INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]

VOLUME 5 AND ISSUE 7 OF 2025

APIS – 3920 - 0001 *(and)* ISSN - 2583-2344

Published by

Institute of Legal Education

https://iledu.in

IPR AND ANTITRUST IN GLOBAL CONTEXT: A SOCIO-ECONOMIC AND LEGAL COMPARISON BETWEEN ADVANCED AND EMERGING ECONOMIES

AUTHOR - VISHWAA S. CHAUDHARY, STUDENT AT UNITEDWORLD SCHOOL OF LAW, KARNAVATI UNIVERSITY

BEST CITATION - VISHWAA S. CHAUDHARY, IPR AND ANTITRUST IN GLOBAL CONTEXT: A SOCIO-ECONOMIC AND LEGAL COMPARISON BETWEEN ADVANCED AND EMERGING ECONOMIES, INDIAN JOURNAL OF LEGAL REVIEW (IJLR), 5 (7) OF 2025, PG. 289-299, APIS – 3920 – 0001 & ISSN - 2583-2344

Abstract

The complex relationship between Intellectual Property Rights (IPR) and Competition Law has become increasingly significant considering globalized markets and expanding innovation-driven economies. This paper explores how IPRs, which offer exclusive rights to creators and innovators, coexist and at times conflict with competition laws designed to foster market fairness and consumer welfare. Through a comparative analysis of developed and developing countries including the United States, United Kingdom, Japan, India, Malaysia, and South Africa, this research identifies how different jurisdictions reconcile the tension between promoting innovation and preventing monopolistic abuses. The paper highlights that while developed nations typically approach the issue through flexible antitrust frameworks and economic analyses, developing countries often struggle to strike the balance due to weaker legal infrastructure and economic priorities. Case studies from each jurisdiction illustrate key policy approaches, enforcement mechanisms, and legal interpretations. Ultimately, the paper argues that a nuanced, context-specific alignment between IP and competition law is essential for equitable and sustainable economic development.

Keywords: *competition, intellectual property, developing countries, market economy, IP enforcement*

I. Introduction

The relationship between intellectual property (IP) law and competition law has gained increasing attention, especially with the global expansion and strengthening of IP protection. While IP law grants exclusive rights to owners over their intellectual assets, competition law aims to prevent market barriers and promote consumer benefits by encouraging competition among multiple providers of goods, services, and technologies. Dealing with this relationship, it poses a unique challenge for the policymakers as well as to follow the procedures and structures. These challenges are especially complex in developing countries, where the application of competition law and policies is often limited or lacks a strong historical foundation. In fact, in most of these countries IPRs have been broadened and strengthened in the absence of an operative body of competition law, in contrast to developed countries where the introduction of higher levels of IP protection has taken place in normative contexts that provide strong defences against anti-competitive practices.[353]

II. The impact of economic development on competition law and IPR

A. Ensuring Fair Play: Competition Law in a Market Economy

Competition is "a situation in a market in which firms or sellers independently strives for the buyers' patronage in order to achieve a

[353] Carlos M. Correa, *Intellectual Property and Competition Law: Exploring Some Issues of Relevance to Developing Countries*, ICTSD, Issue Paper No. 21 (Oct. 2007), https://www.iprsonline.org/resources/docs/corea_Oct07.pdf.

particular business objective for example, profits, sales or market share."[354] Competition policy ensures a fair and competitive market by creating a level playing field for all participants. The implementation of competition law establishes a framework of rules that safeguard the competition process itself, rather than individual competitors. By promoting fair and effective competition, it enhances economic efficiency, stimulates growth and development, and improves consumer welfare.[355] . Without an efficient enforcement scheme, a stronger competition law not only cannot support productivity growth but might also slow down the potential path of growth.[356]Restrictive agreements that limit distributors and dealers to specific territories and prohibit sales outside those areas can be used to enforce discriminatory market segmentation.[357] Restrictive agreements that limit distributors and dealers to specific territories and prohibit sales outside those areas can be used to enforce discriminatory market segmentation.

As to the desirability of adopting a competition law, one important point must be made and that is that improving the investment climate is not the explicit objective of many nations' competition laws nor should it be.[358] The overarching goal of competition law and enforcement should be to promote static and dynamic efficiency (recognising that, in some instances, there is a tension between the two.)

B. The Economic Significance of IPR in Innovation-Driven Growth

Intellectual Property (IP) encompasses significant advancements in human knowledge, including innovative, creative, and technical developments. Intellectual Property Rights (IPR) grant legal protection to creators, ensuring exclusive rights over their inventions for a limited period. These rights encourage healthy competition, drive technological advancements, and contribute to a country's economic growth.

Patents grant exclusive rights for 20 years to prevent unauthorized production, sale, import, or use of a patented invention, which must demonstrate novelty and industrial utility. Related protections include utility models (petty patents) for incremental innovations and industrial designs. Patent applications are publicly disclosed after a set period, offering a market advantage in exchange for technical knowledge disclosure. Plant breeders' rights, with fixed terms and novelty requirements, encourage the development of new seed varieties for agriculture.

Trademarks protect brand names and symbols, preventing consumer confusion and reducing search costs. They encourage businesses to invest in brand recognition and quality, ensuring that licensees maintain product standards. Without trademark protection, low-quality imitations could harm brand reputation and consumer trust. While trademarks rarely lead to market dominance in competitive economies, they may grant market power in restricted markets.

