Amended competition law to help businesses with patents

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NEW DELHI: A proposed amendment to the Competition Act, currently being considered by Parliament, could provide an edge to businesses that have bolstered their market share through the use of patents, trademarks and designs, especially in research-oriented industries such as drugs and automobiles.

The recommendation, if approved, could provide businesses with stronger legal protection when using their intellectual property rights (IPRs). Experts said the recommendation made by the Parliamentary standing committee on finance last week to allow the reasonable use of IPRs as a valid defence against allegations of abuse of dominance could help businesses avoid anti-trust cases when they use their limited monopoly rights.

IPRs, including patents, trademarks and designs, are granted to provide a limited market monopoly.

In a report tabled in Parliament last week, the committee led by Bharatiya Janata Party's Jayant Sinha proposed that the provisions related to abuse of dominance in the Competition Act should not apply to the reasonable use of intellectual property rights or any other rights granted by a law currently in force.

This proposal, if adopted, would provide legal protection for the use of these rights, similar to the protection already offered under provisions addressing anti-competitive agreements.

The proposal aims to clarify the balance between competition principles and IPRs, which grant businesses monopoly rights for a limited time in recognition of their innovation.

The relationship between IPR and competition law is a complex legal landscape for businesses that invest heavily in research and development and seek to protect their products from imitators.

Experts pointed out that India's IPR laws are balanced and have some built-in safeguards, but the proposal from the standing committee will go a long way in ensuring more certainty for businesses.

According to Neelambera Sandeepan, a partner at law firm Lakshmikumaran & Sridharan Attorneys, it is obvious that intellectual property rights create dominance, but any action by the intellectual property rights holder—as far as it is reasonable and is for the purpose of protection of intellectual property rights and not for killing competition or denying market access—is not going to be considered as abuse of dominant position.

The carveout for IPR holders—now available in the case of anti-competitive agreements—has always been based on the assessment of effect and purpose and not a blanket exemption.

Sandeepan said that the proposed change is needed as there is no guidance as of now, and in effect, every IPR holder can be challenged for abuse of dominance. "This carveout proposed by the Parliamentary standing committee may restrict frivolous litigation in future. It gives more certainty to an intellectual property rights holder from the competition perspective," she said.

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India has allowed product patents in all sectors, including pharmaceuticals, since 2005, but patents are only granted if they meet the criteria of novelty and utility and represent a significant improvement over existing technology. This stringent test prevents companies from obtaining patent rights through minor modifications to existing technology and gaining a market monopoly. Additionally, the government can require an IPR holder to grant a production license to a third party in the public interest. The standing committee's proposal clarifies that the reasonable use of intellectual property rights should not result in accusations of abuse of dominance.

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