

**COMPETITION ACT vis-à-vis INTELLECTUAL PROPERTY RIGHTS:
CRITICAL ANALYSIS OF ITS CONVERGENCE, DIVERGENCE AND
COMBINATION**

*Aditya Jha**

ABSTRACT

Prima Facie Intellectual Property Law and Competition Law appear to repel each other but with ever advancement of science and technology, it has been construed that these two laws work in consonance and works to promote and further enhance this technology driven market. Research and Innovation plays a tremendous role in wealth creation in today's world and hence protection laws for the same acts as a catalyst, but the question still remains if the protection granted to innovators creates hindrance in free market and if their operational realms are colliding or not? The present research also focuses on one aspect of this broad discussion on the interplay between IP and Competition Law, being the role of patent law with respect to combination regulation under the Competition Law in India. Combination essentially refers to the "acquisition of one or more enterprises by one or more persons or merger or amalgamation of enterprises" and the Act has also provided for the turnover value and the value of assets of both the acquirer and the acquiree to qualify as a combination. The value of assets includes the value of patent, and other IP too. This where we see the role of IP come into the picture when combinations are discussed. Hence this paper aims to analyse, interpret and suggest various ways through which a proper balance can be drawn out of these two stringent laws.

* Student, B.B.A. LL.B., Symbiosis Law School, Hyderabad

INTRODUCTION

The Competition Act, 2002 discusses in great length the methods by which the Indian Parliament has sought to legislate on anti-competitive behaviour in the markets. Sec. 3 of the Act covers anti-competitive agreements, wherein the right to protect ones IP Right has been a blanket exception to anti-competitive agreements, which has been a concern for many because it essentially amounts to accepting monopolies while trying to dissuade anti-competitive behaviour¹. However, this blanket exception has been provided with some semblance of a recourse by providing Sec. 4 of the Act, which prevents the abuse by dominant position². The exception of IP under Sec. 3(5) of the Act governs the various rights granted to the competitors under various Acts, including, the Copyright Act, 1957, Patents Act, 1970, etc. The Act also defines and regulates combination in an extensive manner while also providing for the role of IP within the same.

Competition Law aims to promote and sustain competition in the market in order to provide ultimate benefit to the end consumer and also promote free trade³. Here even though the antitrust laws and intellectual property laws (hereinafter to be referred to as IP laws) laws seem to embrace reciprocal targets but the fact that IP laws are incentive to further innovation which is an important aspect of this technology driven market. Competition law aims to protect the competition process rather the competitors⁴.

The research will delve into three key chapters. Chapter 1 will explore the need and conflicts arising from the coalition of intellectual property laws and competition laws. It will analyze the inherent tensions and potential clashes between these two legal frameworks. Chapter 2 will focus on the delicate balance between the interests of right owners and the public at large. It will examine how the protection of intellectual property rights can be harmonized with promoting fair competition and ensuring societal benefits. Lastly, Chapter 3 will examine the role of intellectual property in the combination process, particularly in the context of mergers, acquisitions, and amalgamations. It will investigate the impact of patents and other intellectual property rights on competition within combined entities.

¹ Competition Act, 2002 § 3(5).

² Aamir Khan Productions Pvt. Ltd. v. Union of India, 2010 (112) BomLR 3778.

³ Preamble Competition law

⁴ A. Kezsbom & A. Goldman, "No Shortcut to Anti-trust Analysis : The Twisted Journey of the Essential Facilities Doctrine", [1996] Columbia Business L. Rev. 1, 2 (1996).

STATEMENT OF RESEARCH PROBLEM

By virtue of this paper, we shall try to understand and highlight as to how Competition Law and IP law tend to complement each other as *prima facie* they seem to work in repelling domain like one working to provide exclusivity and other obliterating unfair market practices to promote competition. Hence we shall understand as to how each of these laws are not holding each other off rather are complementary to each other. Further we shall also imagine a market without these laws and analyse its consequences.