Trade secrets safeguard proprietary knowledge that may not be patentable or disclosed. Legal protections prevent unauthorized access but allow discovery through independent invention or reverse engineering. Protecting trade secrets promotes innovation and commercialization of non-patented technologies.

Copyrights protect literary, artistic works, and software, granting exclusive rights to reproduce

[354] Mohit Sharma, *The Role of Competition Law in Economic Development of India*, 6 INT'L J. CREATIVE RES. THOUGHTS 2457 (2018), https://www.ijcrt.org/papers/IJCRT1802457.pdf.
[355] Kenneth M. Davidson, Economic Development, Competition, and Competition Law, CUTS (n.d.), https://www.cuts-ccier.org/pdf/Paper_Economic_Development_Competition_and_Competition_Law.pdf.
[356] Tay-Cheng Ma, *The Effect of Competition Law Enforcement on Economic Growth*, 7 J. COMPETITION L. & ECON. 301 (2011), https://doi.org/10.1093/joclec/nhq032.
[357] Frederic Michael Scherer, *International Competition Policy and Economic Development*, ZEW Discussion Paper No. 96-26 (1996), https://www.econstor.eu/bitstream/10419/29465/1/257751270.pdf.
[358] Simon J. Evenett, *Links Between Development and Competition Law in Developing Countries*, U.K. Dep't for Int'l Dev., World Development Report 2005 Case Study (Oct. 28, 2003), https://www.alexandria.unisg.ch/server/api/core/bitstreams/f594887e-3f5d-4c85-a1d6-d7ef604af68c/content.

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]

VOLUME 5 AND ISSUE 7 OF 2025

APIS – 3920 - 0001 *(and)* ISSN - 2583-2344

Published by

Institute of Legal Education

https://iledu.in

and sell original expressions. Related IP rights include protections for performers, broadcasters, and moral rights of artists. Copyrights have limitations, including the fair-use doctrine, which allows restricted copying for research and education.

Today, more than ever, managers must carefully plan and justify financial and strategic decisions, especially when approving R&D budgets or forming joint ventures in an increasingly competitive global market. There is a growing recognition that valuing intangible assets, particularly industrial property rights, is crucial. Additionally, recent changes in accounting laws now require acquired intellectual property rights to be recorded in balance sheets, necessitating proper valuation. Furthermore, many other activities, such as the exploitation of these property rights by way of licensing, cannot be carried out adequately without a valuation.[359]

III. Comparative analysis between developed and developing countries

Many developing countries hesitate to enforce strong IP protection due to economic considerations. To progress, they require maximum access to the intellectual property of developed nations. World Trade Organization (WTO) in the meeting held in Doha addressed that to be unambiguously beneficial to low-income countries, any WTO antitrust disciplines should recognize the capacity constraints that prevail in these economies, make illegal collusive business practices by firms with international operations that raise prices in developing country markets, and require competition authorities in high-income countries to take action against firms located in their jurisdiction in defence of the interests affected developing country consumers.[360]

Weak IP laws and enforcement allow piracy to thrive, enabling these countries to obtain essential goods and services at minimal cost. Developing countries tend to have IPRS systems that favour information diffusion through low-cost imitation of foreign products and technologies.[361] However, weak IPRs can hinder technical progress, as even minor adaptations of existing technologies contribute significantly to economic growth.

Additionally, industries producing counterfeit goods provide employment to thousands. Compared to these immediate economic benefits, the risk of losing foreign investment from Western countries is often seen as a lesser concern.[362] The slow adoption of competition laws in developing countries may be attributed, in part, to the lack of a perceived need for them since governments felt to some extent that a similar role could be played by other forms of state intervention.[363]

A. The Relationship of Competition Law and IPR in Developed Countries

1. US-

The US has a long-established antitrust framework (Sherman Act 1890, Clayton Act 1914, FTC Act 1914) enforced by the Department of Justice (DOJ) and the Federal Trade Commission (FTC). In IP law, US Patent Law[364] came first as per the going concerned for the need to protect the invention and to promote the progress of useful rights. U.S. competition law is governed by foundational statutes primarily the Sherman Act[365], prohibiting monopolization and restraints of trade, the Clayton Act[366] addressing specific monopolistic practices and mergers, and the Federal Trade

[359] Benazeer Fatima, *Role of IPR in Economic Growth* (Manupatra, Feb. 24, 2021), https://articles.manupatra.com/article-details/Role-of-IPR-in-Economic-Growth.

[360] Bernard Hoekman & Petros C. Mavroidis, *Economic Development, Competition Policy and World Trade Organization*, 37 J. WORLD TRADE 1 (2003), https://heinonline.org/HOL/LandingPage?handle=hein.kluwer/jwt0037&div=5&id=&page=.

[361] Keith E. Maskus, *Intellectual Property Rights and Economic Development*, 32 CASE W. RES. J. INT'L L. 471 (2000), https://scholarlycommons.law.case.edu/jil/vol32/iss3/4.

[362] Alice Pham, *Competition Law and Intellectual Property Rights: Controlling Abuse or Abusing Control?*, CUTS CCIER (2008), https://www.cuts-international.org/pdf/CompetitionLaw_IPR.pdf.

