



Intellectual Property and Competition Law

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<u>Part A - Technology Licences</u>	
1. Legislation/Rules	<p><u>Patent Law Number 17.164 (dated 2 September 1999).</u></p> <p>Article 52 - it is forbidden to establish a licence agreement, clauses or conditions which produce a negative effect on competition or constitute unfair competition or which enable an abuse on the part of the patentee or of his/her dominant position in the market. Said forbidden clauses and conditions include ones producing the following effects:</p> <ul style="list-style-type: none">(a) effects detrimental to commerce;(b) exclusive conditions of retrocession;(c) impediments to challenge the validity of dependent patents or licenses;(d) limitations to the licensee in the commercial or industrial areas providing said limitation does not derive from the rights granted by the patent; or(e) limitations to the exportation of the product protected by the patents towards those countries with which there is an agreement to establish an economic and commercial integration zone.

	<p><u>Trade Mark Law Number 17.011 (dated 25 September 1998).</u></p> <p><u>Competition Law Number 17.243 (dated 22 June 2000).</u></p> <p><i>General Prohibition:</i> Article 14 - prohibits “Agreements and coordinated practices between economic agents, joint decisions by business associations and the abuse of a dominant position by one or more economic agents, serving to impede, restrict or distort competition and free access to the markets of production, processing, distribution and trade of goods and service”. For competition laws to be applicable, abuse of economic power must result in “prejudice to the general interest”.</p>
2. Market Shares	No
3. Duration	<p>(a) intellectual property rights, generally: duration of the intellectual property right.</p> <p>(b) know-how: no specific provisions.</p>
4. Regulation of Price	<p>Price fixing not <i>per se</i> prohibited. Price fixing is deemed anti-competitive if it falls within the general definition of prohibited practices (Article 14 of Law Number 17.243) and causes prejudice to the general interest - no specific threshold over which general interest is deemed affected has been provided in competition laws and regulations.</p> <p>The examples of prohibited practices, include “A) to permanently impose in an abusive way, whether directly or indirectly, purchase or sales prices or other transaction conditions on consumers” (Competition Law Article 14).</p>
5. Limitation of Production	No, such limitation is <i>per se</i> prohibited. Article 14 example of prohibited practice: “B) to unjustifiably restrict production, distribution and technological development to the detriment of companies or consumers”.
6. Tie-in Clauses	Generally, no. Article 14 example of prohibited practice: “D) to subordinate an agreement to the acceptance of complimentary or supplementary obligations that, due to their own nature or commercial uses, does not have any relation with the object of those agreements to the disadvantage of their consumers”. Accordingly tie in clauses would be prohibited if they caused prejudice to “a general interest”.
7. General Restrictions	<p>(a) specified customers: Deemed anti-competitive if a restriction falls within general prohibition of Article 14.</p> <p>(b) customer groups: Deemed anti-competitive if a restriction falls within general prohibition of Article 14.</p> <p>(c) field of use: no specific prohibitions. Deemed anti-competitive if a restriction falls within general prohibition of Article 14.</p>

	(d) territory: Deemed anti-competitive if fall within general prohibition of Article 14 (see above, Part A - 1). Note also: Patent Act Number 17.164, Article 52(e) prohibiting restriction within economic integration zones. (Note: Uruguay is a member of Mercosur and the Latin-American Integration Association (ALADI)).
8. Active/Passive Sales Restrictions	Deemed anti-competitive if restriction falls within the general prohibition of Article 14. Note also: Patent Act Number 17.164, Article 52(e) prohibiting restriction within economic integration zones - (see above, Part A - 1).
9. Restriction on exploitation of Licensee IP	May be prohibited with regard to patents under Patent Act Number 17.164 Article 52(d) - see above, Part A - 1.
10. Improvements	May be prohibited Patent Act Number 17.164 Article 52(d) (see above) and Article 69 regarding cross licensing of dependent patents may be relevant. Article 69 – “whenever the patented invention or utility model cannot be exploited in the country without violating a previous patent, the patentee or a licensee to any title thereof shall be entitled to apply for the grant of a compulsory licence regarding the other dependent patents as long as it is necessary to exploit the same and avoid violation thereof. When the object of one of the patents is a product and the other is a process both patents are deemed to be dependent from each other for the corresponding exploitation”.
11. Challenge to IPR	There are no specific provisions regarding trade mark licenses. Patent Act Number 17.164 Article 52(c) (see above, Part A - 1) may prohibit such clauses in the case of patents.
12. Severability	Anti-competitive provisions are capable of being severed and will not result in an agreement being void.
<u>Part B - Distribution Agreements</u>	
1. Legislation/Rules	Competition Law Number 17.243 Article 14
2. Regulation of Price	(a) recommended sales prices: not <i>per se</i> prohibited under the Competition Law. (b) minimum sales prices: not <i>per se</i> prohibited under the Competition Law. (c) maximum: sales prices: not <i>per se</i> prohibited under the Competition

	<p>Law.</p> <p>These may be prohibited under the general prohibition of the Competition Act Number 17.243: Article 14 example of prohibited practices “A) to permanently impose in an abusive way whether directly or indirectly, purchase or sales prices or other transaction conditions on consumers”. Price fixing will be anti-competitive if it falls within the general definition of prohibited practices of Article 14 and causes prejudice to the “general interest”.</p>
3. Restrictions	<p>(a) territories: no specific prohibition. Such clauses only deemed anti-competitive if they fall under the general prohibition of Article 14.</p> <p>(b) customers: no specific prohibition. Such clauses only deemed anti-competitive if they fall under the general prohibition of Article 14.</p> <p>(c) customer groups: no specific prohibition. Such clauses only deemed anti-competitive if they fall under the general prohibition of Article 14.</p> <p>Article 14 example of prohibited provisions “B) to unjustifiably restrict production, distribution and technological development to detriment of companies or consumers”.</p>
4. Active/Passive Sales Restrictions	No specific prohibition. Such clauses only deemed anti-competitive if they fall under the general prohibition of Article 14.
5. Non-compete provisions	Competition Law Application Authority has ruled non compete provisions are not deemed <i>per se</i> anti-competitive and are to be examined on a case by case basis to determine if they have pro-competitive or anti-competitive effects. Restrictions will only be anti-competitive if fall within prohibition of Article 14 of the Competition Law Number 17.243.
6. Restrictions on competing products	No specific prohibition. Such clauses only deemed anti-competitive if they fall under the general prohibition of Article 14.
7. Severability	See above Part A-12