RESEARCH QUESTION

By virtue of this paper we shall answer the following questions:

1. How Competition Law complements Intellectual Property Law?
2. If quality enforcement of Intellectual Property Law creates hindrances to a free market?
3. If Intellectual Property affect combination process?
4. How CCI probes and prohibits creation of dominant position by virtue of combinations?
5. How reward theory of Intellectual Property and free market coexist?

OBJECTIVES OF THE STUDY

This research has been conducted in order to fulfil the following objectives:

1. To trace the trace the gradual move from divergence to convergence for these two realms of laws.
2. To analyse the impact of stringent Intellectual Property Laws on free market
3. To understand the conflict of reward theory in Intellectual Property and free market.
4. To compare the independence of these two realms of law through plethora of cases.

5. To understand working of combination process through light of IP laws.

SIGNIFICANCE OF THE STUDY

There exist various research articles, papers and thesis on the topic highlighting how these two laws coexist and its importance. This paper tries to lay down an exhaustive research within the domain of prescribed word limit to analyse and understand how these laws coexist and also an hypothetical situation where either one of them cease to exist.

SCOPE AND LIMITATIONS OF THE STUDY

Antitrust laws and Intellectual Property Laws are two major realms of law whose study by virtue of one paper is not possible. Hence enormous scope is left outside this research. For instance:

1. Cases where IP laws have subsist Competition Law
2. Cases when in order to promote competition, IP laws have been overlooked.
3. Survey analysis of creators and the industry on their understanding of the topic.

Following are the limitations which caused decrease in the scope of present research:

1. Time Constraint
2. Lack of Resources
3. Limitation of research plethora
4. Lack of professional interaction

RESEARCH METHODOLOGY

This research paper follows a doctrinal research methodology by way of extensively analysing and examining legal propositions which are laid out by statutory provisions and other related aspects of law. Doctrinal research methodology essentially provides for the research to study the statutes

such as the Competition Act, 2002, along with analysing case studies and judicial decisions which are categorised as the primary sources for this research and an examination of journals, articles, books, etc. as the secondary sources which allow for sufficient data to be acquired for the purposes of carrying out and concluding this research. Furthermore, this research also relies on analytical research to study data to understand the role that the IP plays in combination research in India. This research has been carried out by relying on the views of various Courts, legal thinkers, eminent jurists, academicians, etc. and has been conducted in a two-fold manner, firstly, focusing on understanding the basic concept and statutory provisions governing this research topic and secondly, analysing this concept through case studies and judicial examination in order to establish the relevancy of IP in combination regulation.

REVIEW OF LITERATURE

The present research has been conducted based on a plethora of literature ranging from books, journals, articles, etc.

The article titled *Interface Between Competition Law and Patents Law: A Pandora Box*⁵ focuses on providing us a generalised perception of how patents and competition law collide and create a confusion. This article has been extremely beneficial for this research in order to establish the growing importance of the role of patents in competition law as a whole and has been effective in providing a foundation to this present research. However, this article does come with its set of limitations as it focuses more on the jurisdiction tussles and EU and US laws and less on the substance of the Indian laws. While the suggestions in this article have been clearly enumerated, they also seem far-fetched in the reality of today's competition and IP laws.

Another article titled *The Inevitable Connection between Intellectual Property and Competition Law: Emerging Jurisprudence and Lessons for India*⁶ gives a much-needed understanding of the IP based competition litigation which is now finding its relevance in India through the Aamir Khan case. This article very clearly establishes how IP v. Competition Law debate has increased and provides for remedies to balance out the both, owing to increasing cases like the Cartel FICCI

⁵ Teotia M, and Sanwal M, '*Interface Between Competition Law And Patents Law: A Pandora Box*' [2021] SSRN Electronic Journal.

⁶ Raju KD, '*Interface Between Competition Law And Intellectual Property Rights: A Comparative Study Of The US, EU And India*' (2014) 2 Intellectual Property Rights: Open Access.

