

Unclassified

English - Or. English

8 September 2025

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE**

**Latin American and Caribbean Competition Forum**

**LATIN AMERICAN AND CARIBBEAN COMPETITION FORUM - SESSION II:  
COMPETITION AND INTELLECTUAL PROPERTY**

- Contribution from Argentina -

7-8 October 2025

This attached document from Argentina is circulated to the Latin American and Caribbean Competition Forum (LACCF) FOR DISCUSSION under Session II at its forthcoming meeting to be held on 7-8 October 2025 in Asunción, Paraguay

Marcelo Guimarães (marcelo.guimaraes@oecd.org).

**JT03570547**

## *Session II: Competition and Intellectual Property*

### *– Contribution from Argentina –*

1. Intellectual Property Rights (IPR) are intended to encourage and reward innovation, protecting inventors and creators by granting them an exclusive right to their inventions and creations, usually for a limited period of time (OECD, 2024, p.4)<sup>1</sup>.
2. With the increasing importance of IPRs in the contemporary economy, debate on their interaction with competition law has intensified. In a context characterised by the expansion of the knowledge economy, digitisation and the rise of intangible assets, it is becoming increasingly necessary to align competition and intellectual property policy to ensure a proper balance between incentivising innovation and protecting competition.
3. According to the Organisation for Economic Co-operation and Development,<sup>2</sup> while competition law and intellectual property law may, at times, appear to be opposing or contradictory, they also share certain objectives, such as fostering innovation, economic growth and consumer well-being.
4. However, when exclusive IPR are exercised in an abusive manner, or are used to block competition, their effects may be contrary to the public interest. This is the view of the OECD when it warns that certain licensing contracts – for example, with territorial exclusivity clauses, challenge restrictions or grant-back clauses – may restrict competition without generating proportional benefits in terms of innovation or technological dissemination. It is therefore important to carry out case-by-case, effects-based analysis when assessing competition issues related to intellectual property licences.
5. The interaction between competition and intellectual property has been extensively analysed in international studies and regulations, among them the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS),<sup>3</sup> applicable to World Trade Organization (WTO) member states. This agreement recognises that certain practices related to the licensing of IPR may generate restrictions on competition, affecting trade and impeding the transfer and dissemination of technology. It therefore empowers states to implement appropriate measures to prevent or control such conduct, such as exclusive grant-back conditions, conditions preventing challenges to validity and coercive package licensing, provided that they comply with the state's own laws and the provisions of the agreement itself.

---

<sup>1</sup> OECD (2025), *Recommendation of the Council on Intellectual Property Rights and Competition*, [OECD/LEGAL/0495](https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0495). Available online : <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0495>

<sup>2</sup> OECD (2019), "Licensing of IP Rights and Competition Law", *OECD Roundtables on Competition Policy Papers*, No. 230, OECD Publishing, <https://doi.org/10.1787/6a74221e-en>.

<sup>3</sup> *Acuerdo sobre los aspectos de los derechos de propiedad intelectual relacionados con el comercio* (ADPIC) [Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)], [https://www.wto.org/spanish/tratop\\_s/trips\\_s/ta\\_docs\\_s/1\\_tripsandconventions\\_s.pdf](https://www.wto.org/spanish/tratop_s/trips_s/ta_docs_s/1_tripsandconventions_s.pdf).

6. Argentina adheres to TRIPS through Law 24,425,<sup>4</sup> which incorporates into national legislation the possible effects on competition derived from the abusive exercise of exclusive rights provided for by intellectual property law, among other aspects. Although the links between competition and intellectual property are evident and are covered by both international agreements and domestic regulations, their practical complexity means that further efforts are needed to address them appropriately.

7. In this contribution, the subject will be approached from the point of view of collective management organisations (CMOs), observing the difficulties that exist in their relationship with competition law. This contribution will also analyse a case of the National Commission for the Defence of Competition (CNDC in Spanish) on IPR, in which a series of pro-competitive recommendations were issued, pursuant to the application of Law 27,442 on the Defence of Competition (LDC in Spanish).

8. The first section of this note provides an overview of the specificities of CMOs. The second section examines relevant Argentine case law, with a particular focus on a case involving alleged anti-competitive conduct in which the Argentine Society of Music Authors and Composers (SADAIC in Spanish) was investigated and sanctioned. The third section reviews recent regulatory developments regarding CMOs in Argentina, highlighting how these reforms seek to balance the protection of IPR with the promotion of competitive environments. Finally, the fourth section presents concluding remarks.

