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Interaction of Intellectual Property Rights and Competition Law and the Question of Technology Transfer in the Iranian Oil Industry

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ABSTRACT

Understanding of the interplay between IP rights and competition law in the context of technology transfer in the Iranian oil industry is a point that is discussed in this article. While intellectual property rights enjoy a historic record and appropriate rules in this regard, the competition rights in Iran are taking their initial steps. This imbalance stems from the root of the formation of the legal system of oil in Iran based on contractual frameworks over time. The nagging problem to elaborate in this article is that technology transfer can be expected to take place when the type and purpose of technology transfer have already been defined by legal organizations in relation to the relevant industries. Also, the general targeting in the upstream laws alone cannot meet the legal requirements for the transfer of appropriate technology. Therefore, when even one of the mentioned factors does not exist, one cannot expect constructive interaction in the above-mentioned legal systems.

1. Introduction

The equilibrium between intellectual property rights and competition law is one of the hiding points in the legal systems of developing countries. Where one of these two legal grounds extends beyond the other and the effect of this imbalance can be seen in different areas. The point in this article is that why, despite more than a hundred years since the inception of the oil industry in Iran, there has not been a legal framework that would allow the technology transfer process in this country to develop in the long run. Iran's reliance on the industry has become foreign technology?

2. Intellectual property and technology transfer

Since the 1970s, developing countries have spoken of different international contexts that have expressed their desire to increase technological capabilities and reduce the level of development gap between countries in the north and south. In response, developed countries in a number of negotiations, including the Uruguay round,

argued that strengthening intellectual property protection has been a key condition for promoting technology transfer flows to developing countries. This argument has been raised over and over again by fans of the TRIPS[1].

Some studies have been conducted to assess the impact of intellectual property on technology transfer (Maskus, 2000). However, existing evidence is limited and ambiguous, as is the case with studies of the implications of intellectual property regimes in foreign direct investment. Some countries have been among the major technology borrowers in the pre- TRIPS due to weakness of their IP protection programs, such as South Korea, Taiwan, and Brazil.[2] Of course, the reverse situation can be found. Some countries (including many African countries) have developed low-tech standards as technology importers in comparison with the requirements of developed countries. The simple explanation, of course, is that intellectual property rights are just one of many factors in this field and certainly not the most important factor affecting the cross flows of technology boundaries (Masku, et al., 2005).

Although protecting intellectual property rights will increase the transfer of technology through trade, foreign direct investment and licensing, other factors also involve technology transfer in a variety of ways. Among these factors are the following:

"Stability and Security; Required Legal and Institutional (Implementation) and Human Resources (Skilled) and Physical (Like Communications); Transparency and Efficiency of the Legal System; Country Economic Development Level; Development Strategy; Business Orientation; and Commercial Barriers Structure; The ability to emulate countries; size of the market and population; per capita GDP; or the purchasing power of people; the cost of production factors such as labor; transportation costs; abundance of resources; tax levels; investment regulations and incentives; competitive rules; privatization and size Private sector; corruption. "(Bozorgi, 2006: 144-145)

The TRIPS agreement, at the beginning of its introduction, indicates that the reduction of distortion and barriers to international trade, including the transfer of international technology, is its main objective. In addition, it emphasizes that measures and procedures are needed to enforce intellectual property rights. In this regard, in the fifth and fifth paragraphs of the Introduction, the emphasis is on the goals of development and technology, with the maximum flexibility in this regard.[3] Article 7, including the goals of intellectual property rights, has been raised in the discussion of technology transfer. The TRIPS Agreement establishes a legal framework to promote and encourage technology transfer, in particular the transfer of technology from members of the developed country to developing country members. However, technology transfer occurs in reality, and to some extent depends on how the approach has been adopted by the developing country. (Nguyen, 2010)

The question is how agreements like TRIPS foster transfer of technology to LDCs? And the main answer usually refers to the matters such as Control of anti-competitive practices in contractual licenses, Disclosure of patent information, and also through the Compulsory licenses. Same question rises about the application of competition law to technology transfer in developing countries. In this regard there are some Obstacles for developing countries such as, internal obstacles, Lack of capacity, Deficiency of legislation, absence of competition culture. Basically, the main approach which is recommended concerned whit international cooperation between competition authorities, and harmonization through international forums such as WTO, OECD, UNCTAD, etc. (Maskus, 225-255)

3. Transfer of technology to least developed countries (LDCs)

the issues affecting the transfer of technology to developing countries are unlikely to be resolved within the limited contours of the TRIPS Agreement and other WTO disciplines. Expanded use of the flexibilities

[1] See: Agreement on Trade-Related Aspects of Intellectual Property Rights, 15 Apr. 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, Legal Instruments – Results OF The Uruguay Round vol. 31, 33 I.L.M. 81 (1994)

[2] See Also: OECD, International Licensing: Survey Results (1987).