Multiplex case. However, one of the limitations noticed in this article was that while it analysed this debate on a case-to-case basis, the generalised suggestions given by this article do not find relevance when the law in itself is at such a nascent stage and has not evolved fully to be compared at par with that of the US or the EU.

Further article titled “Competition Policy And Intellectual Property in Today’s Global Economy”⁷ authored by Robert D. Anderson , Nuno Pires de Carvalho , Antony Taubman has explored the complexity and multidimensional nature of the relationship between competition policy and intellectual property rights in the global economy. While recognizing the importance of intellectual property rights in fostering innovation, scholars also emphasize the need to strike a balance between IP protection and promoting competition for the benefit of consumers. Further research is required to explore evolving challenges in this field, such as the impact of emerging technologies, the role of international trade agreements, and the harmonization of competition policies across jurisdictions.

Furthermore the article titled “*The Application of Competition Policy vis-à-vis Intellectual Property Rights: The Evolution of Thought Underlying Policy Change*”⁸ authored by Robert D. Anderson and William E. Kovacic underscores the evolving nature of thought and policy surrounding the application of competition policy in relation to intellectual property rights. It highlights the need for a nuanced approach that considers both the pro-competitive benefits of IPRs and the potential anti-competitive risks. The article emphasizes the importance of international cooperation and policy harmonization to address the global challenges posed by the intersection of competition policy and IPRs. Further research is needed to explore emerging issues, including the impact of digitalization and emerging technologies on competition and IPRs.

In conclusion an article titled *Competition Policy and Intellectual Property Rights*⁹, by Organization of economic cooperation and development explores the relationship between competition policy and intellectual property rights (IPRs). It discusses the tension between

⁷ Anderson , R.D., de Carvalho, N.P. and Taubman, A. (eds.), Global economy s intellectual property in today competition ... - assets, Cambridge University Press. Available at: https://assets.cambridge.org/9781107194366/frontmatter/9781107194366_frontmatter.pdf (Accessed: 22 June 2023).

⁸ Anderson, R.D. and Kovacic, W.E. (2017) ‘*The application of competition policy vis-à-vis intellectual property rights*’, WTO Working Papers [Preprint]. doi:10.30875/6c3268f2-en.

⁹ *Competition policy and intellectual property rights - OECD* (no date) Organization of Economic Cooperation and Development . Available at: <https://www.oecd.org/regreform/sectors/2376247.pdf> (Accessed: 22 June 2023).

promoting competition and protecting IPRs in the context of innovation and economic growth. The article highlights the evolving perspectives on this topic, from viewing IPRs as inherently anti-competitive to recognizing their pro-competitive benefits. It also addresses the challenges of balancing IP protection with fostering a competitive market environment. The article emphasizes the importance of international cooperation and policy harmonization in effectively addressing the intersection of competition policy and IPRs.

DISCUSSION

At the outset, Competition Law and Intellectual Property related laws have gained massive momentum in recent years with the former focusing on ensuring that anti-competitive practices in the Indian markets are removed and the latter providing for monopoly to the owner for their intellectual creation. A bare interplay of these two laws places them in a paradoxical light, with both concepts seeming diametrically opposed to each other, thereby creating certain tensions when applied together. Today's technologically driven world has increased the scope of both Intellectual Property (IP) Law as well as the Competition Law and is now being viewed as "*two sides of the same coin*"¹⁰.

IP essentially restricts competitors to unauthorized use of your idea, whereas antitrust laws seeks to achieve the opposite. However, there has been a general agreement that both these fields of law, hence through this paper we shall find a common ground on promoting innovation and consumer welfare¹¹.

CHAPTER 1: COALITION OF IP AND COMPETITION LAWS: NEED AND CONFLICT

Intensive rise in research and development by not just private bodies but also governmental institutions imparts momentous structural and qualitative changes in the economic functioning of current era¹². With the growth of exports, and the evolution of the world into a global village, in

¹⁰ *Supra* note 9.

¹¹ Atari Games Corp. v. Nintendo of Am Inc., 897 F.2d 1572.

