

The Interface of Competition and Intellectual Property: Emerging Issues in Latin America

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I. Introduction

The discussion on the interplay between competition and intellectual property (IP) has featured prominently on policy and academic agendas for several decades. At first glance, IP law may appear to conflict with competition law, as IP rights grant exclusivity that shields innovators from certain forms of competition. Nevertheless, it is now widely recognized that this conflict is more apparent than real, since both competition and IP law ultimately pursue the common objectives of promoting innovation, economic growth, and consumer welfare, albeit through different tools.²

The main concern is the risk that IP rights may confer or enhance market power to such an extent that their holders may have incentives to restrict access to and/or delay further innovations, potentially with limited overall economic benefit to society. In this vein, competition law plays a crucial role in ensuring that the exercise of IP rights does not undermine the competitive process.

While some competition authorities, such as those in the European Union and the United

States, have been active in addressing IP-related issues, engagement in Latin America is relatively recent and remains concentrated in a few jurisdictions.

This article summarizes the main competition enforcement issues related to IP that have emerged in Latin American jurisdictions, covering both anti-competitive behavior and merger review. It also examines IP-related competition advocacy across the region.

II. Copyright Collecting Societies

An issue that has been scrutinized by several Latin American competition authorities involves copyright collecting societies, responsible for licensing and managing copyright work on behalf of right holders, including collecting and distributing royalties without commercially exploiting the works themselves.

By centralizing licensing, monitoring and remuneration, collecting societies can generate significant economies of scale and scope, reducing transaction costs and improving efficiency. At the same time, because they often act as essential intermediaries for accessing copyrights,³ collecting societies may hold significant market power – sometimes amounting to *de facto* or *de jure* monopolies – enabling them to impose licensing conditions that may distort competition. A related concern is the potential foreclosure of competition, particularly where collecting societies prevent the emergence of alternative licensing models, such as

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² OECD (2021), *Revision of the OECD Recommendations on Intellectual Property: Scoping Note by the Secretariat*, DAF/COMP(2021)19.

³ New Zealand Commerce Commission (2023), *Guidelines on the Application of Competition Law to Intellectual Property Rights*, https://comcom.govt.nz/_data/assets/pdf_file/0017/312308/Intellectual-propertyguidelines.pdf.

competing societies or independent rights management platforms, or restrict rights holders from licensing on their own. These concerns have become even more prominent in the digital economy, where digital platforms, on-demand services, and new technologies enable rights holders to manage and license their works more directly.⁴

A number of competition authorities in Latin America have investigated and sanctioned collecting societies for violations of competition law. For instance, in 2016 Colombia's Superintendence of Industry and Commerce (SIC) sanctioned the *Sociedad de Autores y Compositores de Colombia* (SAYCO) for an exclusionary abuse of dominance in the market for collective copyright management. The investigation found that SAYCO – the only authorized collecting society in Colombia – required copyright holders to assign all public communication rights to its management, preventing them from selectively managing certain rights independently. SAYCO also imposed contractual terms that hindered the entry of alternative rights management organizations and forced users to acquire comprehensive copyright packages even when only specific rights were needed, thereby limiting choice and increasing costs.⁵

In 2022, SIC opened a new investigation (still ongoing), finding that SAYCO had only formally complied with the 2016 decision while continuing to impose barriers to individual licensing. The new case has a broader scope, addressing digital and multi-sided markets and

alleging continued use of rigid contracts and misuse of information to reinforce SAYCO's market power.⁶

In 2018 Argentina's Secretariat of Trade, following the recommendations of the National Commission for the Defence of Competition (CNDC, now the National Competition Authority – NCA), sanctioned *Sociedad Argentina de Autores y Compositores* (SADAIC) for abusing its dominant position by charging excessive and discriminatory fees to certain hotels for the secondary reproduction of music. According to the CNDC, an exploitative abuse of dominance (i.e. excessive pricing) was established as SADAIC held a legal monopoly over the commercialization of music reproduction rights in hotels, and the fees imposed were found to be significantly higher than those charged by comparable entities in other jurisdictions.⁷ However, this decision was overturned by the courts.⁸

