

Synergy and interplay between Patents Act and Competition. Act to deal with abuse of dominant position.

Both Patents Act and Competition Act are meant to do things keeping view of the economic development of the country- India.

Though the two Acts are poles apart, there is synergy and interplay between them protecting the economic interests of the country.

They are not completely mutually exclusive. They are mutually supportive while addressing abuse of dominance.

When the rights under the Patents Act are abused in a manner that results in denial of market access in any manner, or limits technical or scientific development in the country, it attracts action u/s 4 (2) (b), (c) of the Competition Act.

"Not working the patent" ie the failure to make available a patented pesticide (or drug) in India is not an option available to the patentee under Indian Patents Act. Patents granted must be necessarily worked in India.

If the patentee is found guilty of refusing market access to the patented pesticide, it shall be held to be abuse of dominant position under the Competition Act.

The penalty under Competition Act can reach several hundred crores for the MNCs withholding patented pesticides in Indian market.

China recently amended their Patent Act. The amendment allows strong action under Anti-Monopoly Law in case of abuse of patent rights that harm the legitimate rights and interests of others.

Q Is CCFI contemplating action under both the Acts separately?

A Yes.