INNOVATION, INTELLECTUAL PROPERTY RIGHTS AND COMPETITION LAW IN MALAYSIA

Angayar Kanni Ramaiah

ABSTRACT

The post-industrial business era, Industrial Revolution 4.0 (IR4.0) requires creativity and innovation for their advances in economic and societal well-being. Their innovative advancement and development is influenced by the incentives and protections for their creations which is predominantly provided via Intellectual Property Rights (IPRs). In this an era the scope IPRs rights and protections (which includes patents, copyrights, designs right and trademarks) have experienced an expansionism. This has widened the protection for the inventor or licensor that guarantees income based on the monopoly position which on the flipside restraints free competition. The Malaysian government's desire on one hand to welcome innovation but on the other hand to fear its disruption on traditional market means we need the right balance. Hence, there is growing concern as to whether we have the right regulatory policy and environment for innovative goods and services in certain industries which is revolutionising and disrupting the conventional market. Therefore the authorities and legislature must identify the boundaries of private rights under IPRs and public right under CL to strike a balance between the "public good theory' and 'property rights theory'. This resolution is crucial for economic dynamics of a developing industry based nation like Malaysia in which promotion for innovation, technology transfer and competition much needed without compromising affordable good-quality products and services for consumers. The apparent conflicting rights and tensions between them are best being resolved amicably. This paper examines the conflicting objectives and tensions between the Competition Act 2010 and IPRs, in the role of the competition policy in the economy of the country to ensure fair competition in the market. The paper presents the challenges and proposes recommendations in the interplay between IPRs and CL.

Keywords: competition, Intellectual Property Rights, innovation and disruption

INTRODUCTION

Competition and Intellectual Property Rights (IPRs) are necessary pillars for the market to be efficient and competitive, although the tension between them in terms of objective is apparent (Torti, 2015). Competition also helps to deal with unexpected, provides resiliency and stokes innovation (Crampton, 2002). The competition is promoted by Competition Law (CL) which prohibits anti-competitive agreements and anti-monopoly market practices to create a free market/oligopolies environment. CL mainly strives to prevent market barriers and concentration of goods service and technologies to prevent monopoly. The freedom to competition is the basis for consumer protection and an incentive to progress market competiveness.

Intellectual Property Rights (IPRs) confers upon its owner an exclusive right to behave in a particular way. Such as a patent owner can prevent the production of the patented good or the registered trademark owner can prevent anyone else applying the name to goods or services. The IPRs is a recognition for the creation of mind. IPRs legitimates monopoly for the idea and/or creation by way of property rights via Copyright, Patent, Trademark, Industrial design(ID), geographical indication(GI) and Integrated Circuit (IC) layout design regulatory instruments. The property rights are granted by the government for an exchange of an individual's creation and it gives monopoly protection generally for a limited time (WIPO).

IPRs laws and CL although share the common goals of enhancing consumer welfare and promoting innovation but in application IPRs confers exclusive rights upon their owners. Whereas, CL strives to keep the goods or services market open to the others (Whish &Bailey, 2016). It appears both regulations promote innovation, creativity and better market of choice for consumer in their own perspective. However in the interface between IPRs, innovative ideas and CL there are some inherent tension and conceptual clash in application. Prima facie Intellectual property rights endanger competition while competition law engenders competition (Bhatt, 2012). Economic and social development of a society is dependent on creativity. Intellectual property rights allow creative freedom (Spencer and Noel, 1993) and encourage innovators and creators to be responsive to consumer needs (Singh,2014).

Innovation have become an essential dynamic component of an open and competitive market economy. The competition enforcers and courts have recognised both disciplines work in tandem to bring new and better technologies, products, and services to consumers at lower prices. (U.S. Department of Justice & FTC, 2007).

The Malaysian Competition Act 2010 prohibits the anti-competitive agreements and abuse of dominant position by an enterprise in any market for goods or services. It is believed to encourage efficiency, innovation and entrepreneurship as well as to promote competitive prices, improvement in the quality of products and services and wider choices for consumers. The paper examines the conflicting objectives and tensions which poses various challenges and proposes recommendations in the interplay between innovation, IPRs and CL.

INTERFACE BETWEEN IPRs, INNOVATION COMPETITION

"Intellectual property rights (IPRs)" is a catch-all term used to describe the legal status and protection that allows people to own intellectual properties i.e. the intangible products of their creativity and innovation imbedded in physical objects in the form that they own physical properties (Bently & Sherman, 2001) The Western system for protecting ideas, via IPRs, arose in the second half of the nineteenth century and is based on some independent concepts. The continental Europe views is based on the rights of the individual, whereas the United States provides a more utilitarian view of intellectual property as a tradable commodity, anchored in the Constitution of the United States of America (North, D. & Thomas, R.2004).