Also:

OECD, the Internationalization OF Software and Computer Services (1989).

[3] Preamble to the TRIPS Agreement; Canada – Pharmaceutical Patent, supra note 112, para. 4.30.

allowed by such rules is an important component of any future strategy, but a set of complementary measures and innovative schemes will be necessary in order to reduce the dramatic North-South asymmetry in technological capacities and to attain the development objectives that the international community endorsed at the Johannesburg Summit on Sustainable Development. (Maskus, 250)

Domestic competition law in the IPRs/technology related area should be neither too strict nor too lax. However, it is difficult to balance IPRs and competition law in practice. Although they have a similar development level, the US and the EU are different in their approaches to IPR-related competition law. Developing countries should, and deserve to, tailor and appropriately enforce their domestic IPR-related competition law to meet their particular socio-economic contexts. In order to do this, developing countries should understand the complexity of IPRs and competition law. They should adapt and customize IPR-related competition law, to make it fit for local needs and sustainable development. While IP protection is being globalized under the TRIPS Agreement, IPR-related competition law in developing countries needs to be 'goaaddddddoobaaa ee hltt proooooonnd srrve nooonll interests and consumer welfare. Analysis of the intersections between IP and competition rules would therefore lead to a false trail if it attributed to the latter a direct role in promoting innovation, and to intellectual property a direct role in promoting competition. Rather, one should recognize a dialectical exchange between the two disciplines which aim at different but often synergic objectives, and therefore often interact to eliminate situations which would obstruct both innovation and competitive dynamics. Thus, through this dialectical exchange, each discipline, by fulfilling its function, can also indirectly serve the aims of the other. A convergence of goals can be acknowledged from an industrial policy angle, i.e. the objective of strengthening and promoting European competitiveness. Obviously, however, such perspective may serve to better comprehend the substantial grounds of a normative and jurisprudential evolution rather than to interpret and apply the positive law. (Nguyen,293, 110-115)

4. Intellectual property rights in Iran

Enjoying strong support areas can be a practical incentive for foreign investment and technology transfer. The point that should not be ignored in this regard is that, investment does not necessarily mean the transfer of up-to-date and successful technology to the host country and often leads to the transfer of out-dated technology to a relatively high rate However, the host country lacking such incentives can itself achieve this type of technology in other ways at a much lower cost.

Contemporary legal system governing intellectual property in Iran can be considered under the following rules:

1.National laws and regulations:

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2.International rules and regulations:

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IIrnn's cceessoon to the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods

The question is, what type of intellectual property right is at issue, and why and to what extent the intellectual property right should be constrained for competition law purposes?

Since no relevant organization related to the oil industry in Iran is specifically responsible for formulating and defining technology transfer goals and monitoring its implementation, practically creating an interaction and balance between intellectual property rights and competition law in line with technology transfer goals in Iran. Go with a serious and ambiguous challenge. Because, when these goals are not defined by the relevant organizations in Iran and are not announced

to the investing companies, how can one expect a balance in the two legal systems mentioned above. The use of upstream domestic documents and laws in Iran, regardless of the implementation methods and drafting of bills governing related industries, will practically remain within the definition of macro goals.

This answers the question which is, why treatment towards technology transfer contract is also quite general, and does not explain what type of technology transfer contracts should be prohibited or sanctioned under Iranian standards? Although numerous international instruments govern the transfer of technology, the technology recipient must create the capacity and conditions to receive the technology according to its short-term and long-term goals and in accordance with the regulatory laws in that area. There is more room for reflection on Iran's oil industry. When this definition does not exist specifically in a country, it cannot be expected to be met by the international community.

