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**Intellectual Property and Competition Law: Divergence and Convergence of the Two in
India and USA**

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Abstract

Intellectual Property is the creative work of the human intellect. The main motivation of its protection is to promote the progress of science and technology, arts, literature and other creative works to encourage and reward creativity. The branch of law which protects the interests of the same is known as Intellectual Property Law. Nations give statutory expression to economic rights of the creators in their creations.

Competition Law on the other hand fosters economic growth in a country especially in a country like India which has a Mixed Economy. It ushers a free environment where there is a fair play and the market forces decide the production of goods and services in every sector. It helps in the upbringing of a competitive and a non-monopolistic market, which fosters economic efficiency and consumer welfare. At the very first instance if we observe the two laws there seems to be no union between the two but over a period of time and with the shift that India has had in emerging as an Economic Power slowly and steadily, the importance of their convergence is being established in the World at large.

Through our paper we have tried to analyse the common thread that exists between these two laws which appear to be divergent at the first instance. IPR being the law which grants the exclusive monopoly rights to an individual over his/her products on the contrary Competition Law restricts monopolistic trade practices in the market. Still the common point between the two laws being that both of them effectual balance between the conflicting interests of the parties and reconcile the evident anomalies in the socio-economic system. This paper elaborates on the fact as to how with a lawful approach the gap between the two divergent fields of law can be bridged through various legislations (both at national and International Front), judicial pronouncements and other methods in two most important countries i.e. USA, which is a Super Power and India which is a Developing Nation.

Chapter 1:

Introduction

The premise of intellectual property rights is that recognizing and rewarding the innovators and creators of intellectual work, augurs well for industrial and technical progress as it spurs invention and innovation. It also infuses efficiency and stimulates competition in new products, new markets and new technologies which is the life-breath of market driven economies; the consequential positive impact of which is felt by consumers as well.

On the other hand, competition law and policy also has a vital role to play in market based economies, as it ushers an environment of free and fair play of market forces. It carves space for new entrants in the market by putting fetters on monopolistic anti-competitive behaviour of dominant enterprises and by checking collusive tendencies. It functions on the touchstone of consumer welfare and economic efficiency.

The simple hallmark of competition law is the protection of those principles and practices which enable the efficient functioning of markets¹. A natural concomitant to this objective is making certain that incumbent enterprises do not engage in anticompetitive practices to the detriment of the market².

The interaction between intellectual property rights (IPRs) and competition law is predominantly created by the non-rivalrous and non-excludable nature of intellectual property, which causes the problem of “appropriability”. The creation of this prima facie “inherent tension” is due to IPR holders being granted statutory rights to essentially control access to the intellectual property

¹ This involves ensuring that entry and exit of enterprises is orderly and not artificially motivated and that efficient combinations of enterprises are enabled. The objective of safeguarding market efficiency may be allied to additional goals such as the promotion of small-scale enterprises or privileging a certain sector of the economy. These additional goals have gained great favour in recent years especially in developing countries, where the post-globalization entry of foreign enterprises has caused concern that free markets work against the interests of developing economies. See K. Maskus, *Competition Policy And Intellectual Property Rights In Developing Countries: Interests In Unilateral Initiatives And A WTO Agreement*, <http://siteresources.worldbank.org/DEC/Resources/84797-1251813753820/6415739-1251814020192/maskus.pdf>

² Such practices ordinarily cover merging with competitors to attain monopoly, refusing to supply goods or to license technologies on market terms in order to prevent competition and agreeing with other firms to establish collusive restraints on trade. In the context of intellectual property rights, certain peculiar anticompetitive practices, examined in detail in §2 infra gain prominence.

and charging monopoly rents for the use of the IPRs—something apparently in conflict with competition law, which attempts to curtail such market power³.

Intellectual Property Rights. IPRs are intangible property rights conferred for tangible fruits of innovative endeavour, creative expression and commercial goodwill. The term is a compendious one and embraces patents, copyright, trademarks, industrial designs, lay-out designs of integrated circuits as well as geographical indication. These provide a protective umbrella to human ingenuity and intellectual work against unwarranted encroachments by conferring exclusive rights to the authors, creators, innovators or the owners (such as employers).