Intellectual Property or IP is based on the public-goods theory, which seen as pre- requisite for creativity and innovation. A public good is non-exclusive, so without IP protection an innovation can be utilized by competitors as soon as it becomes available. It is also non- rivalries, so consumption by one person does not compete with that by another. Under the public-goods theory, a system without IPRs protection will have too little innovation because businesses will hesitate to make an investment if they have to share the result with their competitors. However, this theory fails to determine exactly where the optimal border is between protection and free use (Drexl, 2010).

Whereas, innovation is the process of translating an idea or invention into goods or services that creates value or for which customers will pay (Business Dictionary.com). In business context, innovation blooms out when ideas are applied by the organization in order to further satisfy the needs and expectations of the customers. Thus innovation has become the industrial religion of the late 20th century (Ramaiah, 2015). While business players use it as the key survival element to increase profit and market shares, the governments utilise them to encourage and reach out in trying to fix the economy with various attractive incentives such tax deductions and financial assistance. Innovations comes in the forms of evolutionary innovations (continuous or dynamic evolutionary innovation) that are brought about by many incremental advances in technology or processes or revolutionary innovations (also called discontinuous) which is new and disruptive (Druid,2001).

Innovation involves risk-taking organizations that creates revolutionary products or technologies which takes on the greatest risk, because they create new markets. Imitators take less risk because they will start with an innovator's product and take a more effective approach. Such as IBM with its PC against Apple Computer, Compaq with its cheaper PC's against IBM, and Dell with its still-cheaper clones against Compaq (Jadhav, 2016). Thus, Research and Development (R&D) is an essential process of innovation and a major factor in commercial enterprise.

According to the official interpretation of World Intellectual Property Organisation (WIPO), IPRs comprises those legal rights, by which the products of intellectual activity over a range of endeavours are defined. Intellectual property (IP) is protected in law by which enable people to earn recognition or financial benefit for what they invent or create. By striking the right balance between the interests of innovators and the wider public interest, the IP system aims to foster an environment in which creativity and innovation can flourish. (WIPO Online) In TRIPs Agreement, IPRs refers to copyright and related rights, trademarks, geographical indications, industrial designs, patents, integrated circuit layout designs, protection of undisclosed information and anti-competitive practices in contractual licenses (TRIPs Agreement). Ownership is normally exclusive private individual rights.

Competitive market is when large numbers of producers compete with each other to satisfy the wants and needs of consumers. Whereby, no single producer, or group of producers, and no single consumer, or group of consumers, can dictate how the market operates or determine the price of goods and services, and how much will be exchanged. The necessary conditions for market formation and success includes free market, rivalry, exclududablity, rejectability and diminishability (Economics Online).

Free markets formed through Competition Law (CL) enforcement and based on the possibility of profits incentive for firms to enter the market and when consumers are forced to compete to obtain the benefit of the good or service. This competition process promotes healthy business and prohibits anti-competitive conducts such as cartel and monopoly in the business market.

The researchers studying on 'The Causal Effects of Competition on Innovation: Experimental Evidence" found that, as competition increases, sectors become less likely to be neck and neck, and the average technology level of the leading firm increases(Aghion, Bechtold, Cassar, & Herz 2014). Competition obviously may drive innovation Firstly, because it forces companies to cut their costs, and that requires innovation. Secondly, it also prompts them to produce better products and services than their competitors and this also calls for innovation (Italianer, 2012). So its contribution in furtherance of innovation and enhancement of economic welfare is well established

The technological advances and patent protection laws have been observed to have caused more cases on abuse of monopoly rights, especially in the high technology areas. The number of IPRs related competition cases found to have increased in jurisdictions like United States and European Union (Raju, 2014). Therefore more research is required on the interplay between IPRs and CL to be analysed based on the system of the country as well as lesson and experience from other developed jurisdictions.

COMPETITITON LAW APPROUCH AND ISSUES ON IPRs IN MALAYSIA

The Malaysian Competition Act 2010 (CA2010) prohibits all forms of the anti-competitive agreements and abuse of dominant position by an enterprise in any market for goods or services but does not however, regulate or control merger and acquisition. The Act prohibits has two main categories of anti-competitive conducts. Firstly, under Chapter 1, Sec 4 of the CA 2010. Section 4(1) prohibits a horizontal or vertical agreement between enterprises is prohibited insofar as the agreement has the object or effect of significantly preventing, restricting or distorting competition in any market for goods or services. "Secondly, prohibits the anti-competitive agreements and abuse of dominant position by an enterprise in any market for goods or services but does not however, regulate or control merger and acquisition.