## 1. Collective management organisations (CMOs): Operation, market power and challenges for competition policy

9. The World Intellectual Property Organization (WIPO),<sup>5</sup> defines CMOs as entities that license the use of creative works, sound recordings or performances on behalf of the rights holders they represent, typically on a collective basis, collect licensing fees and pay the rights holders.

10. The licences granted, known as blanket licenses, give the licensee access to an extensive catalogue belonging to one or more rights holders. This mechanism arose from the practical impossibility and administrative effort involved in negotiating individual licences for each musical work, and simplified the market for both rights holders and users.

11. The system helps to reduce the costs of information, search and localisation of right holders by users and vice versa. It also reduces contracting costs by grouping the licensing of multiple works in a single legal act, as well as cutting implementation and monitoring costs thanks to collective oversight.

12. However, the same efficiencies that justify the existence of CMOs bring with them a concentration of market power that poses significant competitive risks. In practice, CMOs operate in contexts with little or no competition, which gives them a dominant position that can lead to abuses such as disproportionate pricing or tariffs. This situation creates tension

---

<sup>4</sup> Law 24,425, Annex 1C, “Acuerdo sobre los aspectos de los derechos de propiedad intelectual relacionados con el comercio” (ADPIC) [Agreement on Trade-Related Aspects of Intellectual Property Rights], <https://servicios.infoleg.gob.ar/infolegInternet/anexos/0-4999/799/124425-19.htm>.

<sup>5</sup> WIPO (2025), *WIPO Good Practice Toolkit for Collective Management Organizations*, <https://www.wipo.int/edocs/pubdocs/en/wipo-pub-cr-cmoutilkit-2025-en-wipo-good-practice-toolkit-for-collective-management-organizations-the-toolkit.pdf>.

that authorities must manage, seeking a "regulatory balance" that takes into account both the protection of copyrights and the well-being of consumers and users.<sup>6</sup>

13. In the case of Argentina, some CMOs were established as legal monopolies by the state, unlike in other countries where the monopoly emerges as a *de facto* position. This gives the CMOs a dominant position in the market, which is defined in Article 5 of the LDC as a situation in which a company is the only supplier or buyer in a market or does not face substantial competition, or when, due to the degree of vertical or horizontal integration, it is in a position to determine the economic viability of a competitor participating in the market.

14. When the dominant position derives from a legal monopoly, it is necessary to guard against exploitative abuse, among other types of anti-competitive conduct. According to the CNDC's *Guidelines for the Analysis of Cases of Abuse of Dominance*, this abuse is manifested when customers or suppliers are exploited through excessive pricing, or through the imposition of unjustifiably unfavourable conditions in other variables that are important to consumers.<sup>7</sup>

15. In Argentina, the regulatory framework views the exploitative abuse of a dominant position as conduct that may harm competition and the general economic interest. As such it is an illegal practice punishable by law.

16. However, there is abundant literature on the difficulties involved in proving the existence of excessive pricing resulting from a dominant position, and international case law confirms this. The number of cases classified by the competition authorities as belonging to this category is very small and, moreover, the few cases that do result in a sanction for this type of conduct are often appealed and their resolution reversed by the courts.

17. Motta and De Streel<sup>8</sup> point out that in order to sanction a practice of this type, the authority must verify at least three conditions: the existence of entry barriers, the presence of market power derived from special privileges and the absence of sector-specific regulation.

18. As Coloma states,<sup>9</sup> the main evidentiary obstacle lies in the lack of an objective parameter to determine whether a price is indeed excessive. To this end, it is essential to construct a credible counterfactual scenario based on reliable data on costs and on the value that users attribute to the good or service. This has led to a situation where, in many cases, the instances of alleged excessive pricing that have eventually been sanctioned are those that were accompanied by related conduct such as price discrimination, which in itself allows for a comparison between two values, one allegedly "competitive" and the other not.

---

<sup>6</sup> Nazar de la Vega, G.M. (2021), "El mercado de las sociedades de gestión colectiva: Mecanismos regulatorios sobre precios" [The collective management organisations market: Regulatory mechanisms on pricing].

<sup>7</sup> CNDC (2019). *Guía para el análisis de casos de abuso de posición dominante de tipo exclusionario* [Guidelines for the analysis of cases of exclusionary abuse of dominance] [https://www.argentina.gob.ar/sites/default/files/traduccion\\_ingles\\_lineamientos\\_abuso\\_posicion\\_dominante.pdf](https://www.argentina.gob.ar/sites/default/files/traduccion_ingles_lineamientos_abuso_posicion_dominante.pdf).

