A young boy in a red shirt is shown in profile, holding a glowing yellow star. The scene is set in a dark room decorated for Christmas, with warm lights and garlands visible in the background. The overall mood is one of wonder and inspiration.

Inspiring a billion imaginations

Competition Between IPR & Competition Law

Ashish Chandra

Opening Statement

“It is a longstanding topic of debate in economic and legal circles: how to marry the innovation bride and the competition groom”

*Mario Monti, European Commissioner for Competition Policy,
January 2004*

Purpose

- Competition law:
 - Concerned with business activities
 - Requires the application of economic theory
 - Prohibit business conducts which harms competitive markets
- IPR laws
 - Concerned with protection the investment of intellect and resources
 - Requires the application of “public policy” theory
 - To create ‘acceptable’ monopolies over the intellectual assets



Purpose

- Common purpose – to promote innovation
 - IPR laws: To promote innovation by recognizing and protecting intellectual capital
 - Competition law: To promote innovation by creating environment of healthy competition



IPR laws – self sustained code for anti-competition?

- Statutory License
- Compulsory License
- Fair Use
- Tariff determination



The objective of above principles is 'public policy' and 'public interest'

Other legislative measures to check anti-Competition

- Sector specific regulations eg:
 - Telecom & Broadcasting: TRAI
 - Medicines: Drug controller of India



Usual restrictions of IPR owners

- Refusal to deal
- Patent pooling & cross licensing
(similar to copyright societies)
- Differential terms of sale of same product
- Different prices for different territories
- Closed technological standards
- Cartelization v. collective bargaining
- Excessive rights management
- Tie-in sales
- Non Compete arrangements



Competition Act

- Section 3 – Anti-competitive agreements
 - Exception to IPR owners for:
 - Retraining any infringement
 - Impose reasonable conditions
- Section 4 – Abuse of dominant position
 - IPR creates monopoly
 - Puts IPR owner into a dominant position
 - Trigger point is “abuse” of dominant position



Important concepts under Competition Law for IPRs

- AAEC
 - Appreciable v. perceptible
 - Adverse v. tolerable
- Dominance v. Abuse of dominance
- Relevant market
- Essential facilities doctrine
- Safety Zone for IPR owners



www.shutterstock.com · 9483217

Relevant Market – Media, Internet, Tech & Sports

- Media:
 - Television:
 - Pay TV v. Ad funded TV
 - DTH / Cable / IPTV / Mobile TV
 - Over the top internet media consumption
 - sVOD / adVOD / PPV / P2P
 - Music
 - Recording & Distribution
 - Music Publishing
 - Online music market



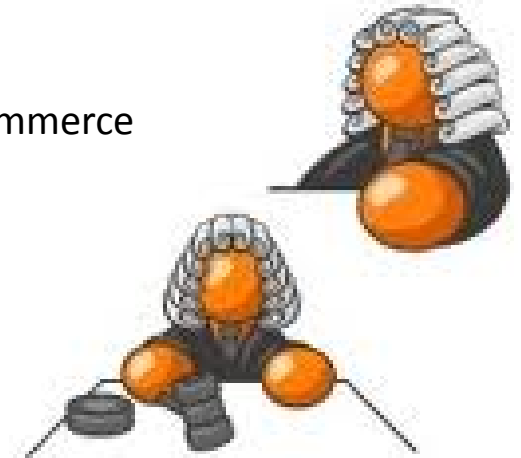
Relevant Market – Media, Internet, Tech & Sports

- Media:
 - Print Media
 - Books
 - Journals
 - Periodicals
 - News Papers
 - Film
 - Production
 - Distribution
 - Exhibition (on various mediums)



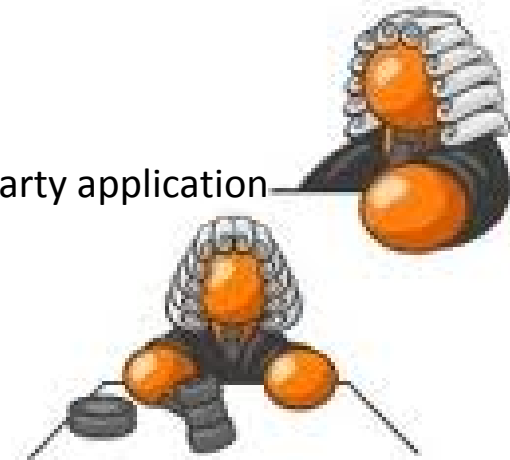
Relevant Market – Media, Internet, Tech & Sports

- E-Commerce:
 - Nature
 - B2B
 - C2C
 - B2C
 - Social buying v. group buying v. classifieds v. classic e-commerce
 - Facilitators
 - Shipments
 - Payments
 - Placement & listing
 - Keyword Advertisements



Relevant Market – Media, Internet, Tech & Sports

- Software:
 - Operating System – Microsoft v. Sun Microsoft Systems, 2004 (EC decision)
 - PC
 - Mobile
 - Tablets
 - Middleware
 - Classic case of Microsoft to open its middleware for third party application developers
 - Application Software
 - Industry specific
 - Usage specific



Relevant Market – Media, Internet, Tech & Sports

- Sports
 - Nature of sports
 - Sports association
 - Sponsorships
 - Ticket sales arrangements
 - Sports media rights



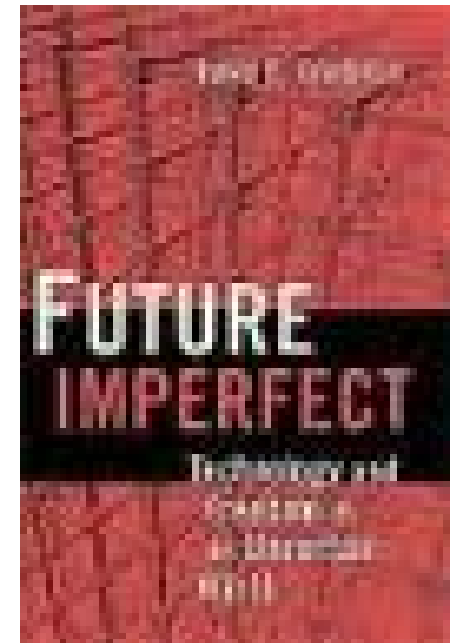
Recent CCI orders concerning IPRs



Title	Ratio
BigFlix	No dominant position as multiple online movie rental players in the market
Microsoft	No abuse of dominance by providing diff price for diff market
Google India	No abuse of dominance by not providing ad impression and click through information to advertisers
ETC Network	No dominant position in the relevant market
Multiplex Assn.	Cartelization v. Collective Bargaining
Dish TV v Prasar Bharti	Refusal to place advt on a public platform of competing services is not anti-competitive
KBC	KBC is not affecting other shows in the similar genre of GEC channels
SAG AG	Complainant failed to prove dominance or abuse of dominance
ISAPI v DOT	DOT is not an enterprise. DOT exercises sovereign functions which are outside Competition Law

Future issues in tech related anti competition

- Standardization of technology network and interoperability
- Network Access and Net Neutrality
- Over-regulation?
- Regulatory convergence in the era of technological / media convergence
- From 'ex post' to 'ex ante' remedy



My 2 cents....

- Commercial Dispute v. Anti-competition
- A mere dominance is not anti-competitive
- A generic abuse of dominance is not sufficient:
 - Abuse should lead to AAEC
 - AAEC should impact “relevant market”
- For public policy issues take shelter of legal tools in IPR laws – use competition law if there are business issues
- Expert opinion is a ‘must have’ to identify dominance, its abuse & its impact
- Competition law is a specialized field of law