¹² Ove Granstrand, 'The Shift Towards Intellectual Capitalism — The Role Of Infocom Technologies' (2000) 29 Research Policy.

19th century there was a rise in the need of intellectual property so that economic interest of the company exporting goods can be safeguarded.

Intellectual property includes “*protecting commercially valuable products of the human intellect*” which includes trademark, copyright, patent, etc¹³ but for this paper we shall restrict our research to impact which patent and trademark protection has on the fair market. For convenience let's understand the meaning of the patent from WIPO. It defines patent as “*exclusive right granted for an invention, which is a product or a process that provides, in general, a new way of doing something, or offers a new technical solution to a problem*”¹⁴ and trademark as “*sign capable of distinguishing the goods or services of one enterprise from those of other enterprises*”¹⁵. Prima Facie one can say why these two laws are being discussed specifically for this paper, because these two have substantive effect on a free market. World is technology driven and hence any kind of restriction in that area has a substantive effect on the market whereas trademark restricts new entrepreneurs to use the goodwill of an already existing entrepreneur. These two act as a bulwark which every entrepreneur needs to consider before entering the market which can be termed as a ‘hindrance to free market’.

Developed States like the United States already had existing antitrust laws like Sherman Act of 1890 and Clayton Act of 1914 which got widespread recognition at the end of Second World War¹⁶ which also laid down the foundation for many European antitrust laws. India on the other got assent to Competition Act in January 2003 which incorporated and enforced today's Competition Act 2002¹⁷ and its amendment in 2007 established what we today call as the Competition Commission of India and Competition Appellate Tribunal. Provisions related to anti-competitive agreement and abuse of dominant position came into effect in May 20, 2009 which enhanced the power of the CCI and CAT¹⁸.

As per Black Law's Dictionary, an efficient market situation is characterized by several key factors. Firstly, there are numerous buyers and sellers in the market, which ensures healthy competition. Secondly, the product being traded is homogeneous, meaning it is identical across all

¹³ A. Roughton, 'The Interface Between Intellectual Property Rights And Competition Policy' (2008) 3 Journal of Intellectual Property Law & Practice.

¹⁴ 'Patents' (Wipo.int, 2022) <<https://www.wipo.int/patents/en>> accessed 20 September 2022.

¹⁵ 'Trademarks' (Wipo.int, 2022) <<https://www.wipo.int/trademarks/en>> accessed 20 September 2022.

¹⁶ *Supra* Note 10.

¹⁷ 'Competition Commission Of India' (Cci.gov.in, 2022) <<https://www.cci.gov.in/legal-framework/act>> accessed 20 September 2022.

¹⁸ *Id.*

sellers. Thirdly, all parties in the market have access to perfect information, allowing them to make informed decisions. Lastly, participants have complete freedom to enter or exit the market without any barriers or restrictions. These elements contribute to a highly competitive and efficient market where prices and quantities are determined solely by market forces¹⁹. Here lies the conflict between IP laws and Competition laws as one intends to create economic value of innovation and invention and grant monopolistic power whereas the other intends easy use of the already existing resources in the market and help the entry and existence of entrepreneurs.

We can hence state that both these laws on face of it have common objectives but through different ways. Hence the motto should be to create a balance between IP laws and Competition Laws so that both the objective i.e. 'economic development' and 'consumer welfare' can be achieved simultaneously.

CHAPTER 2: BALANCE OF INTEREST BETWEEN RIGHT OWNERS AND PUBLIC AT LARGE

Ambit of competition law varies from case to case like mere restriction of sale of spare parts of car in open car market and compelling consumers to buy them from authorised dealers can attract antitrust charges²⁰. Hence the ambit of analysis between these two laws become extremely wide as the interaction between intellectual property rights (IPR) and competition law is primarily influenced by the unique nature of intellectual property, which is characterized by its non-rivalrous and non-excludable characteristics. This poses a challenge in terms of appropriability, as the very nature of intellectual property rights allows for multiple parties to potentially access and use the same knowledge or innovation without diminishing its value. This predicament raises important considerations regarding how to strike a balance between incentivizing innovation through IPR protection while also promoting competition in the market²¹. On one hand IP laws intent to create,

¹⁹ HENRY CAMPBELL BLACK, 'Black Law Dictionary' (*Karnatakajudiciary.kar.nic.in*, 1990) <<https://karnatakajudiciary.kar.nic.in/hcklibrary/PDF/Blacks%20Law%206th%20Edition%20-%20SecA.pdf>> accessed 20 September 2022.