5. Application of competition law to technology transfer

The goal of competition law is to maintain the process of competition in the market and to avoid methods that cause inequality and exploitation. (Fox, 1987) Therefore, these objectives can be categorized as follows: Economic objectives include: 1. Economic efficiency and 2. Consumer welfare and non-economic objectives, including: 1. Political objectives and 2. Social objectives. Commercial competition policy is achieved when, in the markets where low-income individuals are purchasing, it improves the allocation of resources (suppliers of goods and services) by preventing the emergence of cartels and monopolies. Of course, competitive action does not always improve performance and revenue distribution. (Samavatei, 2011)

6. Competition law in Iran's legal system

The most important law in this field can be considered as the law amending the articles of the law of the fourth economic, social and cultural development plan of the Islamic Republic of Iran and the implementation of the general policies of Article 44 of the constitution.

The law, while defining monopoly, clarifies the scope of governmental and non-governmental activities, and in order to facilitate competition and prohibit monopoly, it has considered regulations and also clarified the guarantee of their implementation.

However, the most important and advanced provision in this law can be considered Article 51, according to which "exclusive rights and privileges arising from intellectual property should not violate Articles (44) to (48) of this law, in which case the Competition Council Will have to make one or more of the following decisions:

A) cessation of activity or non-exercise of exclusive rights, including limitation of the period of application of exclusive rights,

B) Prohibiting the party to the contract, agreement or compromise related to the exclusive rights from fulfilling all or part of the terms and obligations contained therein.

C) annulment of contracts, agreements or understandings related to exclusive rights in case the measures subject to paragraphs "a" and "b" of this article are not effective.

The importance of this regulation is in creating a balance between the rules governing intellectual property rights and competition law, which provides a clear criterion for violating the laws governing these two sections and has accepted the scope of intellectual property rights by applying this article to the extent that Have no competition. The important point is that this law is considered an upstream document and other laws are silent on the methods of implementing this document in the field of oil industry. Therefore, creating balance and interaction in different areas of law is associated with the development of relevant laws in the field of related industries, from which further steps must be taken.

7. The rules of competition law applicable in the transfer of technology contracts

Generally, technology transfer contracts contain arrangements that impose restrictions on the parties, especially the technology recipients. These cases are often due to agreements between the parties. Of course, it is true that these actions will generally face serious questions about competition law, but some of them are legitimate in law. Here are the following: (Zahedi, 2008)

Restrictive business practices in connection with obtaining the technology to produce

Restrictions on field of use

Use of competing technologies

Restrictions on volume of productions

Exclusivity arrangements

Tying clauses

Duration of arrangements

Quality controls

Restrictive business practices in connection with the distribution of goods

Territorial Restrictions

Restrictions on distribution channels

Export Restrictions

Restrictive business practices in connection with the development of national technology and scientific capabilities

Restrictions on research and development

Grant Back Provisions

Restrictions on compulsory purchase of inventions or technological improvements

Restrictions on use and training of personal

Other restrictive business practices

Restrictions after expiration of industrial property rights

Restrictions after expiration of arrangements

No challenge provisions

Price fixing

8. Technology transfer and the matter of interaction of competition law and intellectual property

Although it is not possible to ignore the efforts of competition law to limit as much intellectual property rights as possible, the combination of laws protecting intellectual property and providing legitimate competition leads to the development of innovation. (Anderson, 1998) The intellectual property law system, through the granting of exclusive rights and the right to compete with the guarantee of legitimate competitive environments, brings technological innovation into its proper direction and prevents the market from controlling and directing the formation of monopolies and the emergence of illegitimate profitable practices. Therefore, the two systems, have taken steps to get closer to each other and they have a maximum interaction. On the one hand, this process promotes consumer welfare through the use of products and services of the best quality and cost, and on the other hand, it will have the potential to obtain the maximum legal interest in order to move in the direction determined by the competitive rules for the technology holder. For example, in the field of intellectual property rights cooperation with competing rights, it is possible to issue compulsory licenses in the event that exploitation is contrary to competition. But it should not be assumed that competition law overcomes the anti-competitive effects of technology transfer contracts. Generally, the technology transferor is in a better position than the transferee, and determines the terms of the agreement. That is why the necessity of the existence of the indicators to differentiate the legitimate limiting procedures of the anti-trust measures is highly emphasized so that the parties' interactions in the framework of such bilateral arrangements and fair competition are guaranteed. (Rahbari, 2013)