Chapter 2 of the Act regulates two main types of abuse of dominant position that is the exploitative conduct and exclusionary conduct. The prohibition is applied based on an effects-based approach in assessing whether an exclusionary conduct amounts to abuse and by applying two key tests. Firstly does the conduct adversely affect consumers and secondly does the conduct exclude a competitor that is just as efficient as the dominant enterprise? Exclusionary conduct includes predatory pricing, price discrimination, exclusive dealing, bundling up and tying (CA2010).

Under Section 10 (1) "An enterprise is prohibited from engaging, whether independently or collectively, in any conduct which amounts to an abuse of a dominant position in any market for goods or services". Subsection 10(2) CA2010 of the Act further provides a non-exhaustive list of conduct amounting to an abuse of dominant position. That is conducts such as which directly or indirectly imposing an unfair purchase or selling price or other unfair trading condition on a supplier or customer; limiting or controlling production, market outlets or market access, technical or technological development or investment to the prejudice of consumers; refusing to supply to particular enterprises or group or category of enterprises; discriminating by applying different conditions to equivalent transactions that discourage new market entry or market expansion or investment by an existing competitor, seriously damage or force a competitor that is just as efficient from the market or harms competition in the market in which the dominant enterprise operates or in any upstream or downstream market; forcing conditions in a contract that have no connection with the subject matter of the contract (e.g., making the contract conditional on buying an unrelated product);any predatory behaviour towards competitors; and buying up scarce supply of inputs (either goods or services) where there is no reasonable commercial justification(MYCC 4- Guidelines).

However the Section 5 of the CA2010, provides relieves from liability for some criteria. The grounds of criteria for relief includes if the parties to the agreement can prove that there are significant identifiable technological, efficiency or social benefits directly arising from the agreement; the benefits could not reasonably have been provided without the agreement having the anticompetitive effect; the detriment to competition is proportionate to the benefits provided; and the agreement does not eliminate competition in respect of a substantial part of the goods or services.

The CA 2010, primarily aimed to promote and sustain the competition in markets by prohibiting and preventing any practices that may have adverse effect on competition. On the same note it is worth reminding at this point of discussion that the CA 2010 in its second recital, of the preamble also professes that '…the process of Competition itself aimed to encourage efficiency, innovation and entrepreneurship, which promotes competitive prices, improvement in the quality of products.

The recent amendments to the IP law in Malaysia with respect to fulfilling the international agreement such as Trans Pacific Partnership Agreement (TPPA, 2016) appears to have expanded and impose restrictions that challenge or disrupt the sanctity of CL. The resulting provisions are more likely to protect IPRs holders' profits than to serve the constitutional purpose of the IP laws, which tailored to encourage innovation by searching for the right balance between the right to exclude and the need of every innovator to build on the work of others (Hovenkamp, 2008). So concerns have been raised as in other jurisdictions like Europe and US, as to whether, Malaysia is equipped with right regulatory policy and environment for innovative products and

services which is revolutionising and disrupting the market. These issue further sparked attention when some recent cases and statements of the leading politicians and corporate leaders pronounced that "we want to welcome disruptive technology, but we don't welcome disruption, we need to make the right balance" (Lee, 2016 June 2). Hence, it is pertinent to decide what policy or stand Malaysia should take with respect to the "public good theory' and 'property rights theory' to strike the balance.

Finding an amicable resolution on this issue is crucial for its economic dynamics of a developing and industry based country like Malaysia where there is an acute need to promote innovation, technology transfer, and competitive firms without compromising affordable good-quality products for consumers in the market. So pertinent issues on standardisation- related abuses, imposition of abusive terms in licensing, refusal to licence or deal, disruptive innovations, and effects of mergers on innovation must be addressed to assess its impacts on the free competition policy. This challenges the application of CA 2010 and questions how IPRs can be interpreted through CL and policy to address the right balance between property rights theory versus public good theory.

CHALLENGES OF IPRs AND RELATED INNOVATION ON COMPETITITON LAW APPLICATION IN MALAYSIA

CL application is challenged when IPRs holders engage in practices authorised by IP law but seem to have anti-competitive effects. Thus, anti-competitive judges should not be reluctant to condemn IP practices when it threats the competition unless the practice has a clear justification in the IPRs statutes themselves or explicit policies in the relevant statutes. (Hovencamp, 2008). The main challenge is the fact that although IPRs is governed IP related laws but the manner in which such intellectual property exercised still subjected to competition law observation (Nazura & Haliza, 2015). The MyCC as the competition authority also should be careful when dealing with intellectual property matters because too strict an assessment CL on IPRs matters may restrict innovation. IP and Competition policies are not purely complementary policies and managing the interface between them can be difficult.