The rationale behind Intellectual Property Rights is that it fosters a vibrant socioeconomic structure. To expatiate upon the reason d'être of IPRs in greater detail one may emphasize that the contemporaneous “knowledge driven economies” thrive on innovation, enterprise and industrial – technical progress and therefore is it considered expedient to bestow upon, the innovators, creators and entrepreneurs certain “exclusive rights” so as to further encourage them to invest, invent and innovate. These exclusive rights are in the form of intellectual property which not only rewards the innovators and creators of intellectual work for the efforts expended by them, but also allows them to recoup the costs of investments and research & development (R&D).

³ Supra Note 1.

Chapter 2:

Interface of IP Laws and Competition Laws in USA

The US constitutional mandate of “promoting the progress of Science and Useful Arts⁴”, forms the bedrock of copyright and patent laws. There has been a conscientious effort in the United States to stimulate artistic creativity and innovation, which is evident in the creative judicial exposition of Intellectual Property Laws. The courts have more often than not, manifested their penchant for broad and expansive interpretation in the realm of IPRs, resulting in patents being granted to ‘live, human made micro-organism’⁵, ‘computer software’⁶ and ‘business method’⁷ as well.

On the other hand there is an equal emphasis on anti-trust law which aims to create an environment of free and fair trade, whilst improving economic efficiency and consumer welfare. The Anti-trust law in United States is primarily rooted in the Sherman Act of 1890 and the Clayton Act of 1914. Section 1 of the Sherman Act prohibits ‘every contract, combination...or conspiracy, in restraint of trade or commerce’⁸. Under this provision some agreements in restraint of trade, such as price fixing cartels and market allocation agreements are treated as illegal per se. Most agreements, however, are judged under the rule of reason⁹, which calls for evaluation of purpose, power and competitive effects¹⁰.

Section 2 of the same Act prohibits conduct that ‘monopolizes, or attempts to monopolize any part of trade or commerce’. However, under this provision, claims of monopolization and attempts to monopolize are always judged under a full blown rule of reason. Purpose is inferred

⁴ Under Article I, section 8, clause 8 the Congress is granted power ‘to promote the progress of science and useful arts, by securing for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries’.

⁵ *Diamond v Chakravarty* 447 U.S. 303 (1980)

⁶ *Diamond v Diehr* 450 U.S. 175 (1981)

⁷ *State Street Bank & Trust Co. v Signature Financial Group, Inc.* 149 F.3d 1368 (Fed. Cir. 1998)

⁸ Section 1, Sherman Act – “Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal.”

⁹ The rule of reason, first enunciated in *Standard Oil case* (1911) implies that a fact based approach should be adopted for the purpose of evaluating the reasonableness of the alleged anti-competitive conduct. It is in the form of weighing the pros and cons of the purpose and eventual consequence of the conduct and if the pro-competitive effects outweigh the anti-competitive harm, then the conduct is deemed reasonable.

¹⁰ Rudolf Peritz, *The Interface between Intellectual Property Rights and Competition Policy*, Pg 190 edited by Steven Anderman (Cambridge University Press 2007)

from a limited set of conduct identified as predatory, including certain pricing below cost and unjustified refusals to deal¹¹.

The Clayton Act of 1914 declares that tying, exclusive dealing and stock mergers are illegal ‘where the effect... may be to substantially lessen competition or tend to create a monopoly in any line of commerce’. The Act offences (including price discrimination, mergers and exclusionary conduct) call for proof that the conduct under scrutiny may substantially lessen competition¹².

Section 5 of the Federal Trade Commission Act, gives the FTC broad latitude to attack “unfair methods of competition” and “unfair or deceptive acts or practices”. Against the milieu of anti-trust laws, there seems to be a constant tussle between individual’s incontrovertible right to property (including IPRs which confer the right of monopoly and exclusivity) and the broad-spectrum freedom of trade and commerce. The apparent tension between IPRs and anti-trust laws is subsumed under the modern approach of treating IPRs and competition policy as complementary to each other and the underlying theme is to strike an appropriate sense of balance between the two. Perhaps the most powerful impact has been that of “innovation” economics, which exhorted the anti-trust authorities to take a bendable and comprehensive view of both intellectual property and anti-trust law. If one perforates through the chronicles of economic history in the United States, one may perceive that the dawn of twentieth century witnessed a perceptible shift from the languorous economics of “price” competition to the economics of “innovation” competition because the concept of each state is that of a Welfare State.