9. Period of concession contracts

In the area of competition law, it is very interesting that in Iran, contrary to the rules related to intellectual property rights, the legal system of competition law does not have any place in the concession contracts. Of course, the most basic of the new rules of competition, for example in the United Kingdom, dates back to 1948. (Samavatei, 2011)

Formation of legal systems in which there is a high level of protection of technology and capital holders will, in the absence of any criterion for adjusting their positions in legal and commercial bargaining, will give them a dominant position. Also, this contractual structure can pave the way for the abuse of the legal system of the oil industry. Another point is that this happened while in the period under consideration in Iran, instead of opening and competitive markets to protect domestic and national interests, the issue of monopoly is legally established.

In accordance with Article 3 of the Mines Act of 1938: "The right to extract mines of oil and oil and precious stones ... is exclusive to the state and the rights of the owners of these mines will be determined by a special regulation with the consent of the state and the owners." This criterion is in there is, however, a debate that does not support the protection national and public interests. So, this legal system can be considered prone to abuse.

10. Joint venture contract period

An important step was taken in terms of the timing of the governance of cooperative contracts in protecting intellectual property rights, with the establishment of the

Office of Registration of Signs in Iran and the establishment of the Office of Registration of Signs at the Ministry of National Economy and printing of signs in the National Economy Journal. Another point of note was Iran's accession to the Paris Treaty in 1959. Over time, however, the names of organizations active in this field changed in Iran. However, competition law still had have found its true legal status.

Among the issues that can be found in the oil Act of 1957, mentioned in article 3, is: "No agent can assign any or all of the relevant operations to a contractor unless previously provided Conclude the agreement of the National Iranian Oil Company and, in any case, this agreement will not preclude the contractor's liability. " One of the issues arising from the implementation of that law is that the international oil company cannot, as in the past, create a monopoly of the market or, by assigning its contracts and rights and obligations, become a mere mediator. The same provision is also repealed in clause "m" of article 12 of the same law. "The agents cannot transfer their rights which they have acquired pursuant to the provisions of this law and the obligations accepted, with the prior agreement of the National Iranian Oil Company and the approval of the Cabinet of Ministers And approval of the House. "

Another significant factor that could prevent an unhealthy and unequal competition is Article Fourth of the Oil Act of 1957. According to this article: "In the case of foreign nationals, the permission to authorize or delegate operations to a contractor may only be given in certain cases where, in accordance with the laws and economic organizations of the foreign country concerned, the Iranian nationals are allowed to perform in the country in general economic activities and specially for the subject matter of this law."

But encouraging aspects were also included in the aforementioned law, which, while reducing costs and increasing incentives for investment, could have encouraged the transfer of applied technologies in concluded contracts. In accordance with Article 11: "... taxes and rights that include the public and free of discrimination (such as .. nnnnm)) , hhe oonrrccocrs rr e not required to pay any funds to any government official, whether central or local.

11. Period of service contract

The era of concluding service contracts in Iran is not a short period, but it seems that many steps can still be taken in the area of balancing the two legal bases. By looking at oil law, some provisions are being considered in the context of which they are useful.

In article 5 of the Act of the Articles of association of the National Iranian Oil Company, and in support of intellectual property rights, a statement has been made that could create the necessary ground for technology transfer, along with the encouragement. This regulation states: "In order to provide for the purposes and carrying out the operations referred to in Article 4, the company shall have the following rights and powers: ... the possession, possession and registration of patent patents, and the right to use any information about inventions and designs related to the oil industry and related industries ... "

In the oil Act of 1976, given that in the framework of concession contracts, international oil companies, taking into account their high margin for profit, they practically owned and controlled the oil and gas market. In Article 21, the legislature has the following titles to rule out: "The contracting party may not assign the rights which it grants under the terms of the contract, unless otherwise agreed by the National Iranian Oil Company and approved by the Cabinet of Ministers."