The issues related to exclusive right over new creations, protection by distinctive sign 'trademark', patents of inventions as an incentive to innovations and the ways IPR protected on its commercialisation, assignment, licences (exclusive or non-exclusive) overrides fair competition. IPRs restraints the new results of activities (innovation) and creates oligopolistic scenarios which is capable of industrial and commercial exploitation. Though broader patents ultimately translate into greater rewards to primary innovators, they simultaneously tend to increase the costs and uncertainties facing secondary innovators. (OECD, 1997).

IPRs also to give their owners opportunity to even make profit beyond the cost of Research & Development (R & D), creates system exclusive sales right-effect price levels and monopoly over ideas benefiting individual /companies at the expense of the society and industry.

Furthermore, in Malaysia patents are predominantly (WIPO, 1989) granted to foreign firms, which may impose a range of anti-competitive conditions on licensees, which will become a barrier for Malaysians seeking access to new technology. Studies have indicated that licensors who have incurred substantial cost for R&D tend to impose competition harmful Restrictive Business Practices (RBPs) jargon in their technology transfer agreements to protect their interest in the investment (Lee,2016). Among the common practices are tying arrangements, grant backs clauses, price fixing and restrictions on export (Nasaruddin, Zuhairah, Halyani & Haniff Ahamat, 2013).

The relationship between IPRs and CL has a growing attention, as a result of the expansion and strengthening of IPR protection at the global scale. While IP laws deliberately subjects intellectual assets to the exclusive control of right owners, CL seeks to avoid market barriers and benefit consumers by encouraging competition among a multiplicity of suppliers of goods, services and technologies. These has posed a greater challenges particularly in developing countries, which generally have little or no tradition in the application of CL policy. In fact, developing countries IPRs been observed to have expanded and strengthened in the absence of an operative body of competition law, in contrast to developed countries where the introduction of higher levels of IPR protection has taken place in normative contexts that provide strong defences against anti-competitive practices (Kumar, 2012). Hence, it is questionable whether, should this expansion continue or is a new understanding of intellectual property needed? It was observed that it is important to look at the fundamental reasoning behind intellectual property, to understand the role that free markets play in innovation and to form new perspectives to challenge the prevailing view of intellectual-property protection. Such studies can provide insight into how well positioned our society is to take advantage of the technological challenges of the future (Drexl,Max Planck).

TRIPS Agreement (Article 40) have recognised it and have specifically provided for regulating anticompetitive practices in licensing agreements. At this point it is crucial to ensure the right balance between competition and the protection of property rights. Whereby the IPRs provide the innovator market power as the result of its innovation process, whereas competition

policy would favour the spread of the innovation (Perrot, 2009).Developing countries can also follow their own approach to CL and IPRs since the is no other law other than Article 40 of the TRIPs that constraint their capacity to discipline the IP –related anti-competitive conducts (Correa, 2007).

The main concern is the fact that IPR governed by IPR laws but the manner in which such property law is conducted and exercised is subjected to CL observation. MYCC had been cautious on the assessment of CL on IPR as too strict application will restrict innovation. Example of issues - on licensing agreement which creates potentially dominant market power and foreclose market from dominance contractual restrictions through IPR licensing agreement used to cover market sharing agreements which directly conflicts CL falls under CA2010 and Paragraph 4 Guidelines on Chapter 1 Prohibition. MYCC to deal with the situations have endeavoured to issue separate guidelines to deal with IPR. There is no direct provisions to merger control is another shortcoming to deal with IPR related cases.

The underlying question involving CL and IPRs is whether the goal in CL which preserve the competition in the high-tech markets promotes or retards long term innovation in the economy? The landmark Microsoft is the classical centre stage case on CL and IPRs protection issue. Microsoft case is a landmark case on interaction between intellectual property and competition law during the TRIPs regime. European Union or EU invoked competition rules for consumer welfare against absolute intellectual property protection (Raju, 2014).

Therefore regulatory and legal reform is needed to support innovation society and on how can Malaysia improve its IP regime to reward innovators for their efforts in the effort to control the monopolization and standardise IPR to be appropriate with adequate exclusions and flexibility. CL should be utilised to strike a balance between permissible business strategy and abuse of IPR.

SCOPE OF MALAYSIA'S IPRs PROTECTION AND INTERNATIONAL COMPLIANCE

Malaysia has been a member of the World Intellectual Property Organisation (WIPO) and a signatory to the Paris Convention 1883, WIPO Convention 1967 and Berne Convention 1886 which govern these intellectual property rights. In addition, Malaysia is also a signatory to the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) signed under the auspices of the World Trade Organisation (WTO) and NICE AGREEMENT 1957 and VIENNA AGREEMENT 1973. Malaysia have adequate protection to both local and foreign investors. Malaysia's intellectual property laws are in conformance with international standards and have been reviewed by the TRIPs Council periodically (MyIPO).