In 2013, Brazil's Administrative Council for Economic Defense (CADE) sanctioned *Escritório Central de Arrecadação e Distribuição* (ECAD) and six copyright-holder associations for engaging in cartel conduct, finding that they had jointly set standardized fees for the public performance of musical and phonographic works, despite lacking legal authority to do so. CADE held that copyright fees should be negotiated independently and on a market basis, which would better reflect users' needs and promote economic efficiency. In addition, CADE found that ECAD's internal rules imposed disproportionate and unfair

⁴ S. Cabello, S. Rivero and F. Viécens (2022), *La gestión colectiva de los derechos de autor en América Latina: desafíos y oportunidades a partir de los avances de la economía digital*, CETyS, <https://cetys.lat/wp-content/uploads/2022/06/la-gestion-colectiva-V4.pdf>.

⁵ SIC, *Resolución No. 76278*, of 3 November 2016, https://www.sic.gov.co/sites/default/files/estados/RESOLUCION_76278_SAYCO.pdf.

⁶ SIC, *Resolución No. 1079*, of 19 January 2022, <https://www.sic.gov.co/sites/default/files/boletin-juridico/Resolucion.pdf>.

⁷ Secretariat of Trade decision No. RESOL-2018-371-APN-SECC#MP of 26 June 2018, based on CNDC opinion No. 43 of 17 May 2017.

⁸ E. Greco and F. Viécens (2023), *GOODBYE Excessive Prices... as a Competition Law Infringement in Argentina*, CPI Columns Latin America, <https://www.pymnts.com/cpi-posts/goodbye-excessive-prices-as-a-competition-law-infringement-in-argentina/>.

conditions on the affiliation of new associations, creating entry barriers that hindered competition among associations representing copyright holders, which constituted an exclusionary abuse of dominance.⁹

CADE opened a new investigation in 2025 against the collective management organization Ubem for similar anti-competitive conduct, namely collective negotiations and the use of uniform price charts in the market for musical synchronization in audiovisual projects. CADE imposed interim measures prohibiting Ubem from collectively negotiating licensing prices and contractual terms on behalf of its main affiliated members, as well as from using or imposing standardized price charts.¹⁰

III. Misuse of the IP Regulatory System

Competition concerns have also arisen when IP holders exploit the regulatory framework to prevent or hinder market entry, a practice often referred to as regulatory gaming.¹¹ In particular, evergreening strategies seek to extend expiring IP rights in order to preserve exclusivity and market power, potentially amounting to an abuse of dominance where firms hold a dominant position.

Such strategies are especially common in the pharmaceutical sector, where patent holders may delay or prevent the entry of generic medicines by securing follow-on patents for minor, non-therapeutic modifications or by shifting demand to second-generation products while withdrawing or marginalizing earlier versions. These practices may be reinforced by misleading information

submitted to IP authorities to obtain or extend exclusive rights.

While incremental innovation is not inherently anticompetitive or against IP law – and may in fact generate significant consumer benefits – competition concerns emerge when such strategies are primarily designed to exclude competitors and limit consumer access to alternatives. In these cases, it is not the introduction of a new product that renders the conduct anticompetitive, but rather the strategic exploitation of the IP regulatory framework with an anticompetitive objective.

In 2016, Chile's National Economic Prosecutor (FNE) brought an action against G.D. Searle LLC, alleging that the company engaged in anticompetitive practices to delay the entry of generic competitors for Celecoxib-based medicines. FNE argued that Searle strategically manipulated the patent system to extend its exclusivity, including by obtaining a secondary patent, withholding information from the patent office, issuing legal threats, initiating litigation against competitors, and entering into exclusive agreements with a major pharmacy chain. The case was settled with approval of Chile's Competition Tribunal (TDLC). Under the settlement, Searle agreed to grant a free, non-exclusive and sublicensable license to any competitor seeking to manufacture or sell Celecoxib-based products in Chile. Searle also agreed to withdraw litigation against competitors, terminate exclusivity agreements, cease promotional activities for secondary brands for two years, and publicly disclose the settlement terms.¹²

IV. Sham Litigation

<https://www.gov.br/cade/en/matters/news/cade-launches-administrative-proceeding-to-impose-interim-measure-in-music-licensing-market>.

¹¹ S. Dogan and M. Lemley (2009), *Antitrust Law and Regulatory Gaming*, Texas Law Review, Vol. 87/4.