<sup>8</sup> Motta, M. and A. De Streel (2007), "Excessive pricing in competition law: Never say never?", in *The Pros and Cons of High Prices*, Swedish Competition Authority, pp. 14-46.

<sup>9</sup> Coloma, G. (2018), "El abuso explotativo de posición dominante y la nueva Ley de Defensa de la Competencia" [The exploitative abuse of dominant position and the new Competition Act], *Sup. Esp. Com. Ley de Defensa*, pp. 187-197.

19. Intervening can have undesirable effects, according to Motta and De Streel.<sup>10</sup> If the profitability of the dominant company is reduced, this could slow the entry of new competitors, limit the variety available to consumers and even discourage future investment by the dominant company itself.

20. One argument for sanctioning this type of practice is that the direct exploitation of consumers constitutes a serious violation of the well-being protected by competition law. In exceptional scenarios – for example, when entry barriers are insurmountable and market power stems from extraordinary privileges – antitrust intervention may be the only way to correct unjustifiably high prices.

21. In summary, the tension between specific intellectual property regulation and general antitrust law in cases of exploitative abuse generates significant challenges for the effective enforcement of this law.

## 2. Relevant case law in Argentina: The SADAIC case

22. One precedent that exemplifies this intersection between competition and intellectual property in Argentina is the case in which the Argentine Society of Music Authors and Composers (SADAIC)<sup>11</sup> – a CMO that holds a legal monopoly for the administration of music copyrights in Argentina, pursuant to Law 17,648<sup>12</sup> – was sanctioned for alleged anti-competitive conduct.

23. The investigation was launched in 2009 after a complaint was filed before the CNDC by the Hotel and Gastronomy Business Federation of the Argentine Republic (FEHGRA in Spanish) – a body that represents the country's hotel and restaurant industry – questioning a unilateral, disproportionate and discriminatory increase in the fees charged by SADAIC to hotels for the secondary reproduction of musical works, without considering the actual occupancy of the establishments. The complainants argued that the tariffs were set based on presumed income, without considering the actual occupancy of each establishment, and that the new tariff scheme increased payments by between 33% and 70%, depending on the category of the hotel, generating significant additional costs.

24. Upon completing the investigation, the CNDC considered that: i) SADAIC enjoyed a dominant position in the relevant market of collective management of music copyrights for hotels, due to the characteristics of a legal monopoly observable in its position; ii) SADAIC's conduct consisted of imposing excessive and disproportionate tariffs, affecting all of the country's hotel establishments; iii) the tariffs were discriminatory, as they varied without clear criteria between different hotels with similar characteristics, often through specific agreements with regional associations; iv) there were flaws in the regulation, since the applicable regulations did not establish rules for setting tariffs and, therefore, SADAIC had broad powers to set tariffs with a degree of discretion.

25. The technical opinion concluded that the conduct under investigation constituted an abuse of a dominant position in that it set excessively high, unreasonable and discriminatory tariffs in connection with the secondary reproduction in hotel

---

<sup>10</sup> Motta, M. and A. De Streel (2007), "Excessive pricing in competition law".

<sup>11</sup> Resolution and Opinion, <https://cndc.produccion.gob.ar/sites/default/files/cndcfiles/1302%20Dictamen%20y%20Resolucion%20SADAIC-ilovepdf-compressed.pdf>.

<sup>12</sup> Law 17,648 (1968), Argentine Society of Music Authors and Composers (SADAIC), <https://servicios.infoleg.gob.ar/infolegInternet/anexos/35000-39999/38009/norma.html>.

establishments (the reproduction of musical works previously broadcast and disseminated to guests in rooms or common areas) of the repertoire managed by SADAIC.

26. The CNDC's finding of exploitative abuse in this case met the legal test applied by the Court of Justice of the European Union (CJEU) in its analysis of a similar case investigated and sanctioned by the Latvian government against the Consulting agency on copyright and communications/Latvian authors' association (AKKA/LAA, 2017). The CJEU approved the outcome of this latter case.<sup>13</sup>

27. The test consists of two requirements: i) that the investigated entity is established as a legal monopoly and, consequently, there are entry barriers; and ii) that there are excessive prices, making international comparisons adjusted to a homogeneous basis, such as purchasing power parity (PPP).

