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

OECD-IDB Latin American and Caribbean Competition Forum

Session II: Competition and Intellectual Property – Call for contributions

7-8 October 2025

This document is circulated in preparation of the discussion under Session II of the OECD-IDB Latin American and Caribbean Competition Forum (LACCF) that will take place during 7-8 October 2025 in Asunción, Paraguay.

Delegates are invited to submit their written contributions to the Secretariat by Thursday, 31 July 2024

In case you need additional information related to this session, please contact:

Ms. Angélique Servin (Angelique.Servin@oecd.org); and

Mr. Marcelo Guimarães (Marcelo.Guimaraes@oecd.org).

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Session II: Competition and Intellectual Property

– Call for Contributions –

1. This year's OECD-IDB Latin American and Caribbean Competition Forum (LACCF) will feature a session on "Competition and Intellectual Property". This document provides some background information on the topic and invites delegates to make a written submission to the discussions.
2. Intellectual Property (IP) rights create temporary exclusive rights which protect investments in research and some creative ideas. Innovation and technological progress are the single most important determinant of economic growth in the industrialised world. As IP rights protect so much knowledge-based capital, it is unsurprising that they have taken on an increasingly important and extensive role in economic activity – and in market competition as well. In this context, the interaction between competition and IP law has been growing in prominence as the economy digitalises and the importance of intangible assets in the overall economy increases.
3. Competition authorities worldwide have taken enforcement actions that affect IP rights, with the aim of minimising the anti-competitive effects of IP rights while respecting their existence and the societal goals they are meant to promote. Examples of competition enforcement actions include but are not limited to: mergers likely to undermine incentives for innovation; anti-competitive settlements in patent litigation relating to prospective entry by generic suppliers in the pharmaceutical sector; the possibility of anti-competitive conduct in the context of standard-setting processes; manipulation of IP award procedures; and unilateral abuses of market power derived (at least in part) from IP rights in high-technology industries. Competition authorities have also been involved in IP processes and IP policy, mainly through advocacy efforts to ensure that IP law is more pro-competitive.
4. While some competition authorities have been very active in IP-related issues, others – including in Latin America and the Caribbean – have less experience and could further develop their work in this topic, which suggests that it is timely to address the topic in the LACCF.
5. Over the years, the OECD has conducted extensive work on the relationship between competition and IP. In particular, in June 2023 the OECD Council adopted the [Recommendation on Intellectual Property Rights and Competition](#), which consolidated and replaced two earlier Recommendations adopted in 1978 and 1989. The Recommendation sets out the key principles applicable in competition enforcement cases involving IP-related business practices and aims at providing guidance on how to assess such cases, to ensure a correct functioning of markets and adequate incentives to innovate.
6. In addition, several sessions held by the OECD Competition Committee have discussed the topic of competition and IP, including the Roundtables on [Competition and Innovation: A Theoretical Perspective](#) (2023), [The Role of Innovation in Competition Enforcement](#) (2023), [Licensing of IP rights and Competition Law](#) (2019) and the Hearing on [Intellectual Property and Standard Setting](#) (2014).
7. Building on these discussions, this LACCF session will focus mainly on key competition issues related to the interface between competition and Intellectual Property law. This may include, depending on the contributions received from delegates: (i) policy principles and approaches to competition and IP; (ii) competition enforcement regarding IP-related issues, comprising anti-competitive agreements, abuse of dominance and merger control; and (iii) competition advocacy and institutional co-operation regarding IP. The session will also enable to expand the previous OECD discussions on competition and IP to a larger non-OECD membership and to discuss possible particularities of the region.
8. As in past years, the quality and utility of this session will be greatly strengthened by written contributions, which should be sent to the OECD Secretariat by **Thursday 31 July 2025**. In order to assist you with the preparation of your contribution, the Annex includes a number of questions

on which you may wish to focus and a suggested bibliography. The list in the Annex is not exhaustive, and you are encouraged to raise and address other issues in your submissions and during the discussion. We also strongly encourage you to discuss and comment on your relevant enforcement and advocacy experience in this area.