¹² TDLC approving the settlement between FNE and G.D. Searle LLC (Case 310-16), 10 November 2016.

⁹ CADE (2013), *The Central Office of Collection and Distribution and Copyrights associations are condemned for Cartel formation*, <https://www.gov.br/cade/en/matters/news/the-central-office-of-collection-and-distribution-and-copyrights-associations-are-condemned-forcartel-formation>.

¹⁰ CADE (2025), *CADE launches administrative proceeding to impose interim measure in music licensing market*,

Another type of conduct that has drawn the attention of competition authorities in the region concerns sham litigation. Although the use of litigation mechanisms is typically not subject to competition law scrutiny, in light of the fundamental rights of petition and access to justice, such mechanisms may nevertheless be misused by dominant firms as a strategic tool to maintain or extend market power and hinder competition. When legal proceedings are initiated not to obtain a legitimate outcome, but rather to impose costs, delay entry, or exclude rivals, they may constitute an anticompetitive practice known as sham or vexatious litigation. Sham litigation most frequently arises in intellectual property disputes, particularly in patent and copyright cases, where rights are strategically enforced to block or delay market entry.¹³

In Latin America, such conduct is generally treated as a potential abuse of dominance, although precedents remain limited. Brazil stands out in this respect, where a body of jurisprudence has developed, largely influenced by the US analytical framework. For instance, in 2010, CADE sanctioned *Box 3 Vídeo e Publicidade* for abusing its IP rights through sham litigation aimed at excluding competitors. The companies, which operated a televised tourism sales platform (Shop Tour), filed a series of lawsuits against a rival for alleged copyright infringement. CADE found that the lawsuits were objectively baseless and formed part of a broader strategy to eliminate a competitor from the market. Applying the bad-faith standard from civil procedural law, CADE concluded that the lawsuits were not intended to succeed on the merits but rather

to harm a rival through the legal process itself.¹⁴

V. Standard Essential Patents

A more recent area of interest involving IP rights concerns standard essential patents (SEPs), which are patents deemed indispensable for implementing a standard – i.e. common technical specifications that facilitate technology adoption and economies of scale, while also strengthening incentives to innovate and invest. SEPs can enhance competition by enabling broad access to key technologies and promoting interoperability. However, they may also raise competition concerns, especially the risk of hold-up, whereby SEP holders exclude implementers by refusing to grant a license, imposing unreasonable terms, or seeking injunctions to block the use of standardized technologies. To mitigate these risks, standard-setting organizations typically require SEP holders to license their patents on fair, reasonable and non-discriminatory (FRAND) terms. Nonetheless, uncertainty over what constitutes FRAND often leads to disputes between patent holders and implementers.

Some jurisdictions have considered that the pursuit of injunctions in disputes involving SEP licensing may amount to competition harm, albeit only in exceptional circumstances. In those cases, the competition assessment has focused on the conduct of the negotiating parties, finding that recourse to injunctions may be anticompetitive where a prospective licensee is willing to negotiate in good faith on FRAND terms and to pay royalties determined to be FRAND by an independent third party. By contrast, other jurisdictions have been more

¹³ I. Lianos and P. Regibeau (2017), “Vexatious”/“Sham” Litigation in EU and US Antitrust Law: A Mechanism Design Approach, CLES Research Paper Series 1/2017, <https://www.ucl.ac.uk/cles/sites/cles/files/cles-1-2017.pdf>.

¹⁴ CADE’s Administrative Proceeding No. 08012.004283/2000-40. Other IP-related sham litigation cases in Brazil involved Eli Lilly and Ediouro (CADE (2015),

Eli Lilly fined in BRL 36.6 million for sham litigation, <https://www.gov.br/cade/en/matters/news/eli-lilly-fined-in-brl-36-6-million-for-sham-litigation>; CADE (2016), *CADE signs six Cease and Desist agreements in the midst of investigations on anticompetitive practices*, <https://www.gov.br/cade/en/matters/news/cade-signs-six-cess-and-desist-agreements-in-the-midst-of-investigations-on-anticompetitive-practices>).

reluctant to intervene using competition law in SEP licensing disputes, taking the view that the underlying concerns extend beyond competition law and are more appropriately addressed under IP or contract law.¹⁵