28. The CNDC's investigation was able to demonstrate that the case met the aforementioned legal test. First, because SADAIC was the only entity authorised to market music reproduction rights in hotels and, second, because its fees were significantly higher than those charged by other similar entities to hotels in their respective countries.

29. As a result of the analysis, the CNDC recommended that SADAIC be fined 42 732 771 Argentine pesos, equivalent to 10% of SADAIC's revenues from fees charged to hotel establishments during the period under investigation (2009-2014). This recommendation was upheld by the then-Secretary of Commerce. In addition, the CNDC issued a pro-competitive recommendation, in which it suggested establishing certain parameters for determining secondary reproduction fees, in accordance with the principles of: i) limited scope; ii) non-discrimination; iii) reasonableness; iv) transparency.

30. However, SADAIC appealed the resolution of the enforcement authority, challenging the fine and the recommendation made to the Executive Power.

31. Chamber III of the Federal Court of Appeals in Civil and Commercial Matters ruled on the case in August 2019. It revoked the fine imposed on SADAIC, but ratified the recommendation to establish clear parameters to regulate the fees for secondary reproduction of IPR of this type.<sup>14</sup>

32. In the ruling, although the court recognised that SADAIC had a legal monopoly and therefore a dominant position in the collection of copyright royalties, and that hotels are obliged to pay fees for the use of musical works, even in cases of secondary reproduction, it held that the appropriate response should be regulatory and not punitive. It also ruled that a state regulatory agency should be responsible for tariff control, not a competition authority.

33. However, the ratification of the regulatory recommendation issued by the CNDC shows that the increase in the analysed tariffs, when reaching excessive levels, may cause damage both to those who must pay them – in this case, the hotels – and to competition in the market where these hotels operate. In general terms, given the damages resulting from an abuse of a dominant position, the competition authorities may choose to impose

---

<sup>13</sup> Court of Justice of the European Union (CJEU). Ruling in case C-177/16 (AKKA/LAA), <https://curia.europa.eu/juris/document/document.jsf?docid=194436&doclang=EN>.

<sup>14</sup> Chamber III of the Federal Court of Appeals in Civil and Commercial Matters. Case No. 7971/2018/CA1, Hotel and Gastronomy Business Federation of the Argentine Republic v. SADAIC and others / appeal, National Commission for the Defence of Competition, [https://www.argentina.gob.ar/sites/default/files/2022/07/federacion\\_empresaria\\_hotelera\\_gastronomica\\_de\\_la\\_republica\\_argentina\\_c\\_sadaic\\_y\\_otros\\_apel\\_res\\_comision\\_nacional\\_de\\_defensa\\_de\\_la\\_competencia.pdf](https://www.argentina.gob.ar/sites/default/files/2022/07/federacion_empresaria_hotelera_gastronomica_de_la_republica_argentina_c_sadaic_y_otros_apel_res_comision_nacional_de_defensa_de_la_competencia.pdf).

sanctions, agree on commitments with the infringers, apply structural remedies, or a combination of these measures.

34. Frequently, the authorities agree on commitments with the infringing parties or impose remedies that, in the first instance, involve the cessation of the conduct in question and obligations to abstain. Considering that the conduct in question consisted of excessive fees charged by an entity with a legal monopoly over the reproduction rights of musical works and, since the CNDC and competition agencies in general are not empowered to exercise direct control over prices, it was decided that a recommendation be issued to the National Executive Power to regulate the fees charged to hotels. The purpose of this initiative was to remedy the damage generated by the conduct, ensure it ceased and avoid its anti-competitive effects.

35. This type of recommendation aims to encourage other government agencies to introduce regulations to reduce or eliminate abusive conduct derived from the exercise of a dominant position.

36. The approval of this recommendation by Chamber III of the Court constitutes an explicit recognition of the harm to competition, as well as the need for corrective intervention. It can be interpreted that the Court considered that, since the regulatory recommendation of the CNDC and the former Secretariat of Domestic Trade had been adopted, there was no longer any need for a financial penalty as a deterrent measure, given that such conduct would thus be prevented in the future.

37. In summary, the most relevant and significant aspect of the SADAIC case is that the court recognised the need for regulatory reforms, which contributed to the adoption of Decree 600/2019, Joint Resolution 2/2019 and other ensuing rules, which established objective criteria for setting use fees in hotels. As such, although the fine was annulled, the case resulted in a significant regulatory improvement, underlining the preventive and structuring role of competition analysis in intellectual property matters.