The Main IP Laws enacted by the Legislature includes Industrial Designs Act 1996, Trade Descriptions Act 2011, Copyright Act 1987, Patents Act 1983, Trade Marks Act 1976 Protection of New Plant Varieties Act 2004, Geographical Indications Act 2000 and Layout-Designs of Integrated Circuits Act 2000 (MyIPO).

In line with the IP development changes domestically and globally, to efficiently operate, the Intellectual Property Division (BHI) was transformed into a statutory body on 3 March 2003 and is known as the Intellectual Property Corporation of Malaysia (PHIM) through the enforcement of the Intellectual Property Corporation of Malaysia Act 2002. PHIM. Abbreviation rebranded to MyIPO on 3 March 2005. The Intellectual Property Corporation of Malaysia (MyIPO) as the legal custodian of IPR regulations in Malaysia plays an important role in promoting IP, dissemination of IP knowledge to the public. The MyIPO rationale for IPRs protection includes among others in recognition of capital expenditure for new products, encourage Research & Development, Marketing and advertisement, avoid free riders, maintain loyal followers and protect profit (MyIPO).

Some commercial activities of enterprises exercising market power through their IPRs have come under the scrutiny of the competition authorities and there's growing concern that there is not currently right regulatory environment for innovative products and services in a range of industries especially with respect to technology oriented ones. The future of 'sharing economy' of ride-sharing app (e.g. Uber /Grab Taxi), accommodation-sharing websites and money lending services will be shaped by how competition law deals and empowered with emerging innovators, and how that law changes to take account of innovation. Furthermore the direction taken on Pharmaceutical Industry: AIDs medication would impact of IPR agreement on patient and price. There is also need to address the protection of New Varieties of Plants of 1991 (UPOV 1991) which is undermined under IPRs trade agreement such as TPP.

Thus, more must be done to create a regulatory environment for innovation to flourish but how much at the compromise of reducing competition with respect to innovation property protectionism, their R & D investment and right to produce as well as licensing monopoly in especially technology oriented innovation has pose a great challenge. In addressing these issues it is recommended that better coordination between and streamlining of the myriad of public bodies involved in science, technology and innovation policy making would be the first step to address the issue. Secondly, the exercise of an IP right co-owned by two or more co-owners (refers Sec Section 40 of the Patents Act 1983)each of whom has in principle the right to exploit the co-

owned right, may also raise difficulties from the point of view of competition rules. The co-owned IP Rights may give the co-owners the dominant position on the market and their agreement on the co-owned IP Rights (when for example it prohibits the licensing) may also be seen as eliminating the competitors from the market. Thirdly with respect to the growing concern on disruptive innovation perhaps would be helpful to have specific provisions of law and guidelines rather than general guidelines to address issues relating to IPRs. Finally, we also require specific provisions incorporated within CL to address merger cases.

The table below illustrates the types of IPR statues, scope and duration of protection entitled under Malaysian jurisdiction

TABLE OF MyIPO PROTECTION FOR IPRs IN MALAYSIA

IPR PROTECTION UNDER MALAYSIAN INTELLECTUAL PROPERTY CORPORATION (MyIPO)					
	Trade mark	**Copyright**	**Industrial Designs**	**Patents**	**Geographic Indications**
Statutory Instrument	**Trade Marks Act 1976 and Trade Marks Regulations 1997**	**Copyright Act 1987 and Voluntary Notification Regulations 2012**	**Industrial Designs Act 1996 and Industrial Designs Regulations 1999.**	**Patents filing with MyIPo**	Geographical Indications Regulations 2001.
Protection	Protect trade mark proprietors marks process of registration -exclusive right on device, brand, heading, label, ticket, name, signature, word, letter, numeral or any combination	Protection free of any formality"(Berne Convention) - Notification of copyright made by the author, the owner of the copyright in a work, an assignee of the copyright or a licensee as soon as your work is completed.	Protection for Intangible right to the features of shape, configuration, pattern or ornament applied in industrial process or means, features which in finished article appeal to and are judged by the eye.	Provides exclusive right on invention created. Invention covers product or processes. and exclusive right to stop others from manufacturing, using and/or selling the owner's invention in Malaysia	Protects the registered geographical indication. Example Sabah Tea', 'Tenom Coffee" and "Borneo Virgin Coconut Oil' are

RECOMMENDATIONS AND CONCLUSION

The intersection of IPR and CL are undeniably complex areas of law and economics. Both are interdependent and affect each other in three important ways. First, they share the same aims-consumer welfare, together with the increase of useful investment. The law of intellectual property grants an exclusive right in the hope that this will induce people to make investments in things that customers or people want to use. Developing nation like Malaysia, have to face internal obstacles and external obstacles, so CL importantly must prevent those agreements which limit technology diffusion. Any positive effects of IPRs in the country may offset by restrictions on competition.