A recent landmark ruling by CADE in Brazil highlights the increasing relevance of this matter. In 2024, Motorola and Lenovo filed a complaint with CADE alleging that Ericsson abused its dominant position by conditioning access to 5G SEPs in Brazil on the acceptance of a global licensing agreement under allegedly unfair and discriminatory terms. Although CADE's General Superintendence initially rejected the request for interim measures and the parties subsequently reached a private settlement, CADE's Tribunal ordered the opening of a formal investigation in April 2025. The Tribunal found preliminary indications of discriminatory pricing and potentially exclusionary contractual practices, emphasizing that private settlements do not prevent antitrust scrutiny where broader public interests are involved.

CADE ruled that SEPs may qualify as essential facilities where the four traditional criteria are met, adapted to the patent context: (i) the patent is controlled by a firm in a dominant position; (ii) the patented technology cannot be reasonably duplicated in a timely manner by interested parties; (iii) the patent is necessary for the interested firm to comply with a standard, ensure interoperability or meet a legal or regulatory requirement; and (iv) the refusal to license prevents the interested firm from offering its goods or services in a relevant market. The decision signals a shift in CADE's approach, recognizing that SEP licensing strategies adopted by dominant firms may

raise competition concerns, especially where essential technologies and interoperability are involved.¹⁶

VI. Merger Review

Finally, IP rights have also played a crucial role in merger review cases, especially when they constitute core assets driving the transaction, which is frequently the case in highly technological sectors such as pharmaceuticals and information and communications technology (ICT). IP rights may be relevant to the definition of relevant markets, the assessment of competitive effects, and the design of remedies. In Latin America, authorities have focused on trademarks, given the strong customer loyalty brand names may generate and the potential anticompetitive effects arising from their concentration following a merger. Nevertheless, remedies involving other IP rights – notably patents – have also been imposed in a limited number of cases.

An illustrative example is the *Bayer/Monsanto* merger, which was reviewed by several Latin American jurisdictions. The transaction led to a significant concentration of IP rights, particularly in seeds and crop protection products. Given the parties' presence in multiple overlapping markets, concerns were raised regarding a potential reduction in innovation in biotechnology, as well as vertical foreclosure risks arising from the integration of complementary assets along the agricultural value chain. To address these concerns, competition authorities imposed IP-related remedies, including the divestiture of patents and trademarks, as well as behavioral

¹⁵ OECD (2019), *Licensing of IP Rights and Competition Law*, OECD Roundtables on Competition Policy Papers, No. 230, OECD Publishing, Paris, <https://doi.org/10.1787/6a74221e-en>; OECD (2015), *Executive Summary of the Discussion on Intellectual Property and Standard Settings*, [https://one.oecd.org/document/DAF/COMP/M\(2014\)3/ANN3/FINAL/en/pdf](https://one.oecd.org/document/DAF/COMP/M(2014)3/ANN3/FINAL/en/pdf).

¹⁶ CADE (2025), *CADE investigates Ericsson for antitrust violations*, <https://www.gov.br/cade/en/matters/news/cade-investigatesericsson-for-antitrust-violations>; CADE's Administrative Proceeding No. 08700.010219/2024-17, reasoning of the Commissioner-Rapporteur Mr. Gustavo Augusto Freitas de Lima of 29 April 2025.

commitments requiring the licensing of IP rights on FRAND terms.¹⁷

VII. Competition Advocacy

Beyond enforcement, competition authorities can also contribute to promoting competition in the exercise of IP rights through advocacy. Advocacy can be a powerful tool for integrating competition principles into IP law, often serving as the initial avenue through which competition authorities engage in this domain.

Competition authorities have undertaken advocacy initiatives with IP agencies and other governmental bodies to raise awareness of competition-related issues. For instance, in many jurisdictions such efforts have focused on promoting the integrity of patent systems and preventing the granting of ill-founded rights that could harm competition or hinder follow-on innovation without delivering legitimate countervailing benefits.

Additionally, some competition authorities in Latin America have carried out market studies in IP-intensive sectors, especially the pharmaceutical industry, to identify shortcomings in the IP legal framework and its application by IP agencies, as well as to propose potential improvements to strengthen competition in these markets.