### 3. Regulatory developments relating to CMOs in Argentina

38. In 2019, significant regulatory progress was made in this area. First, Decree 600/2019,<sup>15</sup> issued by the National Executive Power, aimed to regulate copyright fee collection – by CMOs – in hotel establishments throughout the country, taking into account the seasonality and the occupancy rates of each region of the country as reported by the Hotel Occupancy Survey, conducted by the National Institute of Statistics and Census (INDEC).

39. That same year, through Joint Resolution 2/2019<sup>16</sup> between the Ministry of Culture and the Ministry of Justice and Human Rights, the previous decree regulating the regime provided for in Decree 600/2019 was extended with the aim of establishing transparent, equitable and non-discriminatory criteria for setting the fees to be paid by hotels for the secondary reproduction of musical works, phonograms and performances protected by IPR. The measure arose, in part, as a response to the problems evidenced in the SADAIC case.

---

<sup>15</sup> Decree 600/2019, <https://servicios.infoleg.gob.ar/infolegInternet/anexos/325000-329999/327449/norma.htm>.

<sup>16</sup> Joint Resolution 2/2019, Ministry of Justice and Human Rights and Government Secretariat of Tourism, <https://servicios.infoleg.gob.ar/infolegInternet/anexos/330000-334999/332957/norma.htm>.

40. To this end, the regulation establishes the following operating principles: i) a single criterion for calculating the tariff, based on the category of the establishment, the number of rooms and the weighted average rate of the standard single room without taxes; ii) consideration of geographical seasonality and occupancy levels, based on INDEC data; iii) that fees agreed between CMOs and hotels may not exceed those established by the regulation; iv) that hotels must submit an annual sworn statement reporting key data such as number of rooms, category of the establishment and average room rate.

41. More recently, the National Executive Power issued Decree 765/2024<sup>17</sup> on Intellectual Property, by which it redefined the concepts of public and private performance, by providing that: "A performance is not considered public when it takes place in a private setting, whether temporary or permanent." In practice, this exempts those who use music or other works in truly private and restricted contexts, for example, hotel rooms or private events such as birthdays, weddings or graduation parties, from paying fees to CMOs.

42. Some months later, the Executive Power took a further step in this direction in the field of intellectual property, with Decree 138/2025,<sup>18</sup> which allowed rights holders to join one or more CMOs or to manage their rights on an individual basis. Previously, CMOs were the only entities representing copyright holders, but the amendment created the possibility of not using CMOs as intermediaries. This promoted greater competition for CMOs – such as SADAIC – in regard to the administration of these rights.

#### 4. Concluding remarks

43. The interaction between IPR and competition law is an increasingly relevant area in the contemporary economy, especially in contexts where intangible assets and technological innovation play a central role. In the context of this interaction, the improper exercise of exclusive rights may generate restrictive effects on competition, particularly when there are regulatory failures or dominant positions of a legal nature.

44. CMOs, in particular, play a key role in administering certain types of copyright, such as music. While it can be said that this model allows for greater efficiency by reducing search, contracting and monitoring costs through blanket licenses, it is also true that it can consolidate a position of dominance that leads to abusive practices such as excessive tariffs.

45. In addition, the total or substantial lack of competition faced by CMOs, whether *de jure* or *de facto*, exacerbates the problems surrounding them. There is a need to balance the protection of IPR with the preservation of the general economic interest, so that mechanisms designed for the former do not turn into anti-competitive practices.

46. The case law arising from the SADAIC case evidenced the need for regulatory reforms in this area, which finally materialised with new regulations that introduced principles of transparency, reasonableness and freedom of affiliation in regard to the management of rights. Recent regulatory developments (Decree 600/2019, Joint Resolution 2/2019, and Decrees 765/2024 and 138/2025) responded to the need to address intellectual property protection and competition defence in complementary regulatory frameworks, reflecting the evolution of that balance.

---

<sup>17</sup> Decree 765/2024, <https://www.boletinoficial.gob.ar/detalleAviso/primera/312933/20240828>.

<sup>18</sup> Decree 138/2025, <https://www.boletinoficial.gob.ar/detalleAviso/primera/321981/20250227>.

47. In short, ensuring an appropriate balance between protecting intellectual rights and defending competition requires a dynamic approach. Argentina has taken important steps in this direction, through regulatory reforms and administrative decisions that seek to promote innovation without compromising the well-being of consumers and users.