United States:1995 Antitrust Guidelines for the Licensing and Acquisition of Intellectual Property¹³

The essence of these guidelines was to accentuate the nexus between Intellectual Property Law and Competition policy. The fundamental precepts as articulated by the Department of Justice and Federal Trade Commission emphasized that -

¹¹ Ibid

¹² Ibid

¹³ Available at <http://www.usdoj.gov/atr/public/guidelines/0558.pdf> last visited on July 31.07.2014.

_ Intellectual property and other forms of property should be placed on an equal pedestal, without being oblivious of the inherent differences between IPRs and other property as far as the “ease of misappropriation” is concerned¹⁴.

_ It should not be presumed that the existence of IPRs confer market power upon the owner¹⁵.

_ Competition policy and IP laws are intertwined with the common objective of promoting innovation and consumer welfare, and the licenses that blend the complementary factors of production produce precompetitive results¹⁶.

Not only were the areas of convergence between competition policy and IP laws highlighted, but also certain novel features introduced, such as – innovation markets, horizontal and vertical relationships, steps to be followed in conducting ‘rule of reason’ analysis and anti-trust ‘safety-zone’ with respect to licensing transactions. The three distinct markets in which competition may be affected by a licensing agreement were identified as – the markets for goods, the technology markets and the innovation markets.

Several US cases have emerged from the thought that, based on the recognition of the fact that trademarks become valuable property rights, as opposed to monopoly rights, which patent law is based on¹⁷ and corrective measures adopted to set right old monopolistic/cartel arrangements¹⁸. Similar to patent law, US Courts have evolved a competition misuse doctrine applicable to trademarks, based on the “clean hands” doctrine.¹⁹ However, for the defence to be used in trademark cases, the use of the trademark has to be essential to the competition law violation.²⁰ US Courts have also taken the lead in mapping out the interaction between trademark licensors and the extent of control exercised by them in a competition law context.²¹

¹⁴§ 2.1 “The Agencies apply the same general antitrust principles to conduct involving intellectual property that they apply to conduct involving any other form of tangible or intangible property.”

¹⁵§ 2.0 (b) “The Agencies will not presume that a patent, copyright, or trade secret necessarily confers market power upon its owner”. IP Guidelines, 1995

¹⁶ Ibid at § 2.0

¹⁷ See W.L. Fugate, *FOREIGN COMMERCE AND THE ANTITRUST LAWS: VOLUME II* (1996), at 10-11.

¹⁸ See *Humble Oil & Refining Co v. American Oil Co* 405 F 2d 803 (8th Cir, 1969) and *Philip Morris Inc v. Imperial Tobacco Co* 401 F 2d 179 (4th Cir, 1968).

¹⁹ See W.L. Fugate, *FOREIGN COMMERCE AND THE ANTITRUST LAWS: VOLUME II* (1996), at 10-11

²⁰ In many cases, the competition law violation asserted has been held to be collateral to the trademark use and the defence has been denied. See *Drop Dead Co v. SC Johnson & Sons, Inc* 326 F 2d 87 (9th Cir, 1963), at 95-96, *Phi Delta Theta Fraternity v. JA Buchroeder & Co* 251 F Supp 968 (WD Mo, 1966), *Clairol, Inc v. The Gillette Co* 270 F Supp 371 (EDNY, 1967) and *Carl Zeiss Stiftung v. VEB Carl Zeiss* 433 F 2d 686 (2nd Cir, 1970).

²¹ See generally S. Sage, *Trade-Mark Licenses and ‘Control’*, 43 *TRADEMARK REPORTS* (1953), at 653. This idea had been previously recognized in connection with licensing of secret processes in cases such as *US v.*

More specifically, considering exclusivity-based arrangements such as tie-in agreements, US law has evolved its own reasonability standards.²²

The most recent legislative effort of note is the adoption of the US Antitrust Guidelines for the Licensing and Acquisition of Intellectual Property Rights, 1995, under which very few horizontal restraints are challenged as per se unlawful. Among those restraints which have been held per se unlawful, price fixing, market division and output restraints and certain group boycotts are most prominent.²³ The standard adopted to determine whether a restraint in a licensing condition is given per se or rule of reason treatment is an assessment of whether the restraint can be expected to increase efficiency.²⁴

General Electric Co 82 F Supp 753 (DNJ, 1949), at 849 and US v. Sealy, Inc 388 US 350 (1967).