Recommendations would be firstly, to establish and strengthen competition laws scope and coverage. Consider the competition implications of various policies and regimes that determine market entry. Ensure adequate coordination among the competition law agency and other agencies. Secondly, use the flexibilities allowed by the TRIPs Agreement, the general considerations in paragraph 1 of the Preamble, read with Article 8(2), which allows members to take appropriate measures consistent with the TRIPs to prevent the abuse of intellectual property rights by rights holders. There are two approaches to prevent IPR abuse i.e. by compulsory licensing (an involuntary contract between a willing buyer and an unwilling seller imposed and enforced by the state) and parallel imports (goods brought into a country without the authorisation of the patent, trademark or copyright holders after those goods were placed legitimately into the market elsewhere). Article 40 of TRIPS in the interface between IPR and competition law helps in providing flexibilities to the developing nations which has provisions like code of conduct for transfer of technology for the developing nations and equitable principles for regulating anti-competitive and restrictive practices that were adopted by the UN General Assembly in 1980 (Verma, & Shanya ,2014). Thirdly Develop adequate policies, including guidelines, to prevent and correct abuse in the acquisition and enforcement of IPRs (Bhatt, 2012). Abuse of competition dominance can be prevented by not granting frivolous or low quality patents with overly broad claims. Active role of government agencies in particularly the MyCC and the Multimedia could also be seen as an important element to stop the market monopoly.

Fourthly, the competition authorities need to realise the co-existence of competition policy and IP laws, whereby the objectives of the two policies, though complementary, can also be conflicting, in which case there could be harm to society in terms of reduced welfare.

Fifthly exemptions although serve a noble idea, (Dube, 2008) must ensure to leave room for competition authorities to carefully implement a rule of reason approach, on a case by case basis, to ensure that the innovation objective, which is the basis for IPRs, does not result in practices that are in violation to the competition laws. Thus, in the case of unreasonable restrictive practices or abuse by the IPR holder, relief must be made available under the Competition Act. In fact, it is widely accepted that competition policy is a potent tool to neutralize the negative effects of anticompetitive activities.

Therefore, in an environment where it is too easy to acquire a patent, competition authorities and courts have tendency to regain a balance by using competition law to limit the undesirable effects of over patenting. Although competition agencies should not be involved in the IP granting process itself because among others for several reasons, including a lack of relevant technical and legal expertise, as well as limited resources. Whatever IP related initiatives competition agencies may take, should strive to limit the anticompetitive aspects of IPRs while respecting its necessary. Further, competition agencies should consider publishing a set of guidelines describing how they will analyse licensing agreements and other IP related conduct. It is advisable for competition authorities to incorporate in their guidelines a practice of distinguishing vertical relationship among licensing parties from horizontal ones (Singh, 2014).

However MyCC must be given ample power and jurisdiction to scrutinize distortion of competition and refusal to deal by the industries and firms in the market. Alternatively CL may be utilised to address situations in which IPRs had been used to charge excessive prices for or prevent access to protected technologies. The excessive pricing and refusal to deal unnecessary on frivolous grounds should be made subject to MyCC scrutiny to facilitate smooth functioning of the marke. Competition provides a strong incentive for developing new technologies in certain fields as in cases where IPRs are granted, governments may adopt measures to mitigate the monopolisation of technologies and promote competition. Thus, although Article 31(b) of the TRIPS Agreement only refers to the refusal of a voluntary licence as a condition for the granting of a compulsory licence, the unilateral refusal to license a patent (generally known as “refusal to deal”) can be considered grounds for granting a compulsory licence and has been contemplated in a number of national patent laws (Correa, 2007).

In conclusion, CL can and should be seeked to draw a line and balance between permissible business strategies and abuse of IPRs in Malaysia to promote innovation, technology transfer, and competitive firms without compromising affordable good-quality products for consumers in the market by addressing the recommended balance CL approach on IPRs.

REFERENCE

Aghion, Philippe, Bechtold, Stefan, Cassar, Lea & and Herz Holger (2014) The Causal Effects of Competition on Innovation: Experimental Evidence. Retrieved https://scholar.harvard.edu/files/aghion/files/causal_effects_of_competition.pdf.