²⁰ *Shamsher Kataria vs Honda Siel Cars India Ltd. & Ors.* Case No, 03/2011.

²¹ K. Maskus, *Competition Policy and Intellectual Property Rights in Developing Countries: Interests in Unilateral Initiatives and 'Welcome To World Bank Intranet'* (*Siteresources.worldbank.org*, 2022) <<http://siteresources.worldbank.org/DEC/Resources/84797-1251813753820/64157391251814020192/maskus.pdf>> accessed 20 September 2022.

innovate and introduce new technologies in the market whereas competition Law promotes a healthy market which remains consumer friendly²².

But there exist some aspect where these two laws appear to conflict and for that many scholars and economists have suggested various principles to end such conflict:

1. In cases where social well-being is at jeopardy, then only competition law should meddle;
2. Monopolistic markets can't be termed to be as banal as they also like competitive markets that need constant research and innovation;
3. Competition law's primary aim is to create a consumer friendly environment and IP laws motive to protect the interest of the creator.

Based on the predominant issue of every case, a balance shall be struck between them.

The debate on unfair trade practices and protection of intellectual property has attracted abundant debates at the world forum which includes *WIPO*. Unfair competition has been recognised as an integral part of protection of industrial property²³.

*“When rights to intellectual property are marketed separately from the products in which they are used, the Agencies may rely on technology markets to analyze the competitive effects of a licensing arrangement”*²⁴. This very paragraph from Carlos M. Correa highlights how fair market complements IP and helps in creation of economic value of the technology

IP in itself is a means of granting a certain degree of monopoly to the person for their intellectual creation and when this coupled with a possible combination amongst enterprises or persons, this essentially widens the scope of monopoly which may be created in a certain market. Therefore, not only is there a need to control such anti-competitive behaviour and reduce the possibilities of abuse, but also to study the impact of IP on combinations and to examine the extent to which they can be regulated.

CHAPTER 3: ROLE OF INTELLECTUAL PROPERTY IN COMBINATION

²² Patel A, 'Intellectual Property Law & Competition Law' (2011) 6 J. Int'l Comm. L. & Tech.

²³ Arpad Bogoch and Stephen Ladas, 'Patents, Trademarks, And Related Rights: National And International Protection' (1976) 24 The American Journal of Comparative Law.

²⁴ Carlos M. Correa — Intellectual Property and Competition Law Pg 5.

It is important to acknowledge that during a combination or merger, all Intellectual Property Rights (IPRs) involved are shared between the entities involved. This shared ownership of IPRs increases the likelihood of the combined entity attaining a dominant position in the market. Such a dominant position can potentially lead to the abuse of market power, as the combined entity may have the ability to restrict competition, limit consumer choice, and engage in anti-competitive practices. Therefore, it is crucial to carefully consider the impact of IPRs in combination transactions to prevent any potential abuse that may arise from the resulting dominant market position. The subject of licences of IP constituting as ‘acquisition’ or ‘transfer’ of assets during a combination has been a subject of debate²⁵.

Combinations are void if they are likely to cause “*appreciable adverse effect*” on the competition in the relevant market for which, the factors to be considered by CCI, have been enumerated under Sec. 20(4) of the Act. Therefore, whenever one seeks to enter into a combination, they have a statutory obligation to notify the CCI, upon whose approval, shall the combination come into effect. The onus is on the CCI to approve the combination, ensuring that all the necessary conditions are complied with and that it does not have an “*appreciable adverse effect*” on the market²⁶.