[363] Carlos M. Correa, *The Strengthening of IPRs in Developing Countries and Complementary Legislation*, Univ. of Buenos Aires (2000)

[364] United States Code, Title 35 – *Patents*, https://www.wipo.int/wipolex/en/legislation/details/22357.

[365] Sherman Act 1890 (US)

[366] Clayton Act 1914 (US)

Commission Act[367] barring unfair methods of competition. Intellectual property rights (IPR) are protected through federal laws like the Patent Act[368] and Copyright Act[369], which grant exclusive rights to inventors and creators for limited times. The Department of Justice (DOJ) and Federal Trade Commission (FTC) jointly enforce antitrust laws, and they have articulated that U.S. IP, and antitrust laws are complementary, sharing the goal of promoting innovation and consumer welfare. The U.S. approach, as outlined in the 1995 DOJ/FTC Guidelines[370] for the Licensing of Intellectual Property, emphasizes a flexible, economics-based analysis of licensing practices. Competition law purposes, intellectual property should be treated in essentially the same way as other forms of property, though this does not mean that it is in all respects the same as other forms of property. "Intellectual property is thus neither particularly free from scrutiny under the antitrust laws, nor particularly suspect under them.[371] The DOJ/FTC Antitrust Guidelines for the Licensing of IP (updated 2017)[372] affirm that IP licensing is generally pro-competitive and that holding an IP right does not presume market power nor immunize conduct. Courts have likewise held that mere ownership of a patent or copyright does not by itself create an illegal monopoly. [373]

An important ground for some patent-based antitrust actions was the use of patent licenses and cross-licenses to orchestrate cartels that raised prices, restricted the output of individual producers, and inhibited the entry of imports and new domestic producers.[374] A notable case involved *Hartford-Empire Company*, a developer of glass bottle-forming machinery, and Owens-Illinois[375], the leading bottle producer at the time. Through internal development, acquisitions, and restrictive licensing, these companies-controlled U.S. bottle-making machinery patents. By selectively licensing production or restricting machine availability during economic downturns, they maintained high prices, even during the Great Depression. U.S. courts (including specialized venues like the Federal Circuit for patent appeals) will scrutinize IP uses that extend beyond the patent's scope or duration, treating such conduct as potentially anti-competitive (for example, tying products to patented goods, restrictive licensing, or "patent misuse")[376]

U.S. case law at the IP–antitrust intersection is rich. A landmark early example was the AT&T consent decree (1956), where AT&T's monopoly led to a forced licensing of its patents to competitors, illustrating use of antitrust remedies to diffuse IP monopolies. More recently, the Microsoft cases highlighted how IP in software can be leveraged anti-competitively in *U.S. v. Microsoft*[377], Microsoft's use of its Windows operating system dominance (protected in part by copyright) to exclude rivals (like Netscape) was held to violate antitrust laws. In the pharmaceutical sector, *FTC v. Actavis*[378] reached the Supreme Court, which ruled that brand-name drug firms settling patent litigation by paying generics to delay entry ("reverse payment" settlements) could violate antitrust law a significant precedent ensuring that patent settlements are subject to competition scrutiny. In another case of *FTC v.*

[367] Federal Trade Commission Act of 1914, 15 U.S.C. §§ 41–58 (2012)
[368] United States Code, Title 35 – Patents
[369] United States Code, Title 17 – Copyright Law
[370] U.S. Dep't of Justice & Fed. Trade Comm'n, *Antitrust Guidelines for the Licensing of Intellectual Property* (Apr. 6, 1995), https://www.justice.gov/sites/default/files/atr/legacy/2006/04/27/0558.pdf.
[371] R. Hewitt Pate, *Competition and Intellectual Property in the U.S.: Licensing Freedom and the Limits of Antitrust*, U.S. Dep't of Justice (June 3, 2005), https://www.justice.gov/atr/file/517816/dl#:~:text=the%20same%20as%20other%20forms,had%20a%20section%20devoted%20to.
[372] U.S. Dep't of Justice & Fed. Trade Comm'n, *Antitrust Guidelines for the Licensing of Intellectual Property* (Jan. 12, 2017).
[373] Max Planck Institute for Intellectual Property and Competition Law, *Copyright, Competition and Development*, WIPO (Dec. 2013), https://www.wipo.int/documents/743993/747687/copyright_competition_development.pdf/20477f75-6f4e-332a-20c8-6759e3dc32bb?version=1.2&t=1671199896643.
[374] F.M. Scherer & Jayashree Watal, *Competition Policy and Intellectual Property: Insights from Developed Country Experience*, Regulatory Policy Program Working Paper RPP-2014-10, Mossavar-Rahmani Ctr. for Bus. & Gov't, Harvard Kennedy Sch. (2014), https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/files/RPP_2014_10_Scherer.pdf.
[375] United States v Hartford-Empire Co 323 US 386 and 324 US 570 (1947)
[376] U.S. Dep't of Justice & Fed. Trade Comm'n, *Antitrust Enforcement and Intellectual Property Rights: Promoting Innovation and Competition* (Apr. 2007), https://www.justice.gov/file/614651/dl?inline.
[377] United States v Microsoft Corp 253 F 3d 34 (DC Cir 2001)
[378] FTC v Actavis Inc 570 US 136 (2013)

Qualcomm[379], a trial court found Qualcomm's practices unlawful, though the decision was later reversed on appeal, showing the evolving debate on how far antitrust can police high-tech patent licensing. For the copyright, in *Data General v. Grumman*[380], a U.S. court addressed a copyright holder's refusal to license software needed for maintenance services, touching on the "essential facilities" doctrine in IP - although U.S. courts generally decline to compel licensing absent extraordinary circumstances, unlike some EU cases.