12. Period of I.P.C contracts

The terms of the competition law to meet the intellectual property rights obligations and standards in Iran are not as equilibrium as possible. Some of the requirements that partly return to these divisions can be expressed as follows:

Article 13 of the structure and pattern of upstream contracts of oil and gas of Iran states: "Before the delivery of information on oil and gas tanks to the companies negotiating with the National Iranian Oil Company or companies wishing to participate in tenders related to the implementation of the project The subject matter of this letter of approval and its primary competence, with the approval of the National Oil Company, is to sign this information, these companies must, by signing the document of confidentiality and maintaining confidentiality, undertake that, managers, employees, experts and other persons Signatory of the company signing this document as well as its subsidiaries, if necessary, should have access to this information. The information received in accordance with the provisions of this document will be kept completely confidential and will not be disclosed to any third party without the permission of the National Iranian Oil Company and the arrangements specified in the document. If it is determined that," this information is

provided to unauthorized persons, and the other party will be required to compensate for the non-fulfillment of obligations to the National Iranian Oil Company. "

Also, in clause 5 of article 6 of the statute of the National Iranian Oil Company, the only regulation that is partly related to the discussion is described as one of the rights and duties of the company: "Registration of patents, industrial designs and signs and Brands owned by the company in the relevant authorities, as well as the purchase and possession of the right to exploit inventions, industrial designs and technical know-how of third parties in the field of the oil industry and its related industries "as well as in paragraph 6" Assistance and support From Iranian companies of knowledge base and Iranian people about the design and production of equipment needed for the operation of the company's activities inside the country. "

Developing countries need adroit, synchronized legal nnd cconomcc sr gg g g ggg g ggggggg gg nmovooon' nn gnnrr ll and dvvooop the aapccyyy to exploit technology, especially technological absorptive domestic skills and competences, in particular. However, without technological input, developing countries cannot use them to produce technological output to serve domestic economic growth and development. competition law can advance or hinder innovation and technology transfer in many ways. Applying it to technology transfer is a two-edged sword. It requires a very well-established, prudent and flexible approach from each country, taking into account domestic interests, consumer welfare and national economic development, as well as the incentives and legitimate benefits of right holders. The role of competition law in technology transfer should be neither overlooked nor over-estimated. On the basis of the experience of developed countries, developing countries should adapt and customize their domestic IPR-related competition law to make it fit the local context and local needs. Appropriately adopting and applying domestic competition law in IPRs/technology transfer is a real necessity for developing countries wishing to protect national interests and consumer welfare in a knowledge-based market economy. However, developing countries should set priorities, taking into account their limited competition law resources, which control IPR-related anti-competitive practices while promoting access to technology. Refusal to license, excessive pricing of IPR-embodied products, IPR-related tying, and IPR-related use restrictions on downstream purchasers should be the focus of competition law enforcement in developing countries. (Nguyen, 303-320)

13. Conclusion

Although, several factors are concerning the matter of technology transfer, and some of them like the attraction and retention of talents is of organizations' concerns (Mirzaie H, Gholipour A, et al 2020). The root of Iran's legal system and its formation on the basis of oil contracts is a problematic factor in supplying the technological needs of this industry. Due to the fact that the applied contracts in this industry were highly unilateral and in favor of oil companies at the beginning of the industry, over time, due to phenomena such as nationalization in oil-rich countries, attention to the oil industry has also been dramatically increased. This has greatly increased the demand from these countries to change the framework of international oil and gas contracts. The response to this demand was the emergence of different contractual frameworks, which in Iran were subject to constraints in accordance with fundamental rights. Increased contestability and improved development outcomes for MENA (Middle East and North Africa) countries require credible institutions that permit newcomers to challenge the status quo and establish a more level playing field. (World Bank ,2017 also Ait Ali Slimane, 2018) Well-performing competition authorities are a necessary part of such an institutional landscape. But if competition authorities are to make a dent in anticompetitive practices, an independent judiciary is needed to uphold the rules of the game. (Khemani, 2007)

According to the contents of this article, the following conclusions and suggestions can be obtained:

Iran, like other developing countries, needs internal harmonization of the legal systems governing intellectual property rights and competition law, and one should not expect the fulfillment of all the goals of each of the above-mentioned legal systems from the other. Because the goals of each of these two legal systems are fundamentally different. So, balance in both systems is the key factor.

Paying attention to the cultural development of each of these two fields and paying attention to the achievements of other countries and using their experiences can be helpful in this field.

Alignment of domestic law with the guidelines of international organizations according to the national interest can accelerate this coordination.

Last but not least, is that the legal system of oil and gas in Iran has its special characteristics, although some basic similarities can be found in domestic legal system and contractual frameworks governing in this filed, but

ignoring those special characteristics can make all the effort in vain.

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