When the CCI considers the factors under Sec. 20(4) of the Act, it also takes into consideration “*the nature and extent of innovation*”. Practically speaking, it can be established that when a combination is entered into, the innovation over which the IP Rights have been obtained, the monopoly over said innovation is shared and therefore, it may have the likely consequence of diminishing competition in the market, thereby granting complete dominance to the combination. In light of this, the CCI steps in to ensure that the combination is either declared void or certain modifications are introduced before its approval in order to promote competition and dimmest anti-competitive behaviours on part of such enterprises and persons. This provision seems to be necessary because combinations may result in dominant position and the remedy for abuse by them has been covered under Sec. 6 of the Act²⁷.

²⁵ Jill Boylston Herndon, 'Intellectual Property, Antitrust, And The Economics Of Aftermarkets' (2002) 47 The Antitrust Bulletin.

²⁶ Competition Act, 2002, S.20(4).

²⁷ Competition Act, 2002, S.6. Regulation of Combination which explains that any combination having appreciable adverse effect on the relevant market can be prohibited.

Therefore, it can be understood that there is an impending need for an analysis to be carried out to study the impact that patents may have during a combination and the regulation of the same. This is furthered by the fact that the transfer of IP takes many forms and the CCI has the burden to decide when these transfers may effectively constitute as a part of a combination. A clarification has been provided by the CCI on this aspect that the IP itself is not an acquisition if it is non-exclusive and in any other case, such a transfer shall be an asset acquisition which needs to be notified to the CCI²⁸.

CHAPTER 4: ROLE OF PATENT LAW IN COMBINATION REGULATION

Patent means granting of Exclusionary Rights. These rights can be comprehended as negative rights because these rights are granted to individuals in order to prevent others from copying the same. However, this can be seen as a Monopoly which is in conflict with competition. Patent is to promote innovation by protecting rights and creating incentives²⁹.

For a novel and inventive product or procedure a patentee is granted a patent. It is granted for both formal as well as substantive examination by the concerned authority. The patentee holds a monopoly over the patent for a period of 20 years. Patent is accessible for post-grant opposition as well as revocation even after the patent is granted. Here commercialization and grant of patent are two aspects. *Prima Facie* grant of patent does not intend that the patentee possess a dominant position in a market over his/her product or process. Mere granting of a patent for a product or process does not certainly mean commercial success, however there are several other aspects involved in order to attain commercial success. Subsequently, there will be no market dominance in the absence of commercial success. However, there are specific provisions under the Patent Act, 1970 in order to eradicate the evils of abuse of dominance, exercising monopoly over a long period and over wider scope.

For example, Section 140 of the Patent Act, 1970 provides remedy for abuse of dominance as it specifies on the conditions which are not lawful to be included in a sale or purchase agreement for an article to be patented. This can be understood through the case of *Micromax v. Ericsson*³⁰. The facts of the said case are that Ericsson (Swedish Telecom Company) and Micromax (Indian

²⁸ *AT&T and Time Warner Inc.*, Combination Registration No. C-2016/11/456.

²⁹ Leela Kumar, 'MRTP Commission And Competition Commission Of India' [2014] SSRN Electronic Journal.

³⁰ *Micromax v. Ericsson* W.P.(C) 464/2014.