The U.S. has been relatively reluctant to use tools like compulsory licensing as a competition remedy unlike some developing countries. In conclusion, U.S. policy favours ex post antitrust enforcement case-by-case over ex ante regulation thus, rather than a specific statute against "patent abuse," the general antitrust laws are applied flexibly. The U.S. government's approach is to encourage innovation through strong IP rights, but police the improper use of those rights through antitrust action rather than by narrowing IP laws themselves.

2. UK (and European Union (EU) perspective)-

The United Kingdom's approach to competition and IP has been shaped by both domestic law and, historically, by European Union law. The Competition Act 1998 and Enterprise Act 2002 form the core of UK competition law, prohibiting anti-competitive agreements and abuse of dominance in terms very similar to EU competition provisions.[381] On the IP side, the UK has comprehensive statutes such as the Patents Act 1977, Copyright, Designs and Patents Act 1988, and others, which implement its TRIPS obligations. Regulatory oversight is split: the Competition and Markets Authority (CMA) (and previously the Office of Fair Trading) enforces competition rules, while the UK Intellectual Property Office administers IP rights. A key principle inherited from EU jurisprudence is that holding an IPR, even a patent monopoly, does not automatically equate to a dominant market position or justify anti-competitive conduct. In Europe, the debate gained prominence with the *Magill*[382] and *IMS*[383] cases and was further intensified by the Microsoft case. These decisions have prominently highlighted the problem of clearly defining the boundaries between two different sets of rights the right to protect intellectual property and the rights stemming from antitrust laws.[384] The Court established that only when an IPR is indispensable for a new product and refusal prevents the emergence of that product to the detriment of consumers, and where there was no justification, could a compulsory license be ordered.

The UK Patents Act itself contains provisions reflecting competition concerns for an instance it allows for compulsory licensing of patents if certain public-interest or anti-competitive conditions are met such as refusal to license on reasonable terms harming industrial development.[385] Overall, the UK legal framework mirrors the European stance that IPR exercise is legitimate, but "IP misuse". For an instance extending patent exclusivity by deceptive means or imposing anti-competitive licensing terms is subject to competition law intervention. In the *AstraZeneca case*[386] involved a pharmaceutical company misusing patent system procedures (and regulatory drug authorizations) to delay generic drug entry. The EU fined AstraZeneca for abuse of dominance a notable example where "evergreening" and misrepresentation to patent offices were deemed anti-competitive; the UK, as part of the EU, implemented this precedent, showing that misusing IP systems to prolong exclusivity can

[379] FTC v Qualcomm Inc 411 F Supp 3d 658 (ND Cal 2019)
[380] Data General Corp v Grumman Systems Support Corp 761 F Supp 185 (D Mass 1991)
[381] Consolidated Version of the Treaty on the Functioning of the European Union, arts. 101 & 102, 2012 O.J. C 326/47.
[382] Joined Cases C-241/91 and C-242/91 P Radio Telefis Eireann (RTE) and Independent Television Publications Ltd (ITP) v Commission of the European Communities ECLI:EU:C:1995:98
[383] Case C-418/01 IMS Health GmbH & Co OHG v NDC Health GmbH & Co KG ECLI:EU:C:2004:257
[384] Mauro Squitieri, *Refusals to License Under European Union Competition Law After Microsoft*, 11 J. INT'L BUS. & L. 111 (2012), https://scholarlycommons.law.hofstra.edu/jibl/vol11/iss1/4.
[385] Patents Act 1977, s. 48 (UK).
[386] Case C-457/10 P AstraZeneca AB and AstraZeneca plc v European Commission ECLI:EU:C:2012:770

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]

VOLUME 5 AND ISSUE 7 OF 2025

APIS – 3920 - 0001 *(and)* ISSN - 2583-2344

Published by

Institute of Legal Education

https://iledu.in

attract competition law penalties. Domestically, the UK's Competition Appeal Tribunal in Pfizer/Flynn (2018) upheld the CMA's finding that an exorbitant price increase of an off-patent drug (phenytoin) was an abuse of dominance (excessive pricing), reflecting how competition law steps in once patent protection is gone but a de facto monopoly persists. Another UK case, *Music Collecting Societies (CISAC case)*[387], dealt with copyright licensing arrangements; while not classic abuse of dominance, it showed vigilance against restrictive arrangements among IP holders (here, coordinating to partition markets) as violating competition rules. In *Samsung vs. Apple*[388], concerning SEPs and injunctions, UK courts followed the *EU's Huawei v. ZTE*[389] framework, indicating that seeking injunctions on SEPs without adhering to fair, reasonable, and non-discriminatory (FRAND) commitments can be abusive aligning with competition principles even in enforcement of IP. Each of these cases underlines that UK courts and regulators, in line with EU law, will curb IP practices that unduly hinder competition, whether it be refusal to license, procedural abuse of the IP system, or leveraging IP to price gouge, while still respecting the essential incentives IP is meant to provide. In evergreening restrictions, the UK doesn't have a statute like India's Section 3(d) Patents Act, it uses patent law doctrines strict inventive step requirements and competition enforcement after the fact to similar effect for example the CMA's investigation into opioid drug patent settlements (2019) signalled that deceptive patenting or unjustified litigation to delay competitors could be treated as anti-competitive.

