, competitive, and equitable pharmaceutical business that supports consumer welfare, competitiveness, and innovation by putting these policy proposals into practice and exploring new avenues.

CONCLUSION

In summary, the analysis of the relationship between intellectual property rights and competition law in the healthcare industry highlights important potential as well as obstacles for consumer welfare and market dynamics. Despite its quick evolution, the Indian healthcare market needs a more in-depth examination to fully comprehend the effects of laws and market dynamics. Research indicates that the use of well-known brands in the pharmaceutical industry upsets the market, encouraging unethical behaviour and creating obstacles to competition. Legislative intervention is not necessary to remedy these distortions, though; regulatory remedies can be used instead. Fair competition and patient choice can be enhanced by outlawing the use of brand names that are confusingly close to generic chemical names, as specified by the Trademarks Act and the Drugs and Cosmetics Act. In addition, setting industry norms for medicine packaging and design components

helps improve uniformity and reduce consumer confusion. It is imperative to acknowledge the distinct attributes of the Indian market and refrain from mindlessly implementing Western regulatory frameworks. Rather, emphasizing creative methods of market regulation can assist in overcoming obstacles and cultivating a competitive atmosphere that gives the needs of consumers and moral behaviour in the healthcare industry top priority.