²² See *Susser v. Carvel Corp* 206 F Supp 636 (SDNY, 1962) and *Siegel v. Chicken Delight, Inc* 311 F Supp 847 (ND Cal, 1970) modified by 448 F 2d 43 (9th Cir, 1971).

²³ J. Watal, *INTELLECTUAL PROPERTY RIGHTS IN THE WTO AND DEVELOPING COUNTRIES* (2001), at 305.

²⁴ See para 3.4 of the 1995 Guidelines, available at US Department of Justice, *ANTITRUST GUIDELINES FOR THE LICENSING OF INTELLECTUAL PROPERTY*, 1995, <http://www.justice.gov/atr/public/guidelines/0558.htm>

Chapter 3:

Interaction between IP and Competition Law in India

The imperatives of “unfettered competition” and “innovation” are indispensable for attaining sustained economic growth. This tension between IPRs and competition policy is sought to be resolved by the competition authorities in major jurisdictions such as US and EU. The law in these countries developed and matured over the years to accommodate the interests of both innovation and competition. However, competition law and policy is in its nascent stage in most of the developing countries and the interface between IP law and competition policy poses a conundrum to these nations. There is also a realization among these countries that innovation is the key to a developed economy. Therefore the primary concern is the precompetitive treatment and exercise of IPRs. The roots of Indian law on competition can be traced back to Articles 38 and 39 of the Constitution which lay down the duty of the State to promote the welfare of the people by securing and protecting a social order in which social, political and economic justice is prevalent and its further duty to distribute the ownership and control of material resources of the community in a way so as to best sub serve the common good, in addition to ensuring that the economic system does not result in the absorption of wealth. It is from these duties that the MRTP Act, 1969, also influenced by US, UK and Canadian legislations,²⁵ came about.²⁶

The focus on liberalization, globalization and privatization made it expedient for us to concentrate on the aspects of competition and innovation equally since the year 1991. The Competition Commission of India was established with the aim of fostering competition, preventing practices having an adverse effect on competition, protecting consumers’ interests and ensuring freedom of trade by various participants in the economy. At the same time, India also tailored and accustomed its IP laws to be in tandem with the TRIPS agreement. One can easily infer that equal thrust on innovation and competition is a matter economic expediency for India. However, the tussle between IPRs and competition cannot be resolved unless a clear cut

²⁵ These include the Sherman Act, Clayton Act, the US Federal Trade Commission Act, 1914 (as amended in 1938) in the US, the Monopolies and Restrictive Practices (Inquiry and Control) Act, 1948, the Resale Prices Act, 1964 and Restrictive Trade Practices Act, 1964 of the UK and the Combined Investigation Act, 1910 of Canada.

²⁶ The Institute of Chartered Accountants of India, *COMPETITION LAWS AND POLICIES (2004)*, at 134.

policy approach is laid out. The Competition Act 2003 explicitly carves out exceptions in favour of the exercise of intellectual property rights.²⁷

Section 3 of the Indian Competition Act prohibits anti-competitive agreements between enterprises and lists out the conduct which is deemed to have a deleterious impact on competition.²⁸

The advanced countries and major trading blocs like US and EU have taken recourse to tools such as compulsory licensing in order to mitigate the impending perils of abusive conduct of dominant enterprises. The applicability of such a provision in India cannot be precluded since the Indian Patent Act makes an explicit provision for compulsory licensing.

This would be more relevant in the realm of pharmaceuticals where competition in the generic drugs may be foreclosed by dominant undertakings. Compulsory licences can be used, both in the context of IPRs and of competition laws, to remedy anti-competitive practices. Article 31(k) of the TRIPS Agreement, explicitly provides for the granting of such licences in the case of patents²⁹. It is pertinent to mention that the power to enact laws on compulsory patent licensing arises from several international agreements such as the World Intellectual Property Organization (WIPO) Paris Convention for the Protection of Industrial Property³⁰, the relevant

²⁷ Section 3(5) of the Act contains the following provision:

Nothing contained in this section shall restrict –

(i) the right of any person to restrain any infringement of, or to impose reasonable conditions, as may be necessary for protecting any of his rights which have been or may be conferred upon him under –

(a) the Copyright Act, 1957

(b) the Patents Act, 1970

(c) the Trade and Merchandise Marks Act, 1958 or the Trade Marks Act, 1999

(d) the Geographic Indications of Goods (Registration and Protection) Act, 1999

(e) the Designs Act, 2000

(f) the Semi-conductor Integrated Circuits Layout-Design Act, 2000

(ii) the right of any person to export goods from India to the extent to which the agreement relates exclusively to the production, supply, distribution or control of goods or provision of services for such export.