Angayar Kanni Ramaiah (2015), Competition Act 2010: Policy and Regulatory Implication on Innovative Entrepreneurship International Academic Research Journal of Social Science 1(2) 2015 Page 211-216

Antitrust Enforcement and Intellectual Property rights: Promoting Innovation and competition. Retrieved at www.ftc.gov OJ [2004] L123/11

Bhatt, Mithilesh Narayan (2012) Interface between Intellectual Property Rights and Competition Law: The Role of TRIPS and Relevance to Developing Countries, ICSSR, New Delhi. Retrieved https://www.slideshare.net/bhatt_narayan_anirudh/interface-between-intellectual-prop

Business Disctionary.com. Retrieved from http://www.businessdictionary.com/definition/innovation.html#ixzz3qG2QzpUn

CFI, Case T-201/04, Microsoft v. Commission, September 17, 2007

Competition Act 2010, (Act 712) (Malaysia)

Competition Commission 2010, (Act 713) (Malaysia)

Competition Law: A Critical Analysis Disruptive innovations and their effect on competition (2015) http://www.oecd.org/daf/competition/disruptive-innovations-and-competition.htm

Copyright Act 1987 (Act 332, as at 1 January 2006) (2006)

Correa, Carlos (2007) A Competition Approach to Intellectual property protection

Crampton, Paul. (2002).Striking the Right Balance between Competition and Other Regulations: The Key Learning from our Mistakes. APEC-OECD Workshop 2002. Retrieved https://www.oecd.org/regreform/2503205.pdf.

Drexl, Joseph (2010) Innovation and entrepreneurship Max Planck Institute for Innovation and Competition Retrieved from https://www.mpg.de/19404/Innovation_entrepreneurship

Nelson, Druid (2001). An Interface between Entrepreneurship & Innovation- New Zealand SMEs Perspective at Winter Conference in Aalborg University of Denmark .Retrieved from http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.564.8431&rep=rep1&type=pdf.

Dube, Cornelius (2006) CUTS Centre for Intellectual Property rights and Competition, CUTS International, India. http://www.cuts-international.org/pdf/viewpointpaper-IPRs-CompPolicy.pdf.

Economics Online. http://www.economicsonline.co.uk/Competitive_markets/Competitive_markets.html#The_profit_motive.

Geertrui Van Overwalle (2013), Exclusive Ownership versus Open Commons: The Case of Gene Patents. The WIPO Journal Volume 4 Issue 2 2013. Retrieved http://www.wipo.int/edocs/pubdocs/en/intproperty/wipo_journal/wipo_journal_4_2.pdf

Geographical Indications Act 2000 (Act 602) (2000).

Guidelines on Developing Core Compentencies in Competition Policy and Law for ASEAN.

Guidelines on Market Definition 2012(Malaysia).

Hovenkamp, Herbert J. (2008). The Intellectual Property-Antitrust Interface. Research Paper No. 08-46; (pp1979-2006).Issues in Competition Law, ABA, 2008. Available at SSRN: https://ssrn.com/abstract=1287628.

http://www.mycc.gov.my/files/announcement/Guidelines%20on%20Chapter%20One.pdf

Industrial Designs Act 1996 (Act 552, as amended up to Act A1449) (2013)

Italianer, Alexander (2012), Innovation and competition. Innovation and competition - Speech at the Fordham Competition Law Institute Conference, 21-09-2012Fordham Competition Law Institute Conference 21 September 2012, New York. Retrieved http://ec.europa.eu/competition/speeches/text/sp2012_05_en.pdf

Jadhav, F. Sachin (2016). Anveshana's International Journal of Research in Regional Studies, Law, Social Sciences. AIJRRLSJM VOLUME 1, ISSUE 8 (2016, SEPT) (ISSN-2455-6602) ONLINE. Retrieved A-STUDY-OF-INNOVATION-MANAGEMENT-AND-PROCESS-OF-INNOVATION-MANAGEMENT.pdf

Kevin Coates (2011), Competition and Regulation of Technology Markets. Oxford University Press2011

Kumar, Pankaj (2012). The Interface between IPRs and Competition: Indian Scenario. Available at SSRN: https://ssrn.com/abstract=2097477 or http://dx.doi.org/10.2139/ssrn.2097477

Bently, L. & Sherman,B. (2001) Intellectual Property Law, OUP (2001), at 1-2. 2

Layout-Designs of Integrated Circuits Act 2000 (Act 601) (2000)

Lee, John Sanghyun (2016) Strategies to Achieve a Binding International Agreement on Regulating Cartels. Springer Nature. Spore.

Lee, Weng Khuen (2016, June 2) Nazir unperturbed by rise of fintech firms. The Sun Daily. Retrieved http://www.thesundaily.my/news/

Main IP Laws: enacted by the Legislature

MYCC 4 - Guidelines Booklet BOOK2-6 FA: Guidelines on Chapter 2 Prohibition. Retrieved http://www.mycc.gov.my/sites/default/files/handbook/MYCC%204%20Guidelines%20Booklet%20BOOK2-6%20FA%20copy.pdf

MyIPO at http://www.myipo.gov.my/ms/mula/

Nasarudin Abdul Rahman, Zuhairah Ariff Abd Ghadas, Halyani Hassan & Haniff Ahamat (2013), Competititon Law and the SMEs: Does the competition Act promote or Hinder the Development of the SMEs in Malaysia. South East Asia Journal of Contemporary Business, Economics and Law, Vol. 2, Issue 3 (June)

Nazura, Abdul Manap & Haliza, A. Shukor (2015) Proceeding of the 2nd International Conference on Management and Muamalah 2015 (2nd ICoMM).16th– 17th November 2015(pp14-24)

North, D. & Thomas, R. (2004) Foundations of Intellectual Property (eds Merges, R. P. & Ginsburg, J. C.) 13–23(West Academic, New York.