For example, in 2017, Mexico's Federal Economic Competition Commission (COFECE, now the National Antimonopoly Commission –

CNA) conducted a market study on competition in the market for expired-patent drugs.¹⁸ It found that generic entry occurred, on average, two years after patent expiration, significantly slower than in other jurisdictions. COFECE identified competition concerns arising from regulatory barriers, strategic patenting practices, and weak demand for generics. To address these issues, it recommended regulatory reforms and more pro-competitive public policies, including clear rules on patent linkage to limit discretion and prevent abusive litigation aimed at extending exclusivity, as well as restrictions on patent types prone to being used to block generic entry.¹⁹

Advocacy may also stem from competition enforcement actions, even if they are not successful. For instance, Argentina recently adopted a new legal framework for copyright collecting societies, establishing a more competitive and transparent system for copyright management. The new regime allows rights holders to manage their rights individually or through collecting societies, abolishing the legal monopoly under the previous system.²⁰ This change was partly driven by the abovementioned investigation carried out by Argentina's CNDC, which sanctioned the music copyright collecting society – although the fine was later overturned by the courts – and submitted pro-competitive recommendations – upheld by the


¹⁷ See for example CADE (2018), *CADE approves with restrictions Bayer's acquisition of Monsanto*, <https://www.gov.br/cade/en/matters/news/cadeapproves-with-restrictions-bayer2019s-acquisition-of-monsanto>; FNE (2018), *FNE aprueba con medidas adquisición de Monsanto por parte de Bayer*, <https://www.fne.gob.cl/fne-aprueba-con-medidas-adquisicion-de-monsanto-por-parte-de-bayer/>.

¹⁸ Other examples of market studies in this area are found in Chile, where FNE carried out two market studies in 2016 and 2019: FNE (2016), *Estudio sobre el Sistema de Protección Suplementaria de Patentes en Chile y sus Efectos en Materia de Libre Competencia*, [https://www.fne.gob.cl/wp-content/uploads/2016/02/FNE-Proteccion-](https://www.fne.gob.cl/wp-content/uploads/2016/02/FNE-Proteccion-suplementaria.pdf)

[suplementaria.pdf](#); FNE (2019), *Estudio de Mercado sobre Medicamentos*, https://www.fne.gob.cl/wp-content/uploads/2019/11/Informe_preliminar.pdf.

¹⁹ COFECE (2017), *Study on free market and competition in the expired-patent drug markets in Mexico*, https://www.cofece.mx/wp-content/uploads/2017/11/Studies-drugmarkets_vF-BAJA.pdf.

²⁰ S. Rivero and M. Vicens (2025), *Un nuevo marco normativo para las Sociedades de Gestión Colectiva en Argentina*, <https://udes.edu.ar/noticias/un-nuevo-marco-normativo-para-las-sociedades-de-gestion-colectiva-en-argentina>.



courts – to the National Executive Branch to establish clear parameters for regulating the fees for secondary reproduction of IP rights.

In this context, close cooperation between competition authorities and IP agencies is essential to maximize synergies between IP protection and competition, including beyond the scope of enforcement actions. The 2023 OECD Recommendation on Intellectual Property Rights and Competition underscores the importance of establishing effective policy-cooperation mechanisms between competition authorities and IP agencies, including through Memoranda of Understanding (MoUs), which have been adopted in several Latin American jurisdictions, such as Brazil, Chile, the Dominican Republic, and Paraguay.

VIII. Conclusion

Competition and IP law rely on different tools to pursue similar objectives. In this regard, the two policies are generally complementary and share important synergies in promoting innovation, economic growth, and consumer welfare. However, tensions may arise in practice, as IP rights can confer or reinforce market power, potentially incentivizing their holders to restrict access and hinder follow-on innovation.

Although competition authorities in Latin America do not yet have a long tradition of addressing IP-related issues, recent developments suggest that this may be changing, at least in a few jurisdictions in the region. This indicates that there remains considerable scope for other Latin American authorities to become more active in this area, notwithstanding challenges such as limited resources, competing enforcement priorities, and the high level of specialized expertise required to assess complex and technical IP matters.

As illustrated by regional experience, competition advocacy can serve as an effective starting point for competition authorities in

this field, helping to shape a more pro-competitive IP legal framework and paving the way for future enforcement actions.