²⁸ Such conduct includes –

determining purchase or sale prices, limiting production or supply, allocating geographic markets or product market, bid rigging or collusive bidding etc.

²⁹ Carlos M. Correa *Intellectual property and Competition law – exploring some issues of relevance to developing countries*, available at http://www.iprsonline.org/resources/docs/corea_Oct07.pdf.

³⁰ Paris Convention, Article 5, states that “[e]ach country of the Union shall have the right to take legislative measures providing for the grant of compulsory licenses to prevent the abuses which might result from the exercise of the exclusive rights conferred by the patent, for example, failure to work.”

provisions of which were incorporated into the World Trade Organization (WTO) Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS)³¹.

TRIPS provides a leeway to the Member States to smoothen the creases created by potential conflict between competition policy and IP law. Articles 8, 31 and 40³² deserve a special mention. Members may “adopt measures necessary to protect public health and nutrition and to promote the public interest in sectors of vital importance to their socio economic and technological development.”³³ Further, TRIPS handles compulsory licenses as an exception to the agreement's minimum requirement that all Member States afford a patentee a right of exclusivity during the complete patent term. TRIPS portends a set of circumstances that establish a floor at which any Member State is allowed to issue compulsory license. The compulsory licenses that are allowed fall into two categories—where there is an overriding public interest or where the patent rights are being used in an anticompetitive manner.³⁴

The Competition Commission of India may use the potent tool of compulsory licensing to countervail the harmful effect of IPRs on competition. This approach must be subject to the TRIPS provisions which entail that the compulsory license should be issued on individual merits and the IPR holder must be appropriately remunerated etc.³⁵ Therefore India can fully use the

³¹ Raj S. Davé, Jon Wood, Susan K. Finston, Zhongyi Tao, Zheng , “*Compulsory Licensing in the United States, China, Japan, Germany & India*” Zha
<http://www.ipo.org/AM/CM/ContentDisplay.cfm?ContentFileID=6484&FusePreview=Yes>

³² The following part of **Article 40** is relevant for our purpose -

1. Members agree that some licensing practices or conditions pertaining to intellectual property rights which restrain competition may have adverse effects on trade and may impede the transfer and dissemination of technology.
2. Nothing in this Agreement shall prevent Members from specifying in their legislation licensing practices or conditions that may in particular cases constitute an abuse of intellectual property rights having an adverse effect on competition in the relevant market. As provided above, a Member may adopt, consistently with the other provisions of this Agreement, appropriate measures to prevent or control such practices, which may include for example exclusive grant back conditions, conditions preventing challenges to validity and coercive package licensing, in the light of the relevant laws and regulations of that Member.

³³ Article 8 of TRIPS

³⁴ Christopher A. , “*Compulsory Licensing under TRIPS*” Cotropia <http://www.cotropia.com/bio/Chapter26--Cotropia--PatentLawHandbook.pdf>

³⁵ **Article 31 of TRIPS lays out conditions to be met for compulsory licensing**
Other Use Without Authorization of the Right Holder

Where the law of a Member allows for other use of the subject matter of a patent without the authorization of the right holder, including use by the government or third parties authorized by the government, the following provisions shall be respected:

- (a) authorization of such use shall be considered on its individual merits;
- (b) such use may only be permitted if, prior to such use, the proposed user has made efforts to obtain authorization from the right holder on reasonable commercial terms and conditions and that such efforts have not been successful within a reasonable period of time. This requirement may be waived by a Member in the case of a national emergency or other circumstances of extreme urgency or in cases of public noncommercial use. In situations of national emergency or other circumstances of extreme urgency, the right holder shall, nevertheless, be notified as

flexibilities allowed by the TRIPS Agreement to determine the grounds for granting compulsory licences to remedy anti-competitive practices relating to IPRs³⁶.