The session will be supported by a Secretariat paper, which will compile the main issues related to the topic. The LACCF webpage will be the primary vehicle for conveying documentation and related links on this subject. It will become available on its main page at https://www.oecd.org/en/networks/latin-american-and-caribbean-competition-forum._____.html. Unless explicitly requested not to do so, the Secretariat will reproduce all written contributions on the LACCF website.

9. All communications regarding the documentation for this session should be sent to Ms. Angélique Servin (Angelique.Servin@oecd.org). Please address any substantive queries relating to this discussion to Mr. Marcelo Guimarães (Marcelo.Guimaraes@oecd.org).

Annex A.

Suggested questions for written contributions to Session II on Competition and Intellectual Property

This Annex provides a list of questions for consideration in preparing your written contribution. A contribution does not need to cover every listed question, and you may wish to address issues not listed here. You are encouraged to refer to relevant cases or advocacy initiatives where appropriate to illustrate your answers. Please prepare your contribution as an integrated essay rather than a list of answers to questions.

A. Policy principles and approaches to competition and IP

- Describe the institutional design of the entities responsible for enforcing competition and IP law in your jurisdiction.
- Does competition law fully apply to IP rights in your jurisdiction?
- If so, what principles govern the interaction between IP and competition law?
- Has your jurisdiction adopted secondary regulations or guidelines on the application of competition law to IP rights?

B. Anti-competitive behaviour involving IP-related business practices

- Does your jurisdiction have experience with cases involving anti-competitive behaviour related to IP rights, including but not limited to licensing agreements, evergreening, pay-for-delay and sham litigation?
- If there have been IP-related cases in your jurisdiction:
 - Did they involve anti-competitive agreements or abuse of dominance?
 - In case of convictions, what sanctions and/or remedies were imposed?
- If there have not been IP-related cases in your jurisdiction, to what circumstances do you attribute this outcome (e.g. the legal framework, lack of resources or absence of illegal practices)?

C. IP-related issues in merger control

- What competition concerns related to IP rights are most commonly raised during merger review in your jurisdiction?
- Can remedies related to IP rights be imposed in merger cases in your jurisdiction?
- If so, do these remedies involve the sale, licensing or suspension of IP rights?

D. Competition advocacy and institutional co-operation

- Does your jurisdiction have experience with competition advocacy related to IP rights?
- If so, what have been the main issues addressed by such advocacy efforts and how effective were they?
- Does the competition authority co-operate with the IP agency in your jurisdiction?

Suggested bibliography

- M. Gómez (2020), *Intersección entre competencia y patentes: hacia un ejercicio pro-competitivo de los derechos de patente en el sector farmacéutico*, South Centre, Documento de Intervigación 105, <https://www.southcentre.int/wp-content/uploads/2020/03/RP-105.pdf>
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- J. Mujica and B. Rojo (2022), *El estatus legal de las cartas de advertencia enviadas por titulares de derechos de propiedad industrial a potenciales infractores: revisitando la intersección entre la libre competencia y la propiedad industrial*, Revista de Derecho Económico, v. 79, n. 1, <https://revistas.uchile.cl/index.php/RDE/article/view/66870/70741>
- G. Muscolo (2025), *Standard Essential Patents: An overview of EU and national case law*, Standard Essential Patents, e-Competitions Special Issue, https://www.concurrences.com/en/bulletin/special-issues/standard-essential-patents/standard-essential-patents-an-overview-of-eu-and-national-case-law?id_rubrique=2966&utm_idc_source=newsletter
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- OECD (2014), *Intellectual property and standard setting*, https://www.oecd-ilibrary.org/finance-and-investment/intellectual-property-and-standard-setting_c49817a1-en
- Q. Schäfer (2024), *Reconsidering the Limits of EU Competition Law on the IP-Competition Interface*, Journal of European Competition Law & Practice, vol. 15, n. 3, pp. 288-196, <https://academic.oup.com/jeclap/article/15/3/188/7656673>
- UNDP (2022), *Using competition law to promote access to health technologies: A supplement to the Guidebook for low- and middle-income countries*, <https://www.undp.org/sites/g/files/zskgke326/files/2022-03/UNDP-Using-Competition-Law-to-Promote-Access-to-Health-Technologies.pdf>
- WIPO (2024), *Intellectual Property and Competition Policy*, <https://www.wipo.int/web/competition-policy>