Electronics Company) have entered into an agreement where Micromax will pay Ericsson royalties on each phone that it sells which utilises the technology of 2G or 3G. Later on, Ericsson filed a Patent Infringement case against Micromax on the ground that Micromax has infringed Ericsson's Standard Essential Patent. Alongside, Micromax has claimed that Ericsson has abused its dominant position. The issues in hand have led to the question of a new perspective that is the relationship between the Competition Act and the Patent Act which prima facie safeguards the conflicting interests in the market. It was contended that Patent Act provides for an exclusive right over a product or process in order to safeguard the patentee and the other hand the Act is contrary to Patent Act as it provides for restraint of abuse of dominance by protecting the competitor. Later on, it was held by the Delhi High Court that the both the acts not contrary and they go hand in hand because Patent Act not only provides patentee for exclusive rights but as per section 27 of the Act, it also ensures the patent holder does not abuse his/her position. It was stated that “[t]he two laws may seem contradictory to a layman's eye, but in the core of their formulation, both of them seek to protect common interests, and therefore do not override or oppose each other” It can also be observed that these companies have a combination patent which has led to the abuse of dominance. It can be said that when there is an abuse of dominance leading to Anti-competitive practices. Likewise, in the recent judgement by the Delhi High in *Monsanto Holdings Private v. Competition Commission of India*³¹ the court held that primary finding was with regards to Section 4 of the Competition Act, 2002 and held that Monsanto has a dominance in the market for providing BT Cotton Technology in India. It was also stated that “*Monsanto had abused its dominance by charging unfair trait value, because there was no objective justification for linking the trait value to the MRP of the seed packets.*”³² Not only the Act but the Combination Regulations also protect the competitors from abuse of dominant power with respect to Patent Holders. For instance, two companies Neil Paxman Limited and Hughes Communication Ltd. own a patent together. The combinations of these two companies can create a monopoly in the market relating to satellite internet service where Hughes is one of the world's leading internet service providers. This leads to the abuse of dominance in the market.

³¹ *Monsanto Holdings Private vs Competition Commission of India*, W.P.(C) 1776/2016.

³² Yogesh Pai and Nitesh Daryanani, 'Patents And Competition Law In India: CCI'S Reductionist Approach In Evaluating Competitive Harm' (2017) 5 Journal of Antitrust Enforcement.

Another example of combination Patent is Lucent Technologies Inc. and Gateway Inc. are two USA based companies who own a patent together. These two companies manufacture computer hardware and communication products. However, through the provisions of laws respective governments of all the nations have come up with their national laws in order to avoid abuse of dominant power and monopoly in the market.

CONCLUSION & RECOMMENDATION

Through the above discussion, it can be effectively concluded that IP plays a vital and indispensable role in combination regulation under Competition Law. As a whole, the tension which is created through the intersection of IP with Competition Law shall always exist, but it can be harmonized by just realising that both laws ultimately aim for consumer welfare. It is imperative to note that it is not necessary to view both these laws as conflicting as stricter implementation of both laws can ensure not only the protection of competition in markets but will also uphold the spirit and necessity of IP in this field. With the number of combinations increasing in today's time, the need for a more detailed system of checks and balances needs to be introduced. This is furthered by the technological advancements, thereby increasing the role of IP within the ambit of combination regulation.

In this paper, the author has analysed the statutory provisions which govern combination regulations, IP covering patents and the interplay between the two. Further, author has also examined various cases and possible scenarios which are necessary for us to successfully establish the relevance and importance of IP, especially patent, during a combination in today's affairs of the Indian markets, thereby effectively fulfilling and answering the research objectives and questions respectively which have been laid out in this paper.

In light of the above discussion, few suggestions and recommendations have been suggested which may act as a recourse to rectify and strengthen the role of IP during a combination regulation to ensure a smoother functioning of the system, thereby upholding the basic principles of both laws. It is absolutely imperative for timely intervention during combinations and when IP is considered while deriving the value, there is an impending need for a stricter and more detailed framework to be put in place in order to not only avoid confusion but also prevent litigation for situations including patent pooling, cross-licensing, licenses, etc. Furthermore, the author also recommends

the need for more consultation with other sectoral regulators as a binding mandate for the CCI. Moreover, since Indian Competition Law is largely a derivative of the US and EU laws, it is strongly recommended that India takes its own stance on ensuring that a tough IP policy isn't introduced as it is monopolistic in nature, which is exactly when it conflicts with Competition Law. The harmonious construction of both the laws doesn't allow any of these rights to be absolute or for one to supersede the other, thereby necessitating the need for a balance to be struck between these laws by enacting a clearer and more flexible policy in place.