3. Japan-

Japan's competition law, the Antimonopoly Act (AMA) of 1947, applies fully to conduct involving intellectual property - with a specific provision that excludes "legitimate exercise" of IP rights from antitrust scrutiny, but this exclusion is interpreted very narrowly. Article 21 of the Japanese Antimonopoly Act (AMA) states that the Act does not apply to actions considered a legitimate exercise of intellectual property rights. In practice, however, the term "exercise of intellectual property rights" is construed narrowly. According to the Guidelines for the Use of Intellectual Property under the AMA (the IP Guidelines) issued by the Japan Fair Trade Commission (the JFTC), any act that may seem, on its face, to be an exercise of a right cannot be "recognisable as the exercise of the rights" provided for in Article 21, provided that it is found to deviate from or run counter to the intent and objectives of the intellectual property systems, which are, namely, to motivate entrepreneurs to actualise their creative efforts and make use of technology, in view of the intent and manner of the act and its degree of impact on competition.[390] However, such actions may still fall under AMA regulations if they involve private monopolization (unilateral conduct), unreasonable trade restrictions (concerted practices), or unfair trade practices. The JFTC guidelines make clear that IP licenses and transactions are treated similarly to other business agreements under antitrust law, with recognition of the unique aspects of IP such as the need to allow exclusivity to spur innovation.

Japan's case law and regulatory decisions on IP and competition, while not as internationally publicized as U.S. or EU cases. A court case often cited is the BBS case. In this case, the Supreme Court in 2000 recognized and talked about a trademark case where importation of grey-market car alloy wheels was allowed despite trademark claims, partly on competition policy grounds preventing partitioning of the European Economic Area (EEA), reflecting how Japanese jurisprudence can incorporate competition considerations in IP exhaustion doctrines

[387] Case T-442/08 International Confederation of Societies of Authors and Composers (CISAC) v European Commission ECLI:EU:T:2013:188

[388] European Commission, Case AT.39939 – Samsung – Enforcement of UMTS Standard Essential Patents (2014)

[389] Case C-170/13 Huawei Technologies Co Ltd v ZTE Corp and ZTE Deutschland GmbH ECLI:EU:C:2015:477

[390] Tokuhiro Matsunaga, Jiro Abe & Mitsutoshi Sugihara, *IP & Antitrust 2020 – Know How: Japan*, Nishimura & Asahi (Nov. 2020), https://www.nishimura.com/sites/default/files/images/74992.pdf.

though this was influenced by EU parallel import principles.

Japan employs a guideline-driven, ex ante policy approach to harmonize IPR and competition law. The JFTC's three dedicated IP-related guidelines serve as quasi-regulations.

Therefore, in order to make its view on competition concerns related to IP rights clear to the public and promote competition compliance, JFTC has been published and continuously revised guidelines on its treatment of the exercise of IP rights under the AMA, responding to the changes in IP-related business models and business environment surrounding IP holders and implementers.[391] This outlines the Japan Fair Trade Commission (JFTC) approach to IP-related competition issues, as guided by the Patent Pool Guidelines and Intellectual Property Guidelines. Japan employs a guideline-driven, ex ante policy approach to harmonize IPR and competition law. The JFTC's three dedicated IP-related guidelines serve as quasi-regulations. The Guidelines on Standardization and Patent Pool Arrangements explicitly allow patent pooling to promote efficiency but warn against pools that collectively refuse licenses to new entrants or fix prices for products using the pooled patents. In terms of legislation, Japan's Patent Act has an interesting provision allowing the government to grant non-exclusive licenses on patents for public interest, which could include anti-competitive situations.[392]

In conclusion, Japan's enforcement of competition law is primarily administrative and negotiated, with the Japan Fair Trade Commission (JFTC) resolving many issues outside of court. The lack of frequent litigation does not indicate inaction; rather, companies generally comply with the JFTC's detailed guidelines, such as avoiding contract terms flagged as illegal. For instance, no-challenge clauses in licensing agreements, where licensees agree not to contest a patent's validity, were deemed potentially anti-competitive unless objectively justified. As a result, many Japanese firms removed such clauses to avoid JFTC intervention. These cases highlight Japan's proactive approach in ensuring IP rights are not misused to stifle competition, effectively preventing blatant IP abuses in its markets. Japan's policy mix emphasizes clarity and prevention by telling companies in advance what IP practices cross the line, Japan minimizes the need for punitive measures. And when interventions are needed, it has the tools such as cease-and-desist orders, surcharge fines up to 10% of turnover for private monopolization and in theory compulsory licenses or criminal penalties to address issues. This careful strategy aims to maintain Japan's innovation while ensuring competition.