Patents Act 1983 (Act 291, as amended up to Act A1264) (2006)

Perrot, Anne (2000) Economic Theory and Competition Law, Chapter 8: Appropriation of the Legal System Economic Concepts: Should conflicting goals be considered? Edward Elgar UK.

OECD, (1997) Committee on Competition Law and Policy. Retrieved http://www.oecd.org/competition/abuse/1920398.pdf

Protection of New Plant Varieties Act 2004 (Act 634) (2004)

Raju, K.D. (2014) Interface between Competition law and Intellectual Property Rights: A Comparative Study of the US, EU and India. Intellectual Properties Rights: Open Access. Intel Prop Rights 2014, Vol 2:3 Retrieved https://www.omicsonline.org/open-access/interface-between-competition-law-and-intellectual-property-rights-a-comparative-study-of-the-us-eu-and-india-ipr.1000115.pdf.

Ramaiah, A.K (2015) Competition Act 2010: Policy and Regulatory Implication on Innovative Entrepreneurship. International Academic Research Journal of Social Science 1(2) 2015 Page 211-216

Richard Whish and David Bailey, Competition Law. Oxford University Press2016

Richard Whish and David Baily (2012), Competition law: Oxford University Press Seventh Edition

Ruchi Verma and Shanya (2014) LASH BETWEEN INTELLECTUAL PROPERTY LAW AND COMPETITION LAW: A CRITICAL ANALYSIS. Vol. 1 Issue 1 RGNUL Student Law Review. Retrieved from http://www.rslr.in/uploads/3/2/0/5/32050109/clash-_ipr_and_competition_law.pdf

Singh, Sumanjeet, (2010) Intellectual Property Rights and Their Interface with Competition Policy: In Balance or in Conflict? (December 12, 2010). Communication Policy Research South Conference (CPRsouth5), Xi'an, China. Available at SSRN: https://ssrn.com/abstract=1724463 or http://dx.doi.org/10.2139/ssrn.1724463

Spencer, W. Waller and Noel J. Bryne (1993) "Changing View of Intellectual Property and Competition Law in the EC and the USA", Brooklyn Journal of International Law, Vol. 20, No. 1.

The Trans-Pacific Partnership (TPP) or Trans Pacific Partnership Agreement (TPPA) is a trade agreement among twelve of the Pacific Rim countries—notably not including China. The finalized proposal was signed on 4 February 2016 in Auckland, New Zealand, concluding seven years of negotiations.

Torti, Valerio. (2015) Intellectual Property Rights and Competition in Standard Setting. Routledge Publishing.

Trade Descriptions Act 2011 (Act 730) (2011)

Trade Marks Act 1976 (Act 175, incorporating all amendments up January 1, 2006) (2006)

TRIPs Agreement .Article 1(2)) Agreement on Trade-Related Aspects of Intellectual Property Rights... Retrieved https://www.wto.org/english/res_e/booksp_e/analytic_index_e/trips_01_e.htm)

U.S. Dept. of **Justice** & Federal Trade Commission (2007). Antitrust Enforcement and Intellectual property Rights: Promoting Innovation and Competition. Retrieved www.usdoj.gov/atr/public/hearings/ip/222655.pdf

Verma, Ruchi & Shanya (2014) LASH BETWEEN INTELLECTUAL PROPERTY LAW AND COMPETITION LAW: A CRITICAL ANALYSIS. Vol. 1 Issue 1 RGNUL Student Law Review. Retrieved from http://www.rslr.in/uploads/3/2/0/5/32050109/clash-_ipr_and_competition_law.pdf

WIPO (1989)] Malaysia: How to commercialize Inventions.WIPO. Retrieved at www.wipo.int/ip-development/en/pdf/asean/malaysia.pdf.

WIPO Online, Information and Introduction, available at http://www.wipo.int/about-ip/en/..)3

WIPO. What is Intellectual Property? Retrieved http://www.wipo.int/edocs/pubdocs/en/intproperty/450/wipo_pub_450.pdf

Angayar Kanni Ramaiah
University Technology Mara, Malaysia
Email::kanni844@ppinang,uitm,edu my