Non- Price Restrictions in Licensing Agreements from the Perspective of Competition Law: A Comparative Study of the Iranian, U.S. and E.U. Legal Systems

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Abstract

There are many agreements for transferring technology, but license agreement is the most important agreement in this regard. According to the mentioned agreement, the owner of patent or technology as licensor grants the license to licensee in specific duration and in a given territory. Exclusive rights of licensor and the objectives of competition law, including the welfare of consumers or preventing monopoly in competition may create a challenge between exclusive rights of licensor and competition law. In other words, it is probable that imposing some restrictions on licensee in using the technology may result in distortion of competition in relevant market, reduction of competitors and prevention of new entrants to the market. On the other hand, the failure to maintain the security of innovation of inventor and the lack of its legal support will destroy the incentive of the creation of new technologies and finally lead to market failure and absence of competition. Therefore, licensing agreements can provoke more concerns of competition law. Rules and aims of competition law must order the economic policy in a community in such a way that provide welfare of consumers and at the same time, the competition in the market does not confront restriction and the monopoly or misuse does not occur. On the other hand, in licensing agreements, intellectual property rights are accompanied by some kind of exclusivity which can allow the owner to impose some restrictions on the licensee. Although the exclusivity of intellectual property rights is desired, it should not endanger the welfare of consumers and aims of competition law. The restrictions on licensee could be price or non-price restrictions. The price restrictions are the ones that their subject is relevant to price or they directly affect the price of products in the market. However, the discussion

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of the current article is non-price restrictions that are the ones that their effects and subject are irrelevant to price but their main effect is on the other aspects of the market positively or negatively. The most important non-price restrictions are grant-back clause, tying arrangements, sale restrictions, output restriction, field of use restriction and non-compete clause. In fact, we regard these restrictions from competition law point of view and the main question here is whether the competition law looks at all non-price restrictions in licensing agreements in the same way and recognizes them as a distortion of competition or does not consider some of them anti-competitive due to their pro-competitive effects. Moreover, for comprehensive study of all of these restrictions it is important to verify whether the distortion of competition - regardless of its legal aspects- depends on various economic elements such as the market share of parties, kind of relevant technology market, dominant position or not and if the answer is positive what is the scope of such dependency and whether there is a specified standard or not. To answer these questions, three legal systems of Iran, the U. S. and the E. U. have been examined comparatively in the article. The current research is a fundamental study and exploits the analytical-descriptive method and uses the library method and digital or classic note taking for data collection. Of course, various legal systems take different solutions in meeting challenges due to their different frameworks. But, the comparative study of developed systems can open new horizons for some countries like Iran which has less than a decade experience in competition law legislation. The study shows that the Iranian legislation in this regard requires some amendments so that it can establish a more suitable equilibrium between competition regulations and technology transfer law. For instance, although E.U. regulations have provided some exemptions from competition law prohibitions for licensing agreements, Iranian statutes have not enacted any exemption in this regard and it will result in an illogical contrast between competition law in intellectual property law. Also, the mentioned subject may endanger the incentive for innovations and inventions. Due to the aforesaid concerns, the enactment of some exact and standard exemptions for licensing agreements by Iranian legislature is recommended in the current article. Also, the E.U. regulations have provided more clarity about the prohibition possibility of licensing agreements for activists in the intellectual property field because an exact market share has been mentioned as the prohibition border and thereby the duties of the license holders have been clarified. However, Iranian statutes have not provided any clear and specified border for economic dominant position or market share and therefore, it is not clear exactly that how much market share can put the licensor in a dominant position. So, it has been advised in the article that the Iranian Legislature enact the exact threshold of market share for dominance standard separately for vertical and horizontal licensing contracts. Unlike the U.S. and E.U. statutes that have provided some special competition rules for licensing agreements, Iranian legal system does not have any particular competition rules for such agreements and general competition standards apply in the field. Therefore, it has been suggested that Iranian legislature by tapping the experiences of two mentioned legal systems provide some special provisions in the field so it can result in more efficiency.

Keywords: Licensing agreement, Patent, Competition law, Dominant position, Intellectual property Laws.

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