B. The Relationship of Competition Law and IPR in Developing Countries

The United Nations Conference on Trade and Development (UNCTAD) highlights competition law and policy, particularly in developing countries that the ultimate goal of both intellectual property and competition policy is to enhance economic growth and consumer welfare.[393]

1. India-

Indian law recognises that limited monopolies granted by IPRs are not per se anticompetitive or excessively exploitative; however, they may take anticompetitive flavours when the IPR holder looks to extend those rights beyond their intended and proper scope or when such monopolies artificially divide markets among enterprises and possibly impedes the development of new goods and services.[394]

[391] OECD, *Licensing of IP Rights and Competition Law – Note by Japan*, Directorate for Financial and Enterprise Affairs Competition Committee, DAF/COMP/WD(2019)6, https://www.jftc.go.jp/en/int_relations/oecd_files/201906LICENSING_OF_IP_RIGHTS_AND_COMPETITION_LAW.pdf.
[392] Patent Act (Japan, Act No 121 of 13 April 1959), art 92
[393] UNCTAD Secretariat, Examining the Interface Between the Objectives of Competition Policy and Intellectual Property, UNCTAD (2016), https://unctad.org/system/files/official-document/ciclpd36_en.pdf.
[394] Lakshmikumaran & Sridharan Attorneys, Interface Between Competition Law and Intellectual Property Laws: Indian Perspective,

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]
VOLUME 5 AND ISSUE 7 OF 2025
APIS – 3920 - 0001 *(and)* ISSN - 2583-2344
Published by
Institute of Legal Education
https://iledu.in

India's legal regime explicitly recognizes the interface of competition law and intellectual property. The Competition Act 2002 is the principal antitrust legislation, enforced by the Competition Commission of India (CCI). The Act prohibits anti-competitive agreements[395] and abuse of dominant position.[396] IPR laws are subject to competition law but not entirely. Under Section 3(5) of the Competition Act, reasonable conditions imposed by IP holders in exercising their rights are exempt from competition law regulations. One example is that a patent gives the holder exclusive rights over the patented product, but CL ensures that such a monopoly is not in the detriment of the market and consumer welfare.[397] However, Section 4 on abuse of dominance has no blanket IP exemption, so a dominant firm's conduct involving IPR can be scrutinized by CCI. India's IP laws (Patent Act 1970 as amended in 2005, Trademarks Act 1999, Copyright Act 1957, etc.) also embed competition principles. Notably, the Indian Patent Act has robust provisions to prevent patent abuse: Section 84 allows compulsory licensing of patents after 3 years if the reasonable requirements of the public aren't met or if the patented invention is not available to the public at a reasonably affordable price, and one of the grounds specifically covers if the patent holder is engaging in anti-competitive practices. Section 3(d) of the Patent Act is another unique provision aimed at evergreening - it restricts patents on trivial modifications of existing drugs - reflecting a competition policy objective to prevent extension of monopolies on known drugs built into patentability criteria.

A landmark jurisprudential development occurred in the Delhi High Court's decisions in *Ericsson v. Micromax*[398], Ericsson challenged an order by filing a writ petition, arguing that the Patent Act's compulsory licensing provisions should override the Competition Act, 2002. The court examined whether the two laws conflicted and ruled that they serve different purposes the Patent Act offers in-personam remedies (compulsory licensing), while Section 27 of the Competition Act provides in-rem remedies (penalties, cease-and-desist orders). Ericsson also contended there was no prima facie abuse of dominance, as it was exercising its legitimate patent rights. However, citing US (Rambus Inc.) and EU cases (Motorola v. Apple, Huawei v. ZTE), the court found that actions like seeking injunctions or demanding excessive royalties could constitute abuse of dominance by Standard Essential Patent (SEP) holders. It noted that legal pressure could force implementers into unfair licensing agreements, leading to higher consumer prices. The Delhi High Court ultimately dismissed all jurisdictional objections, affirming the Competition Commission of India's (CCI) authority to assess abuse of dominance by SEP holders, including Ericsson. Thus, in India, IPR exercise is subject to competition scrutiny to the extent that when an IP holder crosses from legitimate protection into anti-competitive exploitation, the CCI can intervene. The CCI itself released a policy note in 2016 on SEPs emphasizing a way to achieve FRAND (fair, reasonable and non-discriminatory) commitments, where owners of essential patents commit to make their essential patent available to third parties on FRAND terms.[399] CCI found multiple car companies (mostly foreign automakers) had abused dominance by denying independent repairers access to spare parts and technical manuals, thus leveraging IP (designs/logos on spare parts) to foreclose competition. CCI imposed hefty penalties and directed the OEMs to cease restrictive practices. This case

https://www.lakshmisri.com/Media/Uploads/Documents/Interface%20between%20Competition%20Law%20and%20Intellectual%20Property%20Laws%20-%20INDIAN%20PERSPECTIVE.pdf.

[395] The Competition Act 2002, s 3

[396] The Competition Act 2002, s 4

[397] Dhanendra Kumar, *Intellectual Property and Competition Law: Two Sides of the Same Coin*, BUS. STANDARD (Apr. 25, 2024), https://www.business-standard.com/economy/analysis/intellectual-property-and-competition-law-two-sides-of-the-same-coin-124042500486_1.html.