soon as reasonably practicable. In the case of public noncommercial use, where the government or contractor, without making a patent search, knows or has demonstrable grounds to know that a valid patent is or will be used by or for the government, the right holder shall be informed promptly;

(c) the scope and duration of such use shall be limited to the purpose for which it was authorized, and in the case of semi-conductor technology shall only be for public non-commercial use or to remedy a practice determined after judicial or administrative process to be anti-competitive;

(d) such use shall be non-exclusive;

(e) such use shall be non-assignable, except with that part of the enterprise or goodwill which enjoys such use;

(f) any such use shall be authorized predominantly for the supply of the domestic market of the Member authorizing such use;

(g) authorization for such use shall be liable, subject to adequate protection of the legitimate interests of the persons so authorized, to be terminated if and when the circumstances which led to it cease to exist and are unlikely to recur. The competent authority shall have the authority to review, upon motivated request, the continued existence of these circumstances;

(h) the right holder shall be paid adequate remuneration in the circumstances of each case, taking into account the economic value of the authorization;

(i) the legal validity of any decision relating to the authorization of such use shall be subject to judicial review or other independent review by a distinct higher authority in that Member;

(j) any decision relating to the remuneration provided in respect of such use shall be subject to judicial review or other independent review by a distinct higher authority in that Member;

(k) Members are not obliged to apply the conditions set forth in subparagraphs (b) and (f) where such use is permitted to remedy a practice determined after judicial or administrative process to be anti-competitive. The need to correct anti-competitive practices may be taken into account in determining the amount of remuneration in such cases. Competent authorities shall have the authority to refuse termination of authorization if and when the conditions which led to such authorization are likely to recur;

(l) where such use is authorized to permit the exploitation of a patent ("the second patent") which cannot be exploited without infringing another patent ("the first patent"), the following additional conditions shall apply:

(i) the invention claimed in the second patent shall involve an important technical advance of considerable economic significance in relation to the invention claimed in the first patent;

(ii) the owner of the first patent shall be entitled to a cross-licence on reasonable terms to use the invention claimed in the second patent; and

(iii) the use authorized in respect of the first patent shall be non-assignable except with the assignment of the second patent.

³⁶ Raj S. Davé, Jon Wood, Susan K. Finston, Zhongyi Tao, Zheng Zha, "*Compulsory Licensing in the United States, China, Japan, Germany & India*", <http://www.ipo.org/AM/CM/ContentDisplay.cfm?ContentFileID=6484&FusePreview=Yes>

Chapter 4:

Conclusion

We would like to point out that a set of guidelines for the application of competition laws to intellectual property rights are an obligatory requirement for maintaining an effectual balance between IPRs and competition policy. The guidelines may be in the form of broad policy objectives or they may be intricately detailed. The most appropriate approach would be to amalgamate the best features available in various jurisdictions in order to cater to the Indian requirements. Any other gaps may be filled by a case to case approach applying the rule of reason. In a nut shell the impact of IPRs on the market substantially varies depending upon the legal and socio-economic contexts in which they apply.

Thus, the static-dynamic efficacy rationale applicable to a developed country does not necessarily hold in low income countries. High levels of IPR protection may have significant negative distributive consequences in the latter without contributing – or even impeding – their technological development. As a result, competition authorities may legitimately give static efficiency precedence over dynamic efficiency considerations and challenge, for instance, situations of excessive pricing emerging from the exercise of IPRs. Therefore, in case of India also it is necessary for to identify as to whether static efficiency precedes dynamic efficiency or vice –versa. In my view, it may be analysed and dealt with on a case to case basis. For example in case of competition in the pharmaceutical sector, both static and dynamic efficiency would matter. Static efficiency matters as the prices of essential drugs must not be manipulated by those having monopoly rights so as to reap unprecedented profits at the cost of public welfare. Thus, the scales may tilt in favour of competition policy. On the other hand, dynamic efficiency is equally relevant so as to encourage innovation in this sector and in such cases the tilt would be towards protection of exclusivity of IPRs so that there remains sufficient incentive to invest in R&D. The challenge in the end is to strike a balance and we should target for the same.

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