[398] Micromax Informatics Ltd v Telefonaktiebolaget LM Ericsson FAO(OS)(COMM) 169/2017 (Del HC)

[399] Madhurima Gadre, *An Overview of CCI's Take on Standard Essential Patents*, COMPETITION L. OBSERVER (Dec. 11, 2016), https://competitionlawobserver.wordpress.com/2016/12/11/an-overview-of-ccis-take-on-standard-essential-patents/.

underscored that invoking IP (like trademark on a spare part) is not a defence to anti-competitive refusal to deal if consumer harm is shown. One successful intervention was outside CCI in the *Bayer v. Natco*[400], effectively a case study in using IP law for competition ends Natco's generic entry under compulsory license broke Bayer's monopoly on an expensive drug, in line with Competition Act's goals (though not a CCI proceeding, the CCI publicly welcomed the outcome as pro-competitive). There's also *CCI v. Monsanto*,[401] here, Monsanto, which held patents on Bt Cotton seeds (critical agri-biotech), was investigated for potentially abusive licensing terms and high trait fees extracted from Indian seed companies. The case was rendered moot after Monsanto's patents were invalidated by courts for other reasons, but it indicated CCI's interest in the agri-tech IP area. Through these examples, Indian authorities have shown readiness to penalize IP-based market abuses, whether it's exorbitant pricing, refusal to license or supply (spare parts case), or strategies to block generics. The Supreme Court in Competition Commission of *India v. Bharti*[402], a telecom case, drew a line on regulatory overlap, saying CCI should wait if a sector regulator is already seized of a matter.

Some interpret this to mean that if a specialized IP tribunal were handling an issue such as a patent validity or infringement question, CCI might need to time its intervention carefully. Nonetheless, Indian courts have generally affirmed that competition law has its own distinct role even in IP-rich sectors. Collectively, India's cases champion the idea that IP rights cannot be used as a shield for anti-competitive conduct, and Indian authorities will seek diverse remedies from compulsory licenses to fines and behavioural mandates to ensure competitive outcomes.

2. Malaysia-

Intellectual Property (IP) protection in Malaysia is governed by several statutes, including the Copyright Act 1987, Patents Act 1983, Trademarks Act 2019 (effective from December 27, 2019), Industrial Designs Act 1996, Geographical Indications Act 2000, and the Layout-Designs of Integrated Circuits Act 2000. The Malaysian Competition Commission (MyCC) Guidelines[403] acknowledge the tension between intellectual property (IP) law and competition law. While IP law grants exclusive rights over marketing and manufacturing, competition law seeks to prevent anti-competitive practices that could disrupt market fairness.[404]

Government believed that the Free Trade Agreement (FTAs) can also bring benefits through reforms in new areas that were not included in past agreements, such as competition policy, government procurement, investment-state disputes, and investment policies.[405] However, the Competition Act 2010 (CA 2010) does not explicitly include provisions related to intellectual property (IP), except for the MyCC IPRs Guidelines, all IP-related matters in Malaysia remain under the jurisdiction of the Intellectual Property Corporation of Malaysia (MyIPO).

The exclusion at the core of IP may nonetheless be punished under the competition (or, as they are referred to in the US, antitrust) laws and these scrutinize activity that restricts competition, because such conduct could lead to higher prices, lower output, and (often) less innovation.[406] By nature, agreements between

[400] Bayer Corporation v Natco Pharma Ltd 2014 (60) PTC 277 (Bom)
[401] Monsanto Holdings Pvt Ltd & Ors v CCI & Ors WP(C) 1776/2016 & 3556/2017; 272 (2020) DLT 61
[402] Competition Commission of India v Bharti Airtel AIR 2019 SC 113

[403] Malaysian Competition Commission (MyCC), *Guidelines on Intellectual Property Rights and Competition Law*, https://www.mycc.gov.my/guidelines.
[404] Andre Gan & Kherk Ying Chew, *Malaysian Competition Commission Issues Guidelines on IP Rights and Competition Law*, GLOBAL COMPLIANCE NEWS (Aug. 2, 2019), https://www.globalcompliancenews.com/2019/08/02/malaysian-competition-commission-issues-guidelines-ip-rights-competition-law-20190708/.
[405] World Bank Group, *Trade Agreements Boost Productivity and Growth, Contributing to Malaysia's Successful Development, World Bank Says* (Press Release, June 20, 2016), https://www.worldbank.org/en/news/press-release/2016/06/30/trade-agreements-boost-productivity-and-growth.
[406] Michael A. Carrier, Intellectual Property and Competition (Edward Elgar Publ'g 2011), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1944946.

IPR holders and licensees impose some restrictions on competition. However, IP licensing In Malaysia is considered to be generally procompetitive subject that whether the applicable conditions have the object or effect of restricting competition such as price restrictions or fixing floor prices, exclusivity and territorial or other limitations, or conditions which foreclose market entry.[407] The MyCC IPRs Guidelines recognize that while IPR owners have the right to refuse licensing, for instance, this refusal may be deemed abusive if a dominant company's technology or product is crucial for creating a derivative product in a secondary market. Since the proposed new Design Law is silent on the any provision to allow repairs, it is concerned that it would not prevent persons having exclusive rights in a spare parts design from charging monopoly process for the relevant spare parts.[408] This omission could grant exclusive rights to spare parts manufacturers, leading to monopoly pricing in the secondary market and restricting competition. The agreements that distort competition are prohibited[409], while it also restricts the abuse of dominant market positions[410], which may also apply to intellectual property (IP) practices. Therefore, potential anti-competitive conduct involving IP remains subject to competition law oversight.

3. South Africa-

South Africa's competition law is governed by the Competition Act 1998, enforced by the Competition Commission, with adjudication by the Competition Tribunal and appeals to the Competition Appeal Court. The Act explicitly lists as an abuse of dominance the charging of an excessive price to the detriment of consumers,[411] a provision that has been very relevant to IP-related markets like pharmaceuticals. The law does not provide a blanket exemption for IPRs; on the contrary, the Competition Commission of South Africa (CCSA) has authority to investigate and refer cases even if they involve the exercise of IP rights. There is coordination with IP statutes for instance, the Patents Act 1978 in South Africa has provisions on compulsory licensing if a patent is not being worked or if demand isn't met on reasonable terms including if competition is adversely affected.[412] Regulatory bodies aside from the Competition Commission, sector regulators like SA Health Products Regulatory Authority (SAHPRA) and others don't typically address competition except possibly telecom regulator ICASA for spectrum tech issues. In 2019, South Africa's IP Policy Phase I was adopted, which explicitly recognizes the role of competition law in the IP domain and calls for clarifying the interface between IP and competition regimes.[413]

The hallmark case is the *Hazel Tau & Others vs GlaxoSmithKline and Boehringer Ingelheim*.[414] Hazel Tau, an HIV patient, with others and support from Treatment Action Campaign, filed a complaint that GSK and BI were charging excessive prices for their patented ARVs (AZT, lamivudine, and nevirapine). The Competition Commission investigated under Section 8(a) stating about excessive pricing and Section 8(b) for refusal to give a competitor access to an essential facility the competitors being generic makers. In 2003, the Commission made a provisional finding that the pharma firms had abused their dominance. Facing this, GSK and BI settled in 2004, they admitted no wrongdoing but agreed to license patents to local generic firms, cap royalty at 5%, and allow imports. This settlement, approved by the Competition Tribunal, effectively brought generic

[407] Khadijah Mohamed, *The Interface Between Intellectual Property Rights and Competition Law: Legal Development in Malaysia*, in WTO Colloquium Papers 2019, ch. 10, https://www.wto.org/english/tratop_e/trips_e/colloquium_papers_e/2019/chapter_10_2019_e.pdf.
[408] Dhaniah Binti Ahmad & Rashidah Ridha Sheikh Khalid, The Interaction Between IP and Competition Law in Malaysia, WIPO (Singapore, Nov. 14, 2011), https://www.wipo.int/edocs/mdocs/mdocs/en/wipo_rt_ip_sin_11/wipo_rt_ip_sin_11_ref_malaysia.pdf.
[409] Competition Act 2010, s 4 (Malaysia).
[410] Competition Act 2010, s 10 (Malaysia).
[411] Competition Act 1998, s 8(a) (South Africa).
[412] Competition Act 1998 (India), §§ 56–57; Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299, art. 31(k).
[413] Department of Trade and Industry, *Intellectual Property Policy of the Republic of South Africa: Phase I*, Int'l Trade & Econ. Dev. Div. (2018).
[414] GlaxoSmithKline, Boehringer Ingelheim & Others, Case No. 2002 Sep226 (Competition Comm'n of S. Afr.).

competition and price drops as noted. The Hazel Tau case has since been a reference globally for how competition law can intervene on patent issues in extreme circumstances. South Africa had a case involving collective management of music rights which is in *NAB & Others v. SAMPRA*[415], where radio broadcasters complained that the music rights collecting society (SAMPRA) charged excessive license fees. The Competition Tribunal ruled the collecting society was dominant and had engaged in exclusionary conduct against a rival society, ordering it to license on fair terms indirectly curbing a monopolistic use of copyrights. This shows competition law ensuring fair access in a copyright market. In 2021, amid COVID, the Commission warned it would act on any excessive pricing of essential IP-protected products (like vaccines), though global efforts like COVAX and government negotiations took front stage. Each of these cases reinforces that South Africa's competition authorities are prepared to confront IP-related anti-competitive conduct from pricing abuses to refusal to license and unfair licensing practices using both enforcement and negotiated remedies.

South Africa in 2019 amended its Competition Act to strengthen abuse-of-dominance provisions (including easier prosecution of excessive pricing in sectors like pharma). The Competition Commission has an Advocacy Fund, and it actively engages with the Department of Trade, Industry and Competition (DTIC) to coordinate IP and competition strategies. In conclusion, South Africa's legal framework empowers the competition authorities to act when IP rights are exercised in ways that harm competition or consumers, supported by IP laws that allow for intervention like compulsory licenses when public interest and competition require.

IV. Conclusion

The dynamic between Intellectual Property Rights and Competition Law is not a zero-sum game but rather a delicate balancing act essential for sustainable economic progress. This research reveals that while developed countries have established sophisticated mechanisms to reconcile the two frameworks ensuring that innovation incentives do not lead to anti-competitive behaviour developing nations often face legal and infrastructural challenges in achieving the same. The comparative analysis underscores that IP rights must be enforced in ways that do not unduly hinder market competition, and conversely, competition laws must be robust enough to prevent abuse without disincentivizing innovation. Effective policy design must therefore consider both global legal standards and domestic economic realities. Ultimately, a well-calibrated approach integrating the strengths of both legal domains can promote not only innovation and consumer welfare but also inclusive and balanced economic development. The balance between IP law and competition law is crucial but challenging, especially in developing countries. While IP law grants exclusive rights, weak competition frameworks in these regions often fail to prevent misuse, unlike in developed countries where stronger safeguards exist to ensure fair market practices.

[415] Nat'l Ass'n of Broadcasters v. S. Afr. Music Performance Rights Ass'n & Another, (119/2013) [2014] ZASCA 10